VIRGINIA REGISTER OF REGULATIONS

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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 18 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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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

PUBLICATION SCHEDULE AND DEADLINES

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

January 2014 through March 2015

Volume: Issue	Material Submitted By Noon*	Will Be Published On
30:10	December 20, 2013 **(Friday)**	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
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31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 **(Tuesday)**	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 23, 2014 **(Tuesday)**	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Daniel Colpo.

Nature of Petitioner's Request: Prohibit acceptance of coupons for dispensing as it has potential for medication safety concerns through incomplete DUR/Profile data and transcription errors.

Agency Plan for Disposition of Request: The petition has been filed with the Virginia Register of Regulations and will be published on January 13, 2014. Comment on the petition may be sent by email, regular mail, or posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov; comment will be requested until February 12, 2014. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for March 26, 2014.

Public Comment Deadline: February 12, 2014.

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

VA.R. Doc. No. R14-04; Filed December 12, 2013, 3:22 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending **4VAC25-150, Virginia Gas and Oil Regulation.** The purpose of the proposed action is to ensure the gas and oil regulation reflects current industry best practices and to expand disclosure of ingredients used in gas and oil well stimulation and completion on permitted gas and oil operations in the Commonwealth. The existing regulation will also be reviewed to determine if current requirements are sufficient to properly regulate drilling in different geographical areas of the Commonwealth.

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

Statutory Authority: §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Public Comment Deadline: February 12, 2014.

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

VA.R. Doc. No. R14-3940; Filed December 20, 2013, 11:43 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 Medical Assistance Services intends to consider amending **12VAC30-130, Amount, Duration and Scope of Selected Services.** The purpose of the proposed action is to comply with Item 307 UU of Chapter 3 of the 2012 Acts of Assembly, Special Session I, by making programmatic changes to the Client Medical Management program to ensure appropriate utilization, prevent abuse of covered services, and promote improved and cost efficient medical management of essential Medicaid client health care. The proposed action will also assist and educate beneficiaries in appropriately utilizing medical and pharmacy services.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Comment Deadline: February 12, 2014.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R14-2290; Filed December 16, 2013, 12:28 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

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 Nursing intends to consider amending **18VAC90-20, Regulations of the Board of Nursing.** The purpose of the proposed action is to amend provisions on inactive licensure and reinstatement of licensure to ensure that the requirements for evidence of continuing competency are consistent with those for renewal of an active license as a nurse. This action is in response to a petition for rulemaking.

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

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

Public Comment Deadline: February 12, 2014.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R14-01; Filed December 18, 2013, 8:32 a.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 (NOIRA) for repealing **22VAC40-120, Minimum Standards for Licensed Family Day-Care Systems** and promulgating **22VAC40-121, Standards for Licensed Family Day Systems**, which was published in 27:12 VA.R. 1269 February 14, 2011. Due to the time this action has been pending, the

agency has decided to withdraw the NOIRA and determine its next course of action.

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Comment Deadline: March 16, 2011.

Agency Contact: Karen Cullen, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

VA.R. Doc. No. R11-2732; Filed December 16, 2013, 10:30 a.m.

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 (NOIRA) for repealing **22VAC40-180, Voluntary Registration of Family Day Homes - Requirements for Providers,** and promulgating **22VAC40-181, Voluntary Registration of Family Day Homes - Requirements for Providers**, which was published in 26:24 VA.R. 2784 August 2, 2010. Due to the time this action has been pending, the agency has decided to withdraw the NOIRA and determine its next course of action.

Statutory Authority: §§ 63.2-217 and 63.2-1704 of the Code of Virginia.

Agency Contact: Debra O'Neill, Children's Program Licensing Consultant, Department of Social Services, Division of Licensing Programs, 801 East Main Street, 9th Floor, 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. R10-2243; Filed December 16, 2013, 10:31 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Proposed Regulation

Title of Regulation: **4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-40, 4VAC10-30-120, 4VAC10-30-200, 4VAC10-30-210).**

Statutory Authority: §§ 10.1-1101 and 10.1-1152 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 14, 2014.

Agency Contact: Ronald S. Jenkins, Administrative Officer, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

Basis: Section 10.1-1101 of the Code of Virginia authorizes the Department of Forestry to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia. Section 10.1-1152 of the Code of Virginia, as amended by Chapter 484 of the 2012 Acts of Assembly, provides that a special use permit for certain activities on state forest lands shall be issued for a fee established by regulations promulgated by the department.

Purpose: The purpose of the proposed amendments is to better protect and serve the health, safety, and welfare of the public who use Virginia State Forests for their recreational activities or while working in the state forests for official business reasons. The authority to charge a fee is being transferred to regulations. The proposed amendments establish an annual fee of $15 for special use permits to hunt, trap, fish, ride bikes, and ride horses on state forest lands. The department adopted an emergency regulation effective September 18, 2012, and this action will ensure the authority granted under the emergency regulation continues as permanent authority.

Substance: The proposed amendments require that any person who hunts, fishes, traps, rides a bike, or rides a horse in a state forest is required to purchase an annual special use permit for a fee of $15.

Issues: The advantage to the agency is that the amendments will enable the agency to continue charging an annual $15 special permit fee for hunting, fishing, trapping, riding horses, and riding bikes on state forest lands. This fee was previously established by statute, therefore, the proposed amendment is not expected to have any additional impact on the public. This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Forester proposes to: 1) specify that the permit fee to hunt, trap, fish, ride bikes, or ride horses in a state forest is $15, and 2) add clarifying language to the regulations.

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

Estimated Economic Impact. Prior to 2012, the Code of Virginia (§ 10.1-1152) stated that the State Forester is authorized, with the approval of the Board, to require any person who hunts, fishes, traps, rides mountain bikes, or rides horses on any of the lands described in § 10.1-1151 to obtain a special use permit. A special use permit to engage in these activities on any such lands would be issued for a fee, not to exceed $15 annually, as fixed by the State Forester. Permits to trap on such lands could be issued in combination with the hunting permits, or separately, at a fee not to exceed $15 annually for each such permit, to be fixed by the State Forester.

Chapter 484 of the 2012 Acts of Assembly removed the explicit $15 fee from statute, and instead specifies that the fee is to be established by regulations promulgated by the Department of Forestry. Therefore the State Forester proposes to set the fee as $15 in these regulations. As in practice the fee is not changing, this proposed amendment will have no impact beyond adding clarity. Increased clarity from this amendment and the other clarifying changes is potentially beneficial for interested parties in that they will need to spend less time in determining applicable requirements.

Businesses and Entities Affected. The proposed amendments affect the estimated 6,000 to 7,000 individuals who use state forests for hunting, trapping, fishing, biking or horseback riding.[1]

Localities Particularly Affected. The regulations potentially affect anyone interested in hunting, trapping, fishing, biking or horseback riding, but may particularly affect those who live near the state forests. The 22 state forests are located in the following counties: Appomattox, Bedford, Buckingham, Carroll, Craig, Cumberland, Essex, Fauquier, Grayson, King and Queen, King William, Lancaster, Nelson, New Kent, Prince Edward, Prince William, Rockbridge, Rockingham, Russell, Shenandoah, Sussex, and Washington.

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

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

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

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

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

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

[1] Data source: Department of Forestry

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

Summary:

In accordance with Chapter 484 of the 2012 Acts of Assembly, the proposed amendments require any person 16 years of age or older who hunts, fishes, traps, rides a bike, or rides a horse in a state forest to purchase an annual special use permit for a fee of $15.

4VAC10-30-40. Permits.

A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holder or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Forests Regulation. A state forest ~~hunting~~ special use permit will be required to hunt ~~or~~, trap, fish, ride bikes, or ride horses on any state forest or portion thereof on which hunting ~~and~~, trapping, fishing, riding bikes, or riding horses is permitted.

4VAC10-30-120. Charges.

No person 16 years of age or older shall make, use, or gain admittance to, or attempt to use or gain admittance to the facilities in any forest for the use of which a ~~charge~~ special use permit is ~~made~~ required by the department unless he shall ~~pay the charge or price fixed by the department~~ obtain a special use permit and pay an annual fee of $15. Any person under 16 years of age may hunt, trap, fish, ride bikes, or ride horses on any state forest and is not required to obtain a special use permit or pay an annual fee.

4VAC10-30-200. Hunting and fishing.

No person within the confines of any forest, shall hunt, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have in his possession any bird or animal, dead or alive, within the forest except any bird or animal designated as a game bird or animal by the Virginia Board of Game and Inland Fisheries, and the trapping of, hunting of, shooting at, or possession of any such bird or animal is prohibited except during the lawful hunting season set for the forest or portion thereof by the Virginia Board of Game and Inland Fisheries and only in those forests or portion thereof designated by the Forest Superintendent as lawful hunting areas. A state forest ~~hunting~~ special use permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.

4VAC10-30-210. Fishing.

Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing license, have a special use permit, and comply with the Virginia Game and Inland Fisheries rules and regulations.

VA.R. Doc. No. R13-3185; Filed December 16, 2013, 5:16 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-55, 4VAC20-252-150).**

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

Effective Date: January 1, 2014.

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

Summary:

The amendments (i) establish the 2014 Virginia recreational and commercial striped bass quotas as 1,402,325 pounds for each fishery, (ii) establish a 12-pound minimum weight for the coastal striped bass area fishery, and (iii) use the established 12-pound minimum weight to allocate striped bass tags in cases where harvesters reported an average striped bass weight lower than 12 pounds in the previous fishing year.

4VAC20-252-55. Recreational harvest quota.

The total allowable level of all recreational harvest of striped bass for all open seasons and for all legal gear shall be ~~1,230,110~~ 1,402,325 pounds of whole fish. At such time as the total recreational harvest of striped bass is projected to reach ~~1,230,110~~ 1,402,325 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for recreational purposes.

4VAC20-252-150. Individual commercial harvest quota.

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be ~~1,230,110~~ 1,402,325 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach ~~1,230,110~~ 1,402,325 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 184,853 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 184,853 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning an individual's tags for commercial harvests in the Chesapeake area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

D. For the purposes of assigning an individual's tags for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the ~~estimate of the~~ reported average coastal area harvest weight of striped bass harvested by the permitted individual during the previous fishing year, except as described in subsection E of this section. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

E. For any individual whose reported average coastal area harvest weight of striped bass in the previous fishing year was less than 12 pounds, a 12-pound minimum weight shall be used to convert that individual's harvest quota of striped bass, in pounds of fish, to harvest quota in number of fish.

VA.R. Doc. No. R14-3936; Filed December 18, 2013, 4:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-41).**

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

Effective Date: January 1, 2014.

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

Summary:

The amendments establish a maximum smooth dogfish fin-to-carcass weight ratio of 12% and extend the time period commercial fishermen may process smooth dogfish at sea to year round.

4VAC20-490-41. Commercial catch limitations.

A. It shall be unlawful for any person to possess on board a vessel or to land in Virginia more than 33 commercially permitted nonsandbar large coastal sharks in one 24-hour period. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark until that shark is offloaded at the dock or on shore, except smooth dogfish as provided in subsection C of this section. A licensed commercial fisherman may eviscerate and remove the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. ~~From July 1 through the end of February, commercial fishermen may process smooth dogfish at sea, except the first dorsal fin shall remain attached naturally to the carcass until landed. From March 1 through June 30, commercial~~ Virginia licensed commercial fishermen may completely process smooth dogfish at sea prior to landing~~.~~, except that it shall be unlawful for anyone to land or possess on board any vessel any amount of processed smooth dogfish whereby the total weight of fins exceeds 12% of the total dressed weight of any smooth dogfish.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after NOAA Fisheries has closed the fishery for that species in federal waters.

E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted small coastal species.

F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess in Virginia any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner, or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing~~,~~ in Virginia waters~~,~~ while possessing the above species; and

2. All fishing gear aboard the vessel is stowed and not available for immediate use.

G. It shall be unlawful for any person to retain, possess, or purchase any commercially prohibited shark or any research only shark, except as provided in subsection I of this section.

H. All sharks harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted shark dealer.

I. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions, and prohibited species restrictions. Exemptions shall be granted only for display or research purposes. Any person granted an exemption for the harvest of any shark for research or display shall report the species, weight, location caught, and gear used for each shark collected within 30 days. Any person granted a permit to possess any shark for research or display shall provide the commissioner~~,~~ on an annual basis~~,~~ information on the location and status of the shark throughout the life of the shark.

VA.R. Doc. No. R14-3939; Filed December 18, 2013, 3:34 p.m.

Emergency Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-10, 4VAC20-490-42).**

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

Effective Dates: January 1, 2014, through January 30, 2014.

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

Preamble:

This emergency action changes the amount in pounds, from 3,300 to 4,000, of spiny dogfish that can be taken, possessed aboard any vessel, or landed for commercial purposes in Virginia.

4VAC20-490-10. Purpose.

The purpose of this emergency chapter is to ensure the conservation of shark resources by preventing overfishing by commercial and recreational fisheries and to control the practice of finning.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of May 1, 2013, through April 30, 2014, the spiny dogfish commercial landings quota shall be limited to 4,408,894 pounds.

B. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia more than ~~3,300~~ 4,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

VA.R. Doc. No. R14-3941; Filed December 18, 2013, 4:03 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-500. Pertaining to the Catching of Eels (amending 4VAC20-500-20, 4VAC20-500-40, 4VAC20-500-50, 4VAC20-500-55, 4VAC20-500-60; adding 4VAC20-500-35, 4VAC20-500-45).**

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

Effective Date: January 1, 2014.

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

Summary:

The amendments establish (i) a gear-specific harvest season closure for all commercial gears, except pots and traps, from September 1 through December 31; (ii) a recreational possession limit of 25 eels per individual per day; (iii) a 9-inch minimum recreational and commercial size limit; and (iv) a charter and head boat possession limit of 50 eels per captain and crew per day.

4VAC20-500-20. Definition.

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

"Eel" or "eels," as described in this chapter, means the eel species Anguilla rostrata.

"Elver" means any eel of less than six inches in total length.

"Land" or "landing" means to enter port with eels on board any boat or vessel, to begin offloading eels, or to offload eels.

4VAC20-500-35. Minimum size limit.

It shall be unlawful for any individual to take, catch, possess, or land any eels less than nine inches in length.

4VAC20-500-40. Elvers.

It shall be unlawful for any ~~person~~ individual to possess elvers; provided~~,~~ however, that elvers may be taken (i) for research only by duly appointed representatives of any institution of higher education in Virginia and by other parties when specifically authorized in writing by the Commissioner of Marine Resources or (ii) by those ~~persons~~ individuals who are approved for a permit for eel aquaculture by the commission.

4VAC20-500-45. Commercial season.

It shall be unlawful for any individual to harvest, take, catch, possess, or land any eels from September 1 through December 31 from any commercial gear, except from pots and traps.

4VAC20-500-50. Minimum mesh size.

A. It shall be unlawful for any ~~person~~ individual to place, set, or fish any eel pot in Virginia tidal waters which has a mesh less than 1/2-inch by 1/2-inch.

B. It shall be unlawful for any ~~person~~ individual to place, set, or fish any 1/2-inch by 1/2-inch mesh rectangular or square eel pot unless such pot contains at least one unrestricted 4-inch by 4-inch escape panel consisting of 1/2-inch by 1-inch mesh. In addition, it shall be unlawful for any ~~person~~ individual to place, set, or fish any 1/2-inch by 1/2-inch mesh cylindrical eel pot unless such pot contains at least one unrestricted 4-inch square escape panel of 1/2-inch by 1-inch mesh.

4VAC20-500-55. Possession limit.

A. It shall be unlawful for any ~~person~~ individual fishing with recreational hook and line, rod and reel, spear, gig, or other recreational gear to possess more than ~~50~~ 25 eels per day, except as described in subsection B of this section for charter boats and head boats. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of ~~persons~~ individuals on board legally eligible to fish multiplied by ~~50~~ 25, except as described in subsection B of this section for charter boats and head boats. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any eel taken after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any captain or mate of any legally licensed charter boat or head boat to possess more than 50 eels per day. When fishing is from a charter boat or head boat, where the entire catch is held in a common hold or container, the possession limit shall be for the charter boat or head boat and shall be equal to the number of captains and mates on board legally eligible to fish multiplied by 50. Passengers on any charter boat or head boat shall possess no

more than 25 eels per passenger per day. The captain or operator of the charter boat or head boat shall be responsible for any possession limit. Any eel taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of eel ~~which~~ that exceeds the possession limit described in subsection A or B of this section shall be presumed to be for commercial purposes.

4VAC20-500-60. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any ~~person~~ individual violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same ~~person~~ individual within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R14-3937; Filed December 18, 2013, 3:04 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-21, 4VAC20-900-25, 4VAC20-900-35, 4VAC20-900-39, 4VAC20-900-45, 4VAC20-900-50; adding 4VAC20-900-26; repealing 4VAC20-900-36).**

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

Effective Date: January 1, 2014.

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

Summary:

The amendments (i) establish the 2014 Virginia horseshoe crab commercial quota as no greater than 172,828 horseshoe crabs; (ii) establish a quota category-specific licensing system; (iii) establish quota category-specific daily vessel trip limits; (iv) establish a dredge gear prohibition in the Virginia Blue Crab Sanctuary Area; and (v) establish permit eligibility requirements for individuals who have received a horseshoe crab license or permit transfer from May 1, 2011, through December 10, 2013.

4VAC20-900-21. ~~License~~ Permit requirements and exemption.

A. The taking by hand of as many as five horseshoe crabs in any one day only for ~~personal use only~~ noncommercial use shall be exempt from the licensing requirements.

B. ~~Except as provided for in 4VAC20-900-25 G 3, it~~ It shall be unlawful for any ~~boat or vessel~~ individual to land horseshoe crabs in Virginia for commercial purposes without first obtaining ~~either type of horseshoe crab endorsement license~~ a horseshoe crab permit as described in this section. ~~The~~ A valid horseshoe crab ~~endorsement license~~ permit shall be required of each ~~boat or vessel used~~ individual to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection A of this section shall be presumed for commercial purposes. ~~There shall be no fee for the license.~~

~~C. To be eligible for an unrestricted horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998 through 2000.~~

~~1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, and telephone number, and boat or vessel name and its registration or documentation number.~~

~~2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.~~

C. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by trawl gear without first having obtained a Horseshoe Crab Trawl Permit. The Horseshoe Crab Trawl Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection:

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by trawl gear in the commission's mandatory harvest reporting system; or

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by trawl gear in the federal dealer reports to the Standard Atlantic Fisheries Information System.

~~D. To be eligible for a restricted horseshoe crab endorsement license that is limited to using a crab dredge to harvest horseshoe crabs, a Virginia registered commercial fisherman's boat or vessel shall have landed at least 10,000 pounds of whelk in any one year from 2002 through 2005.~~

~~1. The Virginia registered commercial fisherman shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, and telephone number, and boat or vessel name and its registration or documentation number.~~

~~2. The Virginia registered commercial fisherman shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of whelk landings data from the National Marine Fisheries Service.~~

D. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by dredge gear without first having obtained either and only one of the following two available horseshoe crab dredge permits: a Horseshoe Crab Class A Dredge Permit or a Horseshoe Crab Class B Dredge Permit. The Horseshoe Crab Class A Dredge Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection. The Horseshoe Crab Class B Dredge Permit shall only be issued to a Virginia registered commercial fisherman who was issued a restricted horseshoe crab endorsement license or a horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection.

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by dredge gear in the commission's mandatory harvest reporting system; or

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by dredge gear in the federal dealer reports to the Standard Atlantic Fisheries Information System.

E. ~~To be eligible for a horseshoe crab hand harvester permit, the individual shall have been issued~~ It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by hand harvest without first having obtained a Horseshoe Crab Hand Harvest Permit. The Horseshoe Crab Hand Harvest Permit shall only be issued to a Virginia registered commercial fisherman who was issued a horseshoe crab hand harvester permit~~,~~ prior to the license moratorium of May 1, 2011, ~~and shall have documented on Virginia mandatory harvest reporting forms a minimum harvest of one horseshoe crab by hand harvest methods, at any time from 1993 through 2010.~~ and shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by hand harvest in the commission's mandatory harvest reporting system.

~~F. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess any type of a valid horseshoe crab endorsement license or horseshoe crab hand harvester permit to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission.~~

F. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by pound net without first having obtained a Horseshoe Crab Pound Net Permit. The Horseshoe Crab Pound Net Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection:

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by pound net in the commission's mandatory harvest reporting system; or

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by pound net in the federal dealer reports to the Standard Atlantic Fisheries Information System.

G. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by any method other than trawl, dredge, pound net, or hand harvest without first having obtained a Horseshoe Crab General Category Permit. The Horseshoe Crab General Category Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011.

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

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

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

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

D. The commercial quota of horseshoe crab for ~~2013~~ 2014 shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any ~~person~~ individual to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

1. The horseshoe crab commercial trawl gear quota is equal to 12.488% of the commercial quota of horseshoe crabs described in this subsection or 21,583 horseshoe crabs.

2. The horseshoe crab commercial dredge gear quota is equal to 40.348% of the commercial quota of horseshoe crabs described in this subsection or 69,733 horseshoe crabs.

3. The horseshoe crab commercial hand harvest quota is equal to 22.095% of the commercial quota of horseshoe crabs described in this subsection or 38,186 horseshoe crabs.

4. The horseshoe crab commercial pound net quota is equal to 18.142% of the commercial quota of horseshoe crabs described in this subsection or 31,354 horseshoe crabs.

5. The horseshoe crab commercial general category quota is equal to 6.927% of the commercial quota of horseshoe crabs described in this subsection or 11,972 horseshoe crabs.

E. It shall be unlawful for any ~~person~~ individual to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS ~~line~~ Line by any gear after 81,331 male horseshoe crabs have been landed and announced as such, and the following provisions shall also apply:

1. It shall be unlawful for any ~~person~~ individual to harvest or land any female horseshoe crabs from waters east of the COLREGS ~~line~~ Line.

2. It shall be unlawful for any ~~person~~ individual to harvest or land any amount of horseshoe crabs from waters east of the COLREGS ~~line~~ Line by any gear, except for trawl or dredge gear.

3. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee or Horseshoe Crab Class A Dredge Permittee to take, catch, possess, or land more than 1,250 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

4. It shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to take, catch, possess, or land more than 500 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

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

1. It shall be unlawful for any ~~person who holds a~~ valid ~~unrestricted horseshoe crab endorsement license~~ Horseshoe Crab Trawl Permittee, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500~~, except that when~~ per day. When it is projected and announced that 80% of the horseshoe crab commercial trawl gear quota ~~is~~ has been taken, it shall be unlawful for any ~~person who meets the requirements of 4VAC20-900-21 C and holds a valid horseshoe crab endorsement license~~ valid Horseshoe Crab Trawl Permittee to possess aboard any vessel ~~in Virginia~~ or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial trawl quota is taken, it shall be unlawful for any valid Horseshoe Crab Trawl Permittee to possess or land any horseshoe crab taken by trawl gear.

2. It shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500 per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

~~2.~~ 3. It shall be unlawful for any ~~person who holds a~~ valid ~~restricted horseshoe crab endorsement license~~ Horseshoe Crab Class B Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000~~, except that when~~ per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota ~~is~~ has been taken, it shall be unlawful for any ~~person who meets the requirements of 4VAC20-900-21 D, and holds a~~ valid ~~horseshoe crab endorsement license~~ Horseshoe Crab Class B Dredge Permittee to possess aboard any vessel ~~in Virginia~~ or to land any number of horseshoe crabs in excess of 500 per day. ~~The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.~~ When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

~~3. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel~~

~~more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.~~

4. It shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee, as described in 4VAC20-900-21 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 100% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess or land any horseshoe crab taken by hand.

5. It shall be unlawful for any valid Horseshoe Crab Pound Net Permittee, as described in 4VAC20-900-21 F, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 80% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 100% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net Permittee to possess or land any horseshoe crab taken by pound net.

6. It shall be unlawful for any valid Horseshoe Crab General Category Permittee, as described in 4VAC20-900-21 G, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 80% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 125 per day. When it is projected and announced that 100% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess or land any horseshoe crab taken by gear other than trawl, dredge, pound net, or by hand.

~~4.~~ 7. It shall be unlawful for any two ~~horseshoe crab bycatch permittees~~ valid Horseshoe Crab Hand Harvest Permittees when fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota ~~is~~ has been taken, it shall be unlawful for any two ~~horseshoe crab bycatch permittees~~ valid Horseshoe Crab Hand Harvest Permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

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

~~6.~~ 8. It shall be unlawful for any ~~person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit~~ valid Horseshoe Crab General Category Permittee to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, after sunrise and before sunset.

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

~~c.~~ b. It shall be unlawful for any ~~person~~ individual to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches, unless the twine size of that gill net is equal to or greater than 0.81 millimeters in diameter (0.031 inches), and that ~~person~~ individual possesses his own valid commercial striped bass permit or his own black drum harvesting and selling permit, as well as either a horseshoe crab endorsement license or horseshoe crab bycatch permit.

H. From April 1 through June 30, in the Toms Cove Area, it shall be unlawful for any ~~person~~ individual to place, set, or fish any gill net, except as described in this subsection.

1. From April 1 through May 31, any gill net licensed as over 600 feet and up to 1,200 feet in length shall have at least one anchored end 800 feet from the mean low water line.

2. From June 1 through June 30, it shall be unlawful to place, set, or fish any gill net after sunset or before sunrise.

I. It shall be unlawful for any ~~fisherman issued a horseshoe crab endorsement license~~ valid Horseshoe Crab Trawl Permittee, Horseshoe Crab Class A Dredge Permittee, or Horseshoe Crab Class B Dredge Permittee to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

~~J. When it is projected and announced that 65,065 of the commercial quota, as described in subsection E of this section, has been taken from waters east of the COLREGS Line, the limitations on the possession and landing of male horseshoe crabs are as follows:~~

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

~~2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess~~

~~aboard any vessel in waters east of the COLREGS Line or to land more than 500 male horseshoe crabs per day.~~

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

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

4VAC20-900-26. Commercial gear restricted area.

It shall be unlawful for any person to harvest any horseshoe crabs by dredge gear within Virginia Blue Crab Sanctuary Area 2 as described in 4VAC20-752-20. The Virginia Blue Crab Sanctuary Area 2 consists of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at the mean low water line of Willoughby Spit at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, Latitude 36° 58.0456514' N, Longitude 76° 17.8459721' W; thence in a northwesterly direction to a point 200 feet offshore of mean low water, Latitude 36° 58.0637717' N, Longitude 76° 17.8812821' W; thence and following a line in a general easterly direction, said line being 200 feet offshore of the mean low water line, to a point on Ocean View Fishing Pier (formerly Harrison's Fishing Pier), Latitude 36° 57.6985477' N, Longitude 76° 15.5855211' W; thence northeasterly to Thimble Shoal Light, Latitude 37° 00.8708333' N, Longitude 76° 14.3970000' W; thence northeasterly to Cape Charles Lighthouse, Latitude 37° 07.3743333' N, Longitude 75° 54.3898333' W; thence southwesterly along the COLREGS Line to its intersection with the mean low water line of Cape Henry, Latitude 36° 55.6885268' N, Longitude 76° 00.3772955' W; thence, in a general westerly direction, following the mean low water line of the Chesapeake Bay, crossing the mouth of the Lynnhaven River along the north side of the Lesner Bridge and the mouth of Little Creek at the offshore ends of the stone breakwaters and continuing along said mean low water line to a point at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, said point being the point of beginning.

4VAC20-900-35. Monitoring requirements.

A. Any ~~person~~ individual harvesting or landing horseshoe crabs in Virginia shall report monthly on forms provided by the Marine Resources Commission all harvests of horseshoe crabs including, but not limited to, bait fisheries, bycatch, biomedical industry, and scientific and educational research harvests. Reporting requirements shall consist of numbers and pounds landed by sex, harvest method and harvest location.

B. It shall be unlawful for ~~a restricted or unrestricted horseshoe crab endorsement license holder~~ any valid Horseshoe Crab Trawl Permittee, Horseshoe Crab Class A Dredge Permittee, or Horseshoe Crab Class B Dredge Permittee to fail to contact the Marine Resources Operations Station prior to ~~the vessel issued a horseshoe crab endorsement license~~ offloading horseshoe crabs. The horseshoe crab ~~endorsement license holder~~ permittee shall provide the Marine Resources Commission the name of the vessel and its captain and the anticipated or approximate offloading time and site. Following offloading, the horseshoe crab ~~endorsement license holder~~ permittee shall contact the Marine Resources Operation Station and provide the total number of horseshoe crabs landed, gear type, and location of harvest.

C. It shall be unlawful for any ~~horseshoe crab bycatch permittee or horseshoe crab hand harvester permittee~~ valid Horseshoe Crab Pound Net Permittee, Horseshoe Crab Hand Harvest Permittee, or Horseshoe Crab General Category Permittee to fail to contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of landing and provide his Commercial Fisherman Registration License number, and the time, date, number of horseshoe crabs landed, gear type, and location of harvest.

D. It shall be unlawful for any ~~person~~ individual, firm, or corporation to buy any horseshoe crabs from any lawful harvester on or after July 1, 2007, without first having obtained a Horseshoe Crab Buying Permit from the Marine Resources Commission. The permit application shall be completed in full by the licensed seafood buyer, and a copy of the permit shall be kept in possession of the licensed buyer while buying or possessing horseshoe crabs.

E. Any licensed seafood buyer permitted to purchase horseshoe crabs shall provide written reports to the Marine Resources Commission of daily purchases and harvest information on forms provided by the Marine Resources Commission. Such information shall include the date of the purchase, the buyer's horseshoe crab permit number and harvester's Commercial Fisherman Registration License number, gear type used, water area fished, city or county of landing, and number of female horseshoe crabs and male horseshoe crabs purchased. These reports of any current weekly purchases shall be completed in full and submitted to the Marine Resources Commission no later than Thursday of the following week. In addition, once it has been projected and announced that ~~85% of the commercial quota of horseshoe crab has been landed or 69,131 of the commercial quota of horseshoe crab established for the horseshoe crab harvest~~ 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line ~~has been landed~~, each permitted buyer shall call the Marine Resources Commission's IVR on a daily basis to report his name and permit number, date, number of female horseshoe crabs and number of male horseshoe crabs purchased, gear used, and water area fished by the harvester.

F. ~~Persons~~ Individuals harvesting horseshoe crabs for biomedical use and owners of facilities using horseshoe crabs for biomedical purposes shall monitor and report monthly to the Marine Resources Commission all harvests or purchases

of horseshoe crabs and the percentage of mortality up to the point of release including that mortality ~~which~~ that occurs during harvest, shipping, handling, and bleeding.

G. Owners of biomedical facilities using horseshoe crabs shall participate in the tagging program of the Marine Resources Commission to evaluate the post-release mortality of horseshoe crabs.

H. Monthly reports shall be due to the Marine Resources Commission no later than the fifth day of the following month.

4VAC20-900-36. ~~Quota allocation.~~ (Repealed.)

~~A. When it has been projected and announced that 40.348% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by dredge gears, it shall be unlawful for any person to harvest or land horseshoe crabs caught by dredge gears.~~

~~B. When it has been projected and announced that 12.488% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by trawl gears, it shall be unlawful for any person to harvest or land horseshoe crabs caught by trawl gears.~~

~~C. When it has been projected and announced that 22.095% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by horseshoe crab hand harvester permittees, it shall be unlawful for any person to harvest or land horseshoe crabs caught by hand harvesting.~~

~~D. When it has been projected and announced that 18.142% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by pound nets, it shall be unlawful for any person to harvest or land horseshoe crabs caught by pound net.~~

~~E. When it has been projected and announced that 6.927% of the commercial quota, as described in 4VAC20-900-25 D, has been landed by gears not described in subsections A through D of this section, it shall be unlawful for any person to harvest or land horseshoe crabs by gears not described in subsections A through D of this section.~~

4VAC20-900-39. Permit transfers.

A. The commissioner or his designee may approve transfers of a horseshoe crab ~~license or~~ permit, as described in 4VAC20-900-21, to any individual who meets any of the following criteria:

1. Demonstrates a significant hardship on the basis of health and provides the commissioner documentation by an attending physician of the medical condition.

2. Demonstrates a significant hardship on the basis of a call to active military duty and provides the commissioner an explanation in writing and copy of the military orders for active duty.

3. Documents the death of an immediate family member eligible for a horseshoe crab license or permit and possessing a legal Commercial Fisherman Registration License.

B. The documented harvest history of a former horseshoe crab licensee or permittee, in the commission's mandatory harvest reporting system, whose horseshoe crab license or permit has been transferred in accordance with subsection A of this section from May 1, 2011, through December 10, 2013, shall be considered when determining permit requirements of any individual receiving the transferred license or permit.

4VAC20-900-45. Requirements of authorized agents.

A. It shall be unlawful for any ~~person~~ individual to serve as an agent for a horseshoe crab hand harvest permittee.

B. Any ~~person~~ individual serving as an agent to harvest horseshoe crabs for any lawful licensed or permitted horseshoe crab fisherman, except as described in subsection A of this section, shall be limited to the use of only one registered commercial fisherman's horseshoe crab license or permit.

4VAC20-900-50. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any ~~person~~ individual violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same ~~person~~ individual within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R14-3938; Filed December 19, 2013, 12:07 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Fast-Track Regulation

Title of Regulation: **6VAC20-110. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel (repealing 6VAC20-110-10 through 6VAC20-110-90).**

Statutory Authority: §§ 9.1-102 and 9.1-141 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Basis: The Governor's 2012 Regulatory Reform Initiative instructed all agencies to conduct a comprehensive review of

regulations currently in place and repeal regulations that are unnecessary or no longer in use. These regulations have been replaced by current regulations promulgated pursuant to § 9.1-141 of the Code of Virginia and in accordance with the § 2.2-4012.1 of the Code of Virginia.

Purpose: The regulatory chapter no longer serves its intended purpose and was replaced by newly promulgated regulations in July 1994. Repealing these regulations is not expected to have any impact on public health, safety, or welfare.

Rationale for Using Fast-Track Process: The department is seeking to repeal the entire chapter 6VAC20-110. These regulations have not been enforced since they were replaced with a new chapter, 6VAC20-170, in 1994, which has since been repealed and replaced with the current chapter 6VAC20-171.

Substance: This action repeals existing regulations because they have been superseded and are therefore obsolete.

Issues: These regulations have not been enforced since they were replaced in 1994. 6VAC20-171 is in effect and governs the private security services industry, and these regulations are obsolete. The advantage to the public and the agency of repealing these regulations is that such action would eliminate unnecessary regulations. There are no known disadvantages to the public or the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to repeal this regulation.

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

Estimated Economic Impact. According to the Department of Criminal Justice Services, the Rules Relating to Compulsory Minimum Training Standards for Private Securities Business Personnel (6VAC20-110) became obsolete in 1994 when they were replaced by the Regulations Relating to Private Security Services (6VAC20-170), which included the training standards for private security services business personnel. Thus these regulations have not been in use since 1994 and repealing them will have no impact beyond helping eliminate potential confusion by readers of the administrative code.[1]

Businesses and Entities Affected. The proposed repeal of these regulations will not directly affect any businesses or entities.

Localities Particularly Affected. The proposed repeal does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal will not significantly affect the use and value of private property.

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

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

Real Estate Development Costs. The proposed repeal does not 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.

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[1] The Regulations Relating to Private Security Services (6VAC20-170) was subsequently repealed in 2000 and replaced with Regulations Relating to Private Security Services (6VAC20-171), which are currently in effect.

Agency's Response to the Department of Planning and Budget's economic impact analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to the Governor's 2012 Regulatory Reform Initiative, the amendments repeal regulations that are unnecessary because they are no longer in use.

VA.R. Doc. No. R14-3824; Filed December 18, 2013, 1:52 p.m.

FORENSIC SCIENCE BOARD

Fast-Track Regulation

Title of Regulation: **6VAC40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (amending 6VAC40-50-10 through 6VAC40-50-60, 6VAC40-50-80).**

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 13, 2014.

Effective Date: February 27, 2014.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-2281, or email stephanie.merritt@dfs.virginia.gov.

Basis: Section 19.2-188.1 of the Code of Virginia requires the department to evaluate and, where applicable, approve field tests for the detection of marijuana, pursuant to regulations adopted in accordance with the Administrative Process Act, for use by law-enforcement officials. Law-enforcement officers may then testify to the results of department-approved field tests at certain misdemeanor trials. The proposed amendments to the Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material were adopted by the Forensic Science Board pursuant to §§ 9.1-1101 and 9.1-1110 of the Code of Virginia.

Purpose: The Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (6VAC40-50) assist law enforcement and the criminal justice system by providing information critical to criminal charging decisions and subsequent trials for the misdemeanor possession of marijuana. This process positively impacts judicial economy and, in turn, due process. Ultimately, the ability of law enforcement and the courts to rely on the results of marijuana field tests protects the health, safety, and welfare of the citizens of the Commonwealth.

Unlike the recent proposed amendments to the Regulations for the Approval of Field Tests for the Detection of Drugs (6VAC40-30), the department determined the marijuana field test kit manufacturers need not be required to pay the cost of the street drug preparation for this evaluation process because of the availability of the material, low material costs, relative stability in the field test market, and low rate of disapproval.

Rationale for Using Fast-Track Process: The proposed amendments to 6VAC40-50 are minor and do not alter existing, substantive procedures. In September 2012, the department conducted a periodic review of this regulation and received no public comment. Likewise, the Forensic Science Board discussed and voted to adopt these proposed amendments at its January 2013 public meeting, and no member of the public offered a comment. Therefore, the department does not anticipate these proposed amendments will be controversial.

Substance: In addition to nonsubstantive verbiage changes regarding the "evaluation" process, the proposed amendments clarify the resubmission process by noting that resubmitted requests for approval shall be accompanied by a detailed explanation of all modifications or changes to the test, the test instructions, or the manufacturer's claims since the most recent evaluation. This procedure merely formalizes the current practice in which the department and field test manufacturers discuss issues surrounding the resubmission of a previously disapproved field test.

Issues: The proposed clarification of the existing language and resubmission procedure will inform and, therefore, benefit the public, stakeholders, and kit manufacturers. The public generally benefits from the efficient and neutral field test evaluation process to the extent the proper use of department-approved marijuana field tests assist law-enforcement officials with criminal charging decisions and facilitate the judicial process. To the extent the amendments require additional information from a kit manufacturer seeking to resubmit following a disapproval, which is rare for marijuana field tests, the proposed amendments could minimally impact four out-of-state kit manufacturers. The proposed amendments emphasize the neutrality of the evaluation process and clarify resubmission procedures after disapproval. The department is unaware of any disadvantages to the agency or the Commonwealth. The department is unaware of any disadvantage to the public or the Commonwealth and expects the proposed amendments will generally benefit the Commonwealth and its citizens.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Forensic Science Board (Board) proposes to amend language in these regulations in order to improve clarity.

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

Estimated Economic Impact. The Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material concern the evaluation/approval of marijuana field test kits submitted by manufacturers. The evaluation/approval of the marijuana field test kits assists law enforcement and the criminal justice system by providing information critical to criminal charging decisions and subsequent trials for the misdemeanor possession of marijuana. This process positively impacts judicial economy and, in turn, due process. Ultimately, the ability of law enforcement and the courts to rely on the results of marijuana

field tests protects the health, safety and welfare of the citizens of the Commonwealth.

The Board's proposed language amendments do not change any requirements in practice. Thus, the proposed amendments will have no impact beyond providing a small benefit through a potential reduction in confusion concerning the requirements by readers of the regulations.

Businesses and Entities Affected. The regulations affect the four manufacturers of marijuana field test kits who have or have indicated an interest in submitting field test kits for evaluation/approval. All four firms are located outside of the Commonwealth.

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

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The Department of Forensic Science concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments change verbiage relating to the Department of Forensic Science's assessment of marijuana field test kits pursuant to § 19.2-188.1 of the Code of Virginia from an "approval" process to an "evaluation" process and clarify the procedure for resubmitting requests for evaluation after disapproval.

Part I
Definitions

6VAC40-50-10. Definitions.

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or his designee.

"Department" means the Department of Forensic Science.

"List of approved marijuana field tests" means a list of Duquenois-Levine field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 ~~B~~ of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles marijuana field tests or marijuana field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting marijuana plant material.

"Manufacturer's instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions that are published by the manufacturer and supplied with the marijuana field tests or marijuana field test kits.

"Marijuana" means marijuana as defined in § 18.2-247 of the Code of Virginia.

"Marijuana field test" means any Duquenois-Levine test unit used outside of a chemical laboratory environment to detect the presence of marijuana plant material.

"Marijuana field test kit" means a combination of individual marijuana field test units.

Part II
Process for Approval of Field Tests

6VAC40-50-20. Authority for approval.

Section 19.2-188.1 ~~B~~ of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana

field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether or not any plant material, the identity of which is at issue, is marijuana.

6VAC40-50-30. Request for ~~approval~~ evaluation.

A. Any manufacturer who wishes to ~~have~~ submit marijuana field tests or marijuana field test kits ~~approved~~ for evaluation pursuant to this chapter shall submit a written request for ~~approval~~ evaluation to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219

B. Materials sufficient for at least 10 marijuana field tests shall be supplied by each manufacturer. The materials shall include all instructions, precautions, color charts, flow charts and the like which are provided with the marijuana field test or marijuana field test kit and that describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material safety data sheets for each chemical or reagent shall be sufficient for this purpose.

D. ~~This approval~~ The department's evaluation process may require up to 90 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use marijuana plant material to assess those marijuana field tests submitted for ~~approval~~ evaluation. In order to be approved, the marijuana field test must correctly and consistently react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturer's instructions and claims.

6VAC40-50-40. Notice of ~~approval~~ decision.

The department will notify each manufacturer in writing of the approval or disapproval of each test for which ~~approval~~ evaluation was requested. Should any test not be approved, the manufacturer may resubmit their request for ~~approval~~ evaluation of that marijuana field test according to the previously outlined procedures ~~at any time~~ along with a detailed explanation of all alterations or changes to the test or related instructions or claims since the department's disapproval of the previously submitted test.

6VAC40-50-50. Maintenance of approved status.

The department may require that this ~~approval~~ evaluation be done as often as annually for routine purposes. If any modifications are made to an approved marijuana field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that ~~all testing and approval~~ evaluations be repeated for the particular manufacturers' approved marijuana field tests. The department shall notify the manufacturer in writing of this requirement. Any modified marijuana field test must be approved before it can be used in accordance with § 19.2-188.1 ~~B~~ of the Code of Virginia. These changes shall include, but are not limited to, any chemical, procedural or instructional modifications made to the marijuana field test.

6VAC40-50-60. Publication.

Upon completion of such ~~testing~~ evaluations and in concurrence with the approval authority, the department will periodically publish a list of approved marijuana field tests in the General Notices section of the Virginia Register of Regulations. The department will also periodically publish the list on its website. The department may, in addition, provide copies of its approved list to any law-enforcement agency. The department may share any information or data developed from this testing with these agencies.

Part III
Fees

6VAC40-50-80. Fees.

Manufacturers will be charged a fee of $50 for each marijuana field test for which individual ~~approval~~ evaluation is requested. The department will ~~evaluate~~ review the ~~manufacturers'~~ manufacturer's request and notify ~~them~~ the manufacturer in writing of the amount due before ~~testing~~ evaluation begins. Manufacturers who wish to withdraw a request for ~~approval~~ evaluation shall immediately notify the department in writing ~~of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the department in writing~~. The department's assessment of the amount of payment required will be based upon a detailed ~~evaluation~~ review of the manufacturer's request and that amount will be final. ~~Approval will not be granted~~ The evaluation process will not be initiated before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R14-3821; Filed December 19, 2013, 1:42 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Title of Regulation: **8VAC20-640. Regulations Governing Substitute Teachers (repealing 8VAC20-640-10).**

Statutory Authority: §§ 22.1-16 and 22.1-30 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Anne Wescott, Assistant Superintendent for Policy and Communications, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2403, or email anne.wescott@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides the general authority for the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

Chapter 644 of the 2013 Acts of Assembly removes the requirement that the Board of Education promulgate regulations concerning temporarily employed teachers.

Purpose: The Governor's 2012 Regulatory Reform Initiative was established to repeal regulations that are unnecessary or no longer in use; reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and identify statutes that require unnecessary or overly burdensome regulations. Repealing this regulation is necessary to comport with the Governor's 2012 Regulatory Reform Initiative. Repealing this regulation will have no impact on the public health, safety, or welfare.

Rationale for Using Fast-Track Process: Repeal of the regulation is not expected to be controversial because Chapter 644 of the 2013 Acts of Assembly passed the General Assembly unanimously, and there was no opposition from any of the education organizations or other entities during the General Assembly discussion of the bill. The regulations simply duplicate the provisions already in the Code of Virginia.

Substance: The amendments repeal regulations that duplicate provisions of the Code of Virginia.

Issues: The advantage of repealing these regulations is that such action would eliminate unnecessary regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to repeal these regulations.

Result of Analysis. Repealing these regulations will have no economic impact.

Estimated Economic Impact. The regulations in their entirety state that substitute teachers must: 1) be a minimum of 18 years of age (21 years of age preferred), 2) possess good moral character, 3) have earned a high school diploma or GED, and 4) attend orientation to school policies and procedures conducted by the local school division. The minimum age and high school diploma/GED requirements are explicitly stated in Virginia Code § 22.1-302, while the moral character and orientation requirements are not. Thus by eliminating the regulations, the Board is eliminating requirements that substitute teachers "possess good moral character" and "attend orientation to school policies and procedures conducted by the local school division." The Department of Education does not expect this to have any practical impact, as most school divisions have historically had more stringent standards than what was contained within the regulation.

Businesses and Entities Affected. These regulations concern the 132 public school divisions in the Commonwealth.

Localities Particularly Affected. Repealing these regulations does not disproportionately affect particular localities.

Projected Impact on Employment. Repealing these regulations will not affect employment.

Effects on the Use and Value of Private Property. Repealing these regulations will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. Repealing these regulations will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Repealing these regulations will not affect small businesses.

Real Estate Development Costs. Repealing these regulations will not 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 State Board of Education concurs with the economic impact

analysis completed by the Department of Planning and Budget.

Summary:

Chapter 644 of the 2013 Acts of Assembly removed the mandate that the Board of Education promulgate regulations concerning temporarily employed teachers. This action repeals the associated regulations as unnecessary.

VA.R. Doc. No. R14-3778; Filed December 19, 2013, 11:07 a.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-700. Regulations for Conducting Division-Level Academic Reviews (repealing 8VAC20-700-10 through 8VAC20-700-50).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Anne Wescott, Assistant Superintendent for Policy and Communications, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2403, or email anne.wescott@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides the general authority for the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

Purpose: The Governor's 2012 Regulatory Reform Initiative was established to repeal regulations that are unnecessary or no longer in use; reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and identify statutes that require unnecessary or overly burdensome regulations. Repealing this regulation is necessary to comport with the Governor's Regulatory Reform Initiative. Repealing these regulations will have no impact on public health, safety, or welfare.

Rationale for Using Fast-Track Process: Repeal of the regulation is not expected to be controversial. The Department of Education has determined that the regulations duplicate provisions in guidance documents and are not needed.

Substance: The amendments repeal regulations pertaining to conducting division-level academic reviews.

Issues: The advantage of repealing these regulations is that such action would eliminate unnecessary regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to repeal these regulations.

Result of Analysis. Repealing these regulations will have no economic impact.

Estimated Economic Impact. House Bill 1294 of the 2004 Virginia General Assembly amended Code of Virginia § 22.1-253.13:3 to allow the Board to conduct division-level academic reviews when the failure of schools within a division to achieve full accreditation status is related to division-level failure to implement the Standards of Quality. The bill also instructed the Board to promulgate regulations to implement the provisions of the act.

Senate Bill 1201 of the 2013 Virginia General Assembly eliminated the statutory requirement for the Board to promulgate these regulations. The Board now proposes to repeal the regulations. According to the Department of Education, all of the provisions in the regulations are also in guidance documents. Thus repealing the regulations will not change the provisions in practice.

Businesses and Entities Affected. These regulations concern the Board of Education, the Department of Education, and the 132 public school divisions in the Commonwealth.

Localities Particularly Affected. These regulations particularly affect localities with poorly performing schools.

Projected Impact on Employment. Repealing these regulations is unlikely to affect employment.

Effects on the Use and Value of Private Property. Repealing these regulations is unlikely to affect the use and value of private property.

Small Businesses: Costs and Other Effects. Repealing these regulations is unlikely to affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Repealing these regulations is unlikely to affect small businesses.

Real Estate Development Costs. Repealing these regulations is unlikely to 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 agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

This action repeals the Regulations for Conducting Division-Level Academic Reviews.

VA.R. Doc. No. R14-3791; Filed December 19, 2013, 11:08 a.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-710. Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions (repealing 8VAC20-710-10, 8VAC20-710-20, 8VAC20-710-30).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Anne Wescott, Assistant Superintendent for Policy and Communications, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2403, or email anne.wescott@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides the general authority for the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. Chapter 644 of the 2013 Acts of Assembly removes the requirement that the Board of Education promulgate regulations concerning the process for submitting proposals for the consolidation of school divisions.

Purpose: The Governor's 2012 Regulatory Reform Initiative was established to repeal regulations that are unnecessary or no longer in use; reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and identify statutes that require unnecessary or overly burdensome regulations. Repealing this regulation is necessary to comport with the Governor's Regulatory Reform Initiative. Repealing these regulations will have no impact on public health, safety, or welfare.

Rationale for Using Fast-Track Process: Repeal of the regulation is not expected to be controversial. The regulations simply duplicate the provisions already in the Code of Virginia and are, therefore, unnecessary.

Substance: The amendments repeal regulations that duplicate provisions of the Code of Virginia.

Issues: The advantage of repealing these regulations is that such action would eliminate unnecessary regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education proposes to repeal these regulations.

Result of Analysis. Repealing these regulations will have no economic impact.

Estimated Economic Impact. These regulations duplicate language in the Code of Virginia. Thus repealing these regulations will have no economic impact.

Businesses and Entities Affected. Repealing these regulations will not affect the 132 public school divisions in the Commonwealth.

Localities Particularly Affected. Repealing these regulations will not affect localities.

Projected Impact on Employment. Repealing these regulations will not affect employment.

Effects on the Use and Value of Private Property. Repealing these regulations will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. Repealing these regulations will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Repealing these regulations will not affect small businesses.

Real Estate Development Costs. Repealing these regulations will not 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 agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

Chapter 644 of the 2013 Acts of Assembly removed the mandate that the Board of Education promulgate regulations to provide a process whereby school divisions may submit proposals for the consolidation of school divisions to the Board of Education. This action repeals the associated regulations as unnecessary.

VA.R. Doc. No. R14-3792; Filed December 19, 2013, 11:09 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. I13) (amending 9VAC5-50-400, 9VAC5-50-410).**

9VAC5-60. Hazardous Air Pollutant Sources (Rev. I13) (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the Clean Air Act; 40 CFR Parts 61 and 63.

Effective Date: July 1, 2014.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2013. The new standards in the federal regulations that are being incorporated into the regulations by reference are as follows:

1. Three new source performance standards (NSPSs) are being modified: Subpart KKK, Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011 (40 CFR 60.630-636); Subpart LLL, SO_2 Emissions from Onshore Natural Gas Processing for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011 (40 CFR 60.640-648); and Subpart F, Portland Cement Plants (40 CFR 60.60-60.66). Three NSPSs are being added: Subpart Ga, Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011 (40 CFR 60.70a-77a); Subpart OOOO, Crude Oil and Natural Gas Production, Transmission and Distribution (40 CFR 60.5360-5430); and Subpart Ja, Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007 (40 CFR 60.100a-109a).

2. One maximum achievable control technology (MACT) is being incorporated: Subpart DDDDD, Industrial, Commercial, and Institutional Boilers and Process Heaters--major sources (40 CFR 63.7480 through 40 CFR 63.7575).

Article 5

Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2012)~~ (2013) in effect July 1, ~~2012~~ 2013. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil Fuel-Fired Steam Generators.

40 CFR 60.40 through 40 CFR 60.46

(fossil fuel-fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil fuel-fired and wood residue-fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units.

40 CFR 60.40Da through 40 CFR 60.52Da

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel), and for which construction, reconstruction, or modification is commenced after September 18, 1978)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through ~~40 CFR 60.64~~ 40 CFR 60.66

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart Ga - Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.

40 CFR 60.70a through 40 CFR 60.77a

(nitric acid production units producing weak nitric acid by either the pressure or atmospheric pressure process)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart Ja - Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007.

40 CFR 60.100a through 40 CFR 60.109a

(fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, including flares and process heaters, and sulfur recovery plants)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.224

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation and Processing Plants.

40 CFR 60.250 through 40 CFR 60.258

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the benefication of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - ~~(Reserved)~~ Reserved.

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and On or Before November 7, 2006.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.480a through 40 CFR 60.489a

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - (Reserved)

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(wood heaters)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - (Reserved)

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - (Reserved)

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.590a through 40 CFR 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - ~~Onshore Natural Gas Processing: Sulfur Dioxide Emissions~~ Sulfur Dioxide Emissions from Onshore Natural Gas Processing for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - ~~(Reserved)~~ Reserved.

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001.

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for ~~Which~~ which Construction is Commenced ~~After~~ after December 9, 2004, or for ~~Which~~ which Modification or Reconstruction Is Commenced on or ~~After~~ after June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations~~.~~ for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart JJJJ - Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations~~.~~ for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Subpart LLLL - Sewage Sludge Incineration Units.

40 CFR 60.4760 through 40 CFR 60.4925

(an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter, including the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, and bottom ash system; and all ash handling systems connected with the bottom ash handling system)

Subpart MMMM - Reserved.

Subpart NNNN - Reserved.

Subpart OOOO - Crude Oil and Natural Gas Production, Transmission and Distribution

40 CFR 60.5360 through 40 CFR 60.5430

(facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, and storage vessels)

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - ~~(Reserved)~~ Reserved.

Appendix F - Quality Assurance Procedures.

Appendix G - (Not applicable)

Appendix H - ~~(Reserved)~~ Reserved.

Appendix I - Removable label and owner's manual.

Part II
Emission Standards

Article 1
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2012)~~ (2013) in effect July 1, ~~2012~~ 2013. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2012)~~ (2013) in effect July 1, ~~2012~~ 2013. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchlorethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchlorethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 60.552

(at all secondary lead smelters: blast, reverbatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - Reserved.

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA~~. The provisions of this subpart as they apply to area sources~~ and are not incorporated by reference into these ~~regulations)~~ regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

~~(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)~~ (industrial, commercial, and institutional boilers and process heaters)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices,

sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKKK - Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PPPPP - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU - Coal-fired and Oil-fired Electric Utility Steam Generating Units.

40 CFR 63.9980 through 40 CFR 63.10042

(any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam, including fossil fuel-fired steam generators associated with integrated gasification combined cycle gas turbines and excluding nuclear steam generators, for the purpose of powering a generator to produce electricity or electricity and other thermal energy)

Subpart VVVVV - Reserved.

Subpart WWWWW - Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXX - Reserved.

Subpart YYYYY - Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZ - Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA - Reserved.

Subpart BBBBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC - Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart IIIIII - Reserved.

Subpart JJJJJJ - Industrial, Commercial, and Institutional Boiler Area Sources.

40 CFR 63.11193 through 40 CFR 63.11226

(NOTE: Authority to enforce the above standard is being retained by EPA and is not incorporated by reference into these regulations. for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-

emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW - Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 63.11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX - Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80)

Subpart YYYYYY - Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

(melting operations at aluminum, copper, and other nonferrous foundries, including the collection of induction, reverberatory, crucible, tower, or dry hearth furnaces used to melt metal ingot, alloyed ingot and/or metal scrap to produce molten metal that is poured into molds to make castings)

Subpart AAAAAAA - Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBBBBB - Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCCC - Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting,

dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD - Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Subpart EEEEEEE - Gold Mine Ore Processing and Production Area Sources

40 CFR 63.11640 through 40 CFR 63.11653

(any industrial facility engaged in the processing of gold mine ore that uses any of the following processes: roasting operations, autoclaves, carbon kilns, preg tanks, electrowinning, mercury retorts, or melt furnaces)

Subpart FFFFFFF - Reserved.

Subpart GGGGGGG - Reserved.

Subpart HHHHHHH - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.11860 through 40 CFR 63.12000

(facility-wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R14-3856; Filed December 11, 2013, 2:24 p.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-40. Credit Unions (adding 10VAC5-40-80, 10VAC5-40-90).**

Statutory Authority: §§ 6.2-1303 and 12.1-13 of the Code of Virginia.

Effective Date: January 1, 2014.

Agency Contact: Werner Paul, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9698, FAX (804) 371-9416, or email werner.paul@scc.virginia.gov.

Summary:

The State Corporation Commission is adopting regulations to give state-chartered credit unions the authority to (i) purchase loan participation interests to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR 701.22 and (ii) offer employee benefit plans and defined benefit plans on terms and conditions comparable to federal credit unions under 12 CFR 701.19. The regulations also provide state-chartered credit unions the authority to purchase an investment to fund an obligation under an employee benefit plan or defined benefit plan provided that the investment is directly related to the credit union's obligation or potential obligation and the credit union holds the investment only for as long as it has an actual or potential obligation under such plan.

AT RICHMOND, DECEMBER 17, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2013-00097

Ex Parte: In re: parity regulations
for state-chartered credit unions

ORDER ADOPTING REGULATIONS

On September 27, 2013, the State Corporation Commission ("Commission") entered an Order to Take Notice ("September 27 Order") of a proposal by the Bureau of Financial Institutions to amend Chapter 40 of Title 10 of the Virginia Administrative Code, which governs state-chartered credit unions. The proposed regulations would give state-chartered credit unions the authority to (i) purchase loan participation interests on terms and conditions comparable to federal credit unions under 12 C.F.R. § 701.22; and (ii) offer employee benefit plans as well as defined benefit plans and purchase investments to fund such plans on terms and conditions comparable to federal credit unions under 12 C.F.R. § 701.19. The September 27 Order and proposed regulations were published in the Virginia Register of

Regulations on October 21, 2013, posted on the Commission's website, and sent to all state-chartered credit unions and other interested parties. Credit unions and other interested parties were afforded the opportunity to file written comments or request a hearing on or before November 8, 2013. The Commission received comment letters from the Virginia Credit Union League and Northern Star Credit Union, Incorporated. Both comment letters supported the proposed regulations. The Commission did not receive any requests for a hearing.

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the record herein, and applicable law, concludes that the proposed regulations should be adopted with an effective date of January 1, 2014.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective January 1, 2014.

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

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

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send a copy of this Order, together with a copy of the attached regulations, to all state-chartered credit unions and such other interested parties as he may designate.

10VAC5-40-80. Loan participations.

Notwithstanding any provision of Chapter 13 (§ 6.2-1300 et seq.) of Title 6.2 of the Code of Virginia relating to loan participations or cooperative loans, a state-chartered credit union may purchase a participation interest in a loan to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR 701.22.

10VAC5-40-90. Benefits for employees of state-chartered credit unions.

A. A state-chartered credit union may provide employee benefits, including retirement benefits, to its employees and officers. The kind and amount of these benefits shall be reasonable given the credit union's size, financial condition, and the duties of the employees.

B. When a state-chartered credit union is the benefit plan trustee or custodian, the plan shall be authorized and maintained to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR Part 724. When the benefit plan trustee or custodian is a party other than a state-chartered credit union, the benefit plan shall be maintained in accordance with applicable laws, including any applicable regulations adopted by the U.S. Department of Labor, the U.S. Department of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

C. Notwithstanding the investment limitations set forth in § 6.2-1376 of the Code of Virginia, a state-chartered credit union investing to fund an obligation under an employee benefit plan, as defined in 29 USC § 1002(3), may purchase an investment if (i) the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan and (ii) the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

D. A state-chartered credit union may invest to fund a defined benefit plan, as defined in 29 USC § 1002(35), provided that the investment complies with subsection C of this section. If a credit union invests to fund a defined benefit plan that is not subject to the fiduciary responsibility provisions of Part 4 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC § 1001 et seq., it shall diversify its investment portfolio to minimize the risk of large losses unless it is clearly prudent not to do so under the circumstances.

E. A state-chartered credit union shall not occupy the position of a fiduciary, as defined in ERISA and the regulations adopted by the U.S. Department of Labor.

VA.R. Doc. No. R14-3872; Filed December 17, 2013, 12:13 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-20. Regulations for the Conduct of Human Research (amending 12VAC5-20-10, 12VAC5-20-30 through 12VAC5-20-130).**

Statutory Authority: §§ 32.1-12 and 32.1-12.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 14, 2014.

Agency Contact: Dev Nair, PhD, Director, Division of Policy and Evaluation, Office of Family Health Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7662, or email dev.nair@vdh.virginia.gov.

Basis: Section 32.1-12.1 of the Code of Virginia states that the State Board of Health shall promulgate regulations

pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia for human research, as defined in § 32.1-162.16 of the Code of Virginia, to be conducted or authorized by the department or any facilities or other entities operated, funded, or licensed by the department.

Purpose: To fulfill the statutory mandate to review regulations and to protect the citizens of the Commonwealth, the Virginia Department of Health conducted a periodic review of 12VAC5-20, Regulations for the Conduct of Human Research, pursuant to Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. As a result of this review, and in order to help protect the health, safety, and welfare of citizens, the Virginia Department of Health is providing proposed amendments to the regulations. It is necessary to amend these regulations to make corrections to outdated citations, provide consistency in language, and enhance the clarity of the regulations in order to achieve improvements that will be reasonable, prudent, and will not impose an unnecessary burden on users of the Virginia Department of Health's Institutional Review Board, human subject researchers, or the public.

Substance: The proposed amendments to the regulations include:

12VAC5-20-10:

1. Updating the definition of "human research."

2. Adding a definition of "subject" or "human subject."

3. Replacing the term "participants" with "subjects" in various sections.

4. Eliminating the detailed elements of informed consent. This information is duplicated in 12VAC5-20-100.

5. Amending the definition of "legally authorized representative" to be consistent with § 32.1-162.16 of the Code of Virginia.

6. Adding a definition of "protected health information."

12VAC5-20-30 - Replacing the term "human participants" with "human subjects" to be consistent with language used in § 32.1-162.16.

12VAC5-20-40 - Clarifying that no official or employee of the institution or agency conducting or authorizing the research is qualified to act as a legally authorized representative.

12VAC5-20-50 - Changing the committee reporting requirement from January 31 to March 31 of each year.

12VAC5-20-50 and 12VAC5-20-60 - Amending the term "chairman" to "chair."

12VAC5-20-70 - Requiring that the committee have at least five members instead of at least seven members.

12VAC5-20-80:

1. Clarifying that no human research shall be conducted unless a research committee has reviewed and approved the project. The section is also amended to provide details as to the elements of the project that are to be considered in the review.

2. Deleting the requirement that the committee approve a written procedure for when a subject has a complaint regarding the research. The requirement that the committee develop a procedure is retained.

3. Requiring that the committee chair provide a written report to the head of the institution regarding any violation that led to either a suspension or termination of the research.

4. Requiring that the committee ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA) and federal and state regulations regarding disclosure of personal health information.

5. Providing that cooperating institutions conducting research may enter into a joint review, rely on another qualified committee, or come to an agreement that avoids duplication of review effort.

12VAC5-20-90 - Providing additional clarification on when and how an expedited review can be completed and clarifying the authority to suspend or terminate approval for a project.

12VAC5-20-100 - Clarifying the informed consent requirements and when the committee may waive the informed consent requirement.

12VAC5-20-110 - Eliminating the reference to the Alzheimer's Disease and Related Disorders Registry and the reference to § 32.1-116.1:2 of the Code of Virginia.

12VAC5-20-130 - Changing the reporting date from January 31 to March 31 annually.

Issues: There are no disadvantages to the public. There are no disadvantages to the agency or the Commonwealth. An advantage to the agency and the Commonwealth is that the amended regulations will provide greater clarification on the requirements for human research and clarification on the protection of research subjects.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to reduce the number of required members on human research committees from seven to five, and make several other clarifying changes to these regulations. These regulations only apply to research either wholly or in part conducted by the Virginia Department

of Health (Department), local health departments in the Commonwealth and to any facility operated, funded or licensed by the Department which conducts or which proposes to conduct or authorize research which uses human participants.

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

Estimated Economic Impact. The regulations state that human research activity shall be reviewed and approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities. The current regulations require that the committee shall have at least seven members. The Board proposes to reduce the number of required members to five. Having five committee members is less burdensome and is consistent with federal regulation.[1]

The Board proposes several other changes to the language in these regulations. None of the other proposed amendments introduce any new requirements or changes to current requirements that are not either already in federal regulation or Virginia statute. Thus these other proposed changes will have no impact beyond improving clarity.

Businesses and Entities Affected. The proposed amendments affect the Virginia Department of Health, local health departments in the Commonwealth and any facility operated, funded or licensed by the Department which conducts or which proposes to conduct or authorize research which uses human participants.

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

Projected Impact on Employment. The proposed amendments will not likely affect employment.

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

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

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

Real Estate Development Costs. The proposed amendments do not 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, a determination of the public benefit, 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 an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Relevant federal regulation: 45 CFR 46.107

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the findings of the economic impact analysis.

Summary:

The proposed amendments (i) revise the definitions of human research, informed consent, and legally authorized representative to be consistent with § 32.1-162.16 of the Code of Virginia and 45 CFR Part 46; (ii) provide additional clarity on committee review procedures; (iii) require that the research review committee ensure compliance with the Health Insurance Portability and Accountability Act and federal and state regulations regarding disclosure of personal health information and change committee membership from seven to five; (iv) clarify the informed consent requirements; and (v) revise the required reporting dates for the research review committee to report yearly activities and the commissioner to report the listing of institutions that are subject to federal regulations regarding human subject research and are exempt from 12VAC5-20.

12VAC5-20-10. Definitions.

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

"Affiliated with the institution" means employed by or contracting with the institution or directly or indirectly involved in the management thereof.

"Commissioner" means the Commissioner of the Department of Health.

"Committee" means human research committee assembled pursuant to 12VAC5-20-70 of this chapter by any institution defined herein.

"Department" means the Department of Health.

"Human research" means any systematic investigation ~~utilizing human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participants' needs~~, including research development, testing, and evaluation, utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).

"Informed consent" means the knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free power of choice. ~~For the purposes of human research, the basic elements of information necessary to such consent shall include:~~

~~1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonably to be expected;~~

~~2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the individual;~~

~~3. An instruction that the person may withdraw his consent and discontinue participation in the human research at any time without prejudice to him;~~

~~4. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols; and~~

~~5. An offer to answer any inquiries by any individual concerning the procedures and protocols.~~

~~In addition to the required elements, the information provided to the individual should also include the following:~~

~~1. A statement that the study involves research, and an explanation that includes identification of any procedures which are experimental; the expected duration of the individual's participation; and a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the individual will not be identified without his written permission;~~

~~2. A statement that there may be other risks not yet identified;~~

~~3. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the individual;~~

~~4. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the individual is otherwise entitled, and the individual may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;~~

~~5. An explanation of whom to contact for answers to pertinent questions about the research and research participants' rights, and whom to contact in the event of a research related injury; and~~

~~6. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what is included or where further information may be obtained.~~

~~Information should be provided in a manner that is understandable to the individual with regard to his educational level and language of greatest fluency.~~

"Institution" or "agency" means any facility, program, or organization owned or operated by the Commonwealth, by any political subdivision, or by any person, firm, corporation, association, or other legal entity.

"Legally authorized representative" means, in the following specified order of priority, (i) the parent or parents having custody of a prospective ~~participant~~ subject of human research who is a minor; (ii) the agent appointed under an advance directive as defined in § 54.1-2982 of the Code of Virginia, executed by the person who is the prospective subject of human research, provided the advance directive authorizes the agent to make decisions regarding the person's participation in human research; (iii) the legal guardian of a prospective ~~participant~~ subject of human research; (iv) the spouse of a prospective subject of human research, except where a suit for divorce has been filed and the divorce decree is not yet final; (v) an adult child of a prospective subject of human research; (vi) a parent of a prospective subject of human research when the individual is an adult; (vii) an adult brother or sister of a prospective subject of human research; or (viii) any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject of human research to such person's participation in the particular human research. For the purposes of this chapter, any person authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject to ~~his~~ such subject's participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm or discomfort anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations, ~~or~~ tests, or treatments.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the ~~participant~~ subject.

"Protected health information" or "PHI" means individually identifiable health information that is created or received by or on behalf of the institution or agency that is maintained or transmitted in any medium, including electronic media. PHI excludes individually identifiable health information in:

1. Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC § 1232g;

2. Records described at 20 USC § 1232g(a)(4)(B)(iv) (educational records not otherwise covered under the Family Educational Rights and Privacy Act in subdivision 1 of this definition); or

3. Employment records held by a covered entity in its role as an employer.

"Subject" or "human subject" means a living person about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the person or (ii) identifiable private information.

12VAC5-20-30. Applicability.

This chapter shall apply to the department, including any local health department and to any facility operated, funded or licensed by the department ~~which~~ that conducts or ~~which~~ proposes to conduct or authorize research ~~which uses~~ using human ~~participants~~ subjects.

12VAC5-20-40. Policy.

A. No human research ~~may~~ shall be conducted without informing the ~~participant~~ subject or his legally authorized representative of the procedures, risks, and discomforts of the research. The consent of the ~~participant~~ subject or his legally authorized representative to participate in the research shall be subscribed to in writing by the ~~participant~~ subject or his legally authorized representative and supported by the signature of a witness not involved in the conduct of the research, except as provided for in 12VAC5-20-100 ~~F and H of this chapter~~. Special arrangements shall be made for those who need assistance in understanding the consequences of participating in the research.

B. Each human research activity shall be reviewed and approved by a committee as set forth in 12VAC5-20-70 ~~of this chapter~~ composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities.

C. Every person engaged in the conduct of human research or proposing to conduct human research shall associate himself with an institution or agency having a research review committee, and the human research which he conducts or proposes to conduct shall be subject to review and approval by such committee in the manner set forth in ~~these regulations~~ this chapter.

D. Nontherapeutic research using patients or residents within an institution as defined herein is forbidden unless it is determined by the research review committee that such nontherapeutic research ~~will~~ shall not present greater than minimal risk.

E. The ~~individual~~ person, institution, or agency conducting the human research shall ~~be required to~~ notify all ~~participants~~ subjects of human research of the risks caused by the research ~~which~~ that are discovered after the research has concluded. If consent has been obtained by the signature of the legally authorized representative, the legally authorized representative shall also be notified.

F. No official or employee of the institution or agency conducting or authorizing the human research shall be qualified to act as a legally authorized representative for a subject of the particular human research.

12VAC5-20-50. Review process for department.

A. Prior to the initiation of a human research project by any component of the department, a description of the proposed human research project shall be submitted to a research review committee established by the department for review and approval. The description shall include a statement of the purpose of the proposed project and justification thereof, the criteria for inclusion ~~of a participant~~ as a subject in the research project, a description of what will be done to the ~~participants~~ subjects, and a copy of the informed consent statement.

B. The committee shall report by ~~January~~ March 31 of each year to the commissioner on activities of the committee during the previous calendar year. Such reports shall include:

1. A description of each human research project reviewed and whether it was approved or disapproved;

2. Any significant deviations from proposals as approved;

3. A list of committee members, their qualifications for service on the committee, and their institutional affiliation; and

4. A copy of the minutes of any committee meetings conducted.

C. The ~~chairman~~ chair of the committee shall report as soon as possible to the commissioner any violation of the research protocol ~~which~~ that led the committee to either suspend or terminate the research.

D. The commissioner may inspect the records of the committee.

E. The commissioner shall report at least annually to the Governor and General Assembly on the human research projects conducted by any component of the department as annually reported to the commissioner by the committee.

12VAC5-20-60. Review process for institutions or agencies funded or licensed by the department.

A. Prior to the initiation of a human research project by any institution or agency funded or licensed by the department, a

description of the proposed human research project shall be submitted to a research review committee for review and approval. The description shall include a statement of the purpose of the proposed project and justification thereof, the criteria for inclusion of a ~~participant~~ subject in the research project, a description of what will be done to the ~~participants~~ subjects, and a copy of the informed consent statement.

B. When more than one such institution or agency is involved in a research project, the cooperating entities may enter into joint review.

C. Such institutions or agencies having a committee shall report by ~~January~~ March 31 of each year to the commissioner on activities of the committee during the previous calendar year. Such reports shall include:

1. A description of each human research project reviewed and whether it was approved or disapproved;

2. Any significant deviations from proposals as approved;

3. A list of committee members, their qualifications for service on the committee, and their institutional affiliation; and

4. A copy of the minutes of any committee meetings conducted.

D. The ~~chairman~~ chair of the committee shall report as soon as possible to the head of such institution or agency and to the commissioner any violation of the research protocol which led the committee to ~~either~~ suspend or terminate the research.

E. The commissioner may inspect the records of the committee.

F. The commissioner shall report at least annually to the Governor and General Assembly on the human research projects conducted by such institutions or agencies as annually reported to the commissioner by the relevant research review committees.

12VAC5-20-70. Composition of research review committee.

A. Each committee shall have at least ~~seven~~ five members, appointed by the head of the institution, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the institution. The committee shall be sufficiently qualified through the maturity, experience, and diversity of its members, including consideration of race, gender and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of ~~participants~~ subjects in human research. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of applications and proposals in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee regularly reviews research that has an impact on patients or residents within an institution as defined herein or other vulnerable category of ~~participants~~ subjects, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these ~~participants~~ subjects and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of members of one profession, and at least one member ~~must~~ shall be an individual whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy).

C. Each committee shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflicting interest. The committee size shall be maintained at no fewer than ~~seven~~ five persons by appointment of a substitute representative for each member with a conflicting interest.

E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals ~~may~~ shall not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas.

G. The committee and the institution shall establish procedures and rules of operation necessary to fulfill the requirements of this chapter.

12VAC5-20-80. Elements of committee review process.

A. No human research shall be conducted or authorized by a person, institution, or agency unless a research review committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the human research;

2. The degree of the risk and, if the human research is nontherapeutic, whether it presents greater than minimal risk;

3. Whether the rights and welfare of the human subjects involved are adequately protected;

4. Whether the risks to the human subjects are outweighed by the potential benefits to them;

5. Whether the risks to subjects are minimized (i) by using procedures that are consistent with sound human research design and that do not unnecessarily expose subjects to risk and (ii) whenever appropriate, by using currently accepted procedures for diagnostic or treatment purposes;

6. Whether additional safeguards have been included in the study to protect the rights and welfare of the subjects when some or all of the subjects are likely to be incapable of providing informed consent or are otherwise vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons;

7. Whether the informed consent is to be obtained by methods that are adequate and appropriate and whether the written consent form is adequate and appropriate in both content and language for the particular human research and for the particular subjects of the human research;

8. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;

9. Whether criteria for selection of subjects are equitable; and

10. Whether the human research conforms with other requirements of the department, where applicable.

~~A.~~ B. The committee shall consider a research ~~proposals~~ proposal within 45 days after its submission to the committee. In order for the research proposal to be approved, it shall receive the approval of a majority of ~~those~~ the committee members present at a meeting ~~in~~ for which a quorum exists. A committee shall notify investigators and the institution in writing of its decision to approve or disapprove the ~~proposed~~ research ~~activity,~~ proposal or of modifications required to secure committee approval.

~~B.~~ C. During the committee review of research ~~projects~~ proposals, no personal identifiers of present or potential subjects shall be stated.

~~C.~~ D. The committee shall ~~approve or~~ develop a written description of the procedure to be followed when a subject has a complaint about a research project in which he is participating or has participated.

~~D.~~ E. Any subject who has a complaint about a research project in which he is participating or has participated shall be referred to the committee to determine if there has been a violation of the protocol.

F. The committee shall have the authority to suspend or terminate approval of research that is not being conducted in accordance with the committee requirements or that has been associated with unexpected serious harm to the subjects. Any suspension or termination of approval shall include a statement of the reasons for the committee's action and shall be reported promptly to the investigator, appropriate institutional officials, the department or agency head, and the commissioner.

G. The chair of the committee shall provide a written report to the head of the institution of any violation of the human research protocol that led the committee to suspend or terminate the human research.

~~E.~~ H. The committee shall require reports from approved research projects at least annually to ensure conformity with the approved proposal. The frequency of such reports shall be consistent with the nature and degree of risk of each research project. The committee shall also require a report ~~from the research project~~ at the conclusion of the research project.

I. The committee shall ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d et seq.), if applicable, and federal and state regulations regarding the use and disclosure of PHI created for human research. In particular, authorization shall be obtained for the use and disclosure of PHI created for the purpose of human research, except as otherwise permitted by 45 CFR 164.512(i).

J. When cooperating institutions conduct some or all of the human research involving some or all of the subjects of the human research, each cooperating institution shall be responsible for safeguarding the rights and welfare of the subjects and for complying with this chapter, provided however, in complying with this chapter, institutions may enter into joint review, rely upon the review of another qualified committee, or come to similar agreements aimed at avoiding duplication of effort. Any such agreement shall be in writing and designate a lead institution, which shall be the institution responsible for reporting and handling any possible misconduct in the human research. Such agreements shall be entered into by the committee chair with the approval of a majority of the committee members. If an institution or agency does not have a research review committee, such agreements shall be approved and entered into by the chief executive officer of the institution or his designee.

12VAC5-20-90. Expedited review of human research projects.

A. The committee is authorized to conduct an expedited review of a human research project ~~which~~ that involves no more than minimal risk to the subjects ~~if:~~ and involves only research procedures listed in one or more categories established by the Secretary of Health and Human Services and published in the Federal Register pursuant to 45 CFR 46.110.

B. The committee also is authorized to conduct an expedited review of a human research project that involves no more than minimal risk to the subjects if:

1. Another institution's or agency's human research review committee has reviewed and approved the project; or

2. The review involves only minor changes in previously approved research and the changes occur during the approved project period.

C. An expedited review may be carried out by the chair of the committee or by one or more experienced reviewers designated by the chair from among the committee members. In reviewing the research project, the reviewers may exercise all of the authorities of the committee except that the

reviewers may not disapprove the research project. A research project may be disapproved only after review by the full committee in accordance to the procedures set forth in 12VAC5-20-80.

~~B.~~ D. Each committee ~~which~~ that uses an expedited review procedure shall adopt a method for keeping all members advised of research ~~proposals which~~ projects that have been approved under the procedure.

12VAC5-20-100. Informed consent.

A. "Informed consent" means the knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free power of choice. For the purposes of human research, the basic elements of information necessary to determine the existence of such consent shall include the following:

1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonably to be expected, how the results of the human research are disseminated, and how the identity of the person is protected;

2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the ~~individual~~ person, together with their side effects, risks, and benefits;

3. A description of any adverse consequences and risks to be expected and an indication of whether there may be other significant risks not yet identified;

~~3.~~ 4. An instruction that the person may withdraw his consent and discontinue participation in the human research at any time without prejudice to him or fear of reprisal;

~~4.~~ 5. An explanation of any costs or compensation that may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols or any medical care that may be available if an injury occurs;

~~5.~~ 6. An offer to answer any inquiries by ~~any individual~~ the person or, if applicable, his legally authorized representative concerning the procedures and protocols and a description of the ways in which concerns may be raised or questions asked;

~~6.~~ 7. A statement that the study involves research, and an explanation that includes identification of any procedures that are experimental; the expected duration of the ~~individual's~~ person's participation; a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the ~~individual~~ person will not be identified without his written permission;

~~7.~~ 8. A statement that there may be other risks not yet identified;

~~8.~~ 9. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the ~~individual~~ person;

~~9.~~ 10. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the ~~individual~~ person is otherwise entitled, and the ~~individual~~ person may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;

~~10.~~ 11. An explanation of whom to contact for answers to pertinent questions about the research and research participants' rights, and whom to contact in the event of a research-related injury; and

~~11.~~ 12. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what is included or where further information may be obtained.

Information shall be provided in a manner that is understandable to the ~~individual~~ person with regard to his educational level and language of greatest fluency.

B. No human research shall be conducted in the absence of informed consent subscribed to in writing by the person or by the person's authorized representative except as provided for in subsection E of this section. If the person is capable of providing informed consent, written consent shall be provided by the person and witnessed. If the person is incapable of making an informed decision as defined in § 54.1-2982 of the Code of Virginia, at the time consent is required, written consent shall be provided by the person's legally authorized representative and witnessed. If the person is a minor otherwise capable of rendering informed consent, the consent shall be provided by both the minor and his legally authorized representative. An investigator shall seek such consent only under circumstances that provide the person who is the prospective subject or the representative sufficient opportunity to consider whether to participate and that minimize the possibility of coercion or undue influence. The information that is given to the person or, if applicable, the person's legally authorized representative shall be in language understandable to the person or representative.

C. No person shall participate in human research unless the informed consent requirement in this section is met. No informed consent shall include any language through which the person waives or appears to waive any of his legal rights, including any release of any person, institution, or agency or any agents therof from liability for negligence. No person shall be forced to participate in any human research if the investigator conducting the human research knows that participation in the human research is protested by the person.

D. No legally authorized representative shall consent to nontherapeutic human research unless it is determined by the research review committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the subject. A legally authorized representative may not

consent to participation in human research on behalf of a subject if the legally authorized representative knows, or upon reasonable inquiry ought to know, that any aspect of the human research protocol is contrary to the religious beliefs or basic values of the subject, whether expressed orally or in writing.

E. The research review committee may approve a consent procedure that does not include or that alters some or all of the elements of informed consent set forth in this section, or that waives the requirements to obtain informed consent provided the committee finds and documents that:

1. The human research involves no more than minimal risk to the subjects;

2. The omission, waiver, or alteration will not adversely affect the rights and welfare of the subjects;

3. The human research could not practicably be performed without the omission, waiver, or alterations; and

4. After participation, the subjects shall be provided with additional pertinent information, whenever appropriate.

~~B.~~ F. Consent may take the form of either of the following:

1. A written consent document that embodies the elements of informed consent required by this section. This form may be read to the subject or the subject's legally authorized representative, but, in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed and witnessed; or

2. A short form written consent document stating that the elements of informed consent required by this section have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the subject or the representative. Only the short form ~~itself~~ written consent is ~~to be~~ signed by the subject or the representative. However, the witness shall sign both the short form written consent and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary and a copy of the short form written consent shall be given to the subject or the representative.

G. The research review committee may waive the requirement in subsection B of this section for the investigator to obtain a written informed consent form for some or all subjects if it finds that the only record linking the subject and the human research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject shall be asked whether the subject wants documentation linking the subject with the human research, and the subject's wishes shall govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide subjects with a written statement explaining the human research.

12VAC5-20-110. Categories of human research exempt from regulation.

Research activities in which the only involvement of human ~~participants will be~~ subjects is in one or more of the following categories are exempt from this chapter:

1. The surveillance and investigation by the department into all preventable diseases and epidemics in the Commonwealth and into the means for the prevention of such diseases and epidemics conducted pursuant to § 32.1-39 of the Code of Virginia.

2. Research designed to study on a large scale anonymous vital records and registry data collected pursuant to the Code of Virginia, Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 (Vital Records), § 32.1-64.1 (Virginia Hearing Impairment Identification and Monitoring System), § 32.1-69.1 ~~(Viginia~~ (Virginia Congenital Anomalies Reporting and Education System), § 32.1-70 (Statewide Cancer Registry), ~~§ 32.1-71.1 (Statewide Alzheimer's Disease and Related Disorders Registry),~~ § 32.1-46.01 (Virginia Immunization Information System), and ~~§§~~ § 32.116.1 ~~and 32.116.1:2~~ (Emergency Medical Services Patient Care Information System).

3. Research or student learning outcomes assessment conducted in educational settings such as research involving:

a. Regular or special education instructional strategies; or

b. The effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods; or

c. The use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that ~~participants~~ subjects cannot be identified, directly or through identifiers linked to the ~~participants~~ subjects.

4. Research involving survey or interview procedures unless responses are recorded in such a manner that the ~~participants~~ subjects can be identified, directly or through identifiers linked to the ~~participants~~ subjects, and either:

a. The ~~participant's~~ subject's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the ~~participant's~~ subject's own behavior such as sexual behavior, drug or alcohol use, or illegal conduct.

5. Research involving survey or interview procedures, when the respondents are elected or appointed public officials or candidates for public office.

6. Research involving solely the observation of public behavior, including observation by participants, unless observations are recorded in such a manner that the ~~participants~~ subjects can be identified, directly or through identifiers linked to the ~~participants~~ subjects, and either:

a. The observations recorded about the ~~individual~~ subject, if they became known outside the research, could reasonably place the ~~participant~~ subject at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the ~~participant's~~ subject's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

7. Research involving the collection or study of existing data, documents, records, or pathological specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner so that ~~participants~~ subjects cannot be identified, directly or through identifiers linked to the ~~participants~~ subjects.

12VAC5-20-120. Committee records.

A. Documentation of committee activities shall be prepared and maintained by each such committee and shall include the following:

1. Copies of all research proposals reviewed, scientific evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to ~~participants~~ subjects;

2. Minutes of committee meetings ~~which shall be~~ in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on ~~these actions~~ each action, including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controversial issues and their resolution;

3. Records of continuing review activities;

4. Copies of all correspondence between the committee and the investigators;

5. A list of committee members;

6. Written procedures for the committee; and

7. Statements of significant new findings provided to ~~participants~~ subjects.

B. The records required by this chapter shall be retained for at least three years, and records relating to research ~~which~~ that is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

C. ~~An~~ Each research review committee of a state institution or agency shall ensure that an overview of approved human research projects and the results of such projects ~~will be~~ are made public on ~~the department's~~ such institution's or agency's website unless otherwise exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

12VAC5-20-130. Applicability of federal policies.

Human research ~~at institutions which are~~ that is subject to policies and regulations for the protection of human ~~participants~~ subjects promulgated by any agency of the federal government shall be exempt from this chapter. ~~Such institutions~~ Institutions where research is performed that is subject to federal policies and regulation shall notify the commissioner annually, by ~~January~~ March 31, of their compliance with the policies and regulations of federal agencies. The commissioner shall identify institutions exempt from this chapter as reported in accordance with this section in the annual report to the Governor and the General Assembly provided in accordance with 12VAC5-20-60 F.

VA.R. Doc. No. R13-3401; Filed December 17, 2013, 5:24 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-1401; repealing 12VAC5-31-1465).**

Statutory Authority: §§ 32.1-12, 32.1-111.4, and 32.1-111.5 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: March 1, 2014.

Agency Contact: Michael Berg, Regulatory and Compliance Manager, Department of Health, 1041 Technology Park Drive, Glen Allen, VA 23059-4500, telephone (804) 888-9131, or email michael.berg@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to promulgate regulations to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-111.4 of the Code of Virginia directs the board to establish requirements regarding emergency medical services (EMS). Section 32.1-111.5 of the Code of Virginia requires the board to establish the qualifications required for certification of emergency medical services providers, including those qualifications necessary for authorization to follow Do Not Resuscitate Orders pursuant to § 54.1-2987.1 of the Code of Virginia, and the procedures and the qualifications required for the recertification of EMS providers.

Purpose: This regulatory action will help to strengthen the EMS system, and thereby protect the health, safety, and welfare of citizens, by improving the efficiency of the EMS provider recertification process through the removal of certain unnecessary and burdensome regulatory requirements. There is unanimous consensus by the EMS system that the current method and process used to recertify EMS providers needs to

be changed. The EMS system is in agreement that the recertification of EMS credentials should be based solely on completion of continuing education hours and should not require a written examination or examination waiver by the provider's EMS agency operational medical director (OMD) to complete the process. Current review of available data reveals greater than 90% of all recertification testing is being waived.

These changes will not adversely affect the health, safety, and welfare of the citizens of the Commonwealth because the ability to provide patient care as an EMS provider is governed by regulations that require authorization by the agency OMD and affiliation with an EMS agency.

Rationale for Using Fast-Track Process: Changes to the regulations are not expected to be controversial as the various stakeholders groups and the EMS community requested this change to simplify the existing recertification process. These changes will mirror the recertification processes of other allied health professions.

Substance: The changes to the regulation allow a certified EMS provider to gain recertification through continuing education only, removes any retesting requirement (written or practical) at the state level, and removes the requirement for the OMD to sign any paperwork to "waive" any test administered by the state. This does not preclude the ability of the individual OMD to implement any local requirements he believes necessary to evaluate the ability of the EMS providers that provide patient care under his authority.

Issues: The primary advantage of this regulatory action is that it removes burdensome and unnecessary regulatory requirements as well as aligns with other allied health care recertification practices in the Commonwealth. This regulatory action poses no disadvantages to either the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 72 and 331 of the 2013 Acts of Assembly, the proposed regulations no longer require Emergency Services (EMS) providers to take a written examination for recertification.

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

Estimated Economic Impact. Pursuant to Chapters 72 and 331 of the 2013 Acts of Assembly, the proposed regulations no longer require EMS providers to take a written examination for recertification. Under the current regulations, EMS providers are required to take a written examination for recertification. However, the written examination requirement may be waived by the relevant operational medical director. According to the Virginia Department of Health (VDH), more than 90% of all recertification testing is currently being waived. With the proposed changes, recertification of EMS credentials will be based solely on completion of continuing education hours currently required.

The proposed changes will primarily affect EMS providers. EMS providers who are currently obtaining waivers will not have to seek waivers and the ones currently taking the exam will not have to take it under the proposed regulations. VDH estimates that during the five-month period from August to December 2013, approximately 2,137 providers will be required to take the test. Of these, approximately 1,991 will obtain waivers and about 145 will actually take the test. The proposed regulations will benefit the affected providers as they will no longer incur time and travel costs to take the exam or obtain a waiver. The test is administered by VDH free of charge. Thus, VDH is also expected to realize cost savings from reduced administrative workload, reduced postage costs, and reduced printing costs.

Businesses and Entities Affected. There are approximately 37,000 EMS providers in the Commonwealth. These providers work for approximately 684 agencies that are volunteer, commercial, and municipal entities.

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

Projected Impact on Employment. Proposed elimination of the recertification exam is expected to provide time savings to the providers as well as to VDH due to their reduced work load. Thus, a potential increase in supply of EMS providers and a potential decrease in demand for VDH administrative staff time may be expected.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to have a significant effect on the value of private property.

Small Businesses: Costs and Other Effects. Some of the commercial agencies employing EMS providers may be small businesses. However, the proposed regulations do not have a direct impact on these agencies.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to have a direct impact on commercial agencies that may be small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 Virginia Department of Health has reviewed the economic impact analysis and concurs with the results.

Summary:

In accordance with Chapters 72 and 331 of the 2013 Acts of Assembly, the amendments remove the requirement for emergency medical services (EMS) providers to take a written examination or obtain a waiver from testing from the relevant operational medical director to recertify their EMS certifications.

12VAC5-31-1401. General recertification requirements.

A. An EMS provider ~~must complete the requirements for recertification and the~~ requesting recertification must complete the continuing education hour requirements, as identified in 12VAC5-31-1403, for the level at which the EMS provider is requesting to be recertified. The Office of EMS must receive ~~the required~~ documentation of the EMS provider's completion of continuing education within the issued certification period for the provider 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.~~

~~(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.~~ B. An EMS provider under legal recognition pursuant to 12VAC5-31-1393 must ~~pass~~ recertify by passing a Virginia written and practical EMS certification examination ~~and is not eligible for examination waiver~~.

12VAC5-31-1465. ~~Recertification examination requirement.~~ (Repealed.)

~~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, 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.~~

VA.R. Doc. No. R14-3703; Filed December 17, 2013, 11:39 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-800, 12VAC30-130-810, 12VAC30-130-820).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: December 16, 2013, through June 15, 2015.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an agency may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Item 307 UU of Chapter 3 of the 2012 Acts of Assembly, Special Session I, directed the department to make programmatic changes to ensure appropriate utilization, prevent abuse, and promote improved and cost-efficient medical management of essential Medicaid client health care (as described in Item 307 UU) within 280 days or less from its enactment date.

The purpose of this regulatory action is to comply with the legislative mandate by making programmatic changes to the Client Medical Management (CMM) program to ensure appropriate utilization, prevent abuse, and promote improved and cost-efficient medical management of essential health care and to assist and educate beneficiaries in appropriately utilizing medical and pharmacy services.

The amendments to the Medicaid Client Medical Management program are not essential to protect the health, safety, or welfare of citizens. However, the amendments could be essential to protect the health, safety, and welfare of Medicaid clients who abuse prescription drugs. The current regulations promote case management of Medicaid individuals who have been identified as abusers of specific medical services provided by physicians and pharmacists. The current regulations lack an education component, therefore leaving enrollees with only the option of being restricted for a certain period of time to a specific physician or pharmacy. The revisions provide for a two-tiered system, allowing for an educational component as well as restrictions. The revised regulations provide for the notification of potential abusers that they have been identified and will be monitored closely for a certain period of time. It is anticipated that the revised regulations will assist recipients, physicians, and pharmacists as they and CMM work together to identify the recipients' utilization patterns and educate them on appropriate use of services.

Currently, the regulations provide for administration of the Client Medical Management program. CMM guidelines lock-in recipients to one physician/pharmacy for a minimum of 36 months. At the end of the lock-in period, if the recipient is deemed to be still inappropriately utilizing services, he is re-enrolled for another 36 months. Despite this approach, the recidivism rate has steadily risen, and recipients are remaining in lock-in for years. Furthermore, providers have also become disinterested in being designated as a recipient's assigned physician or pharmacist while the abuse is ongoing.

Individuals who are determined to be utilizing physician or pharmacy services beyond the specified limits will be evaluated to determine if their utilization warrants being locked in to specific providers. Individuals exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period of time exceeding four weeks would be locked in to one pharmacy provider. Individuals having two occurrences of having prescriptions for the same drug filled two or more times on the same or subsequent day would also be restricted. Individuals who utilize services from three or more physicians/pharmacies in a three-month time period would be restricted. Individuals who receive more than 24 prescriptions in a three-month period would be restricted. Finally individuals receiving more than 12 psychotropic prescriptions, more than 12 analgesic prescriptions, or more than 12 controlled drug prescriptions in a three-month period would be restricted.

These changes update references to the computer subsystem that will generate individuals' utilization reports for the purpose of data analysis. A new exception is provided for individuals to not be restricted when evidence indicates that the prescription or medical services utilization, or both, are appropriate for their diagnoses and medical conditions. This action provides for a two-tiered system, allowing for both restriction and education/monitoring. The new restriction period will last for 24 months. DMAS anticipates that reducing the lock-in period to 24 months will counter recidivism, assure providers that recipients are being educated about their utilization patterns in a timely manner, and prevent recipients from stagnating in the CMM program. A 24-month period will also allow for the review of utilization within the first 12 months of the CMM lock-in to determine if a recipient's behavior has been modified.

This action provides for individuals to visit physicians or specialists other than their designated restriction physician upon written referral from the restriction physician.

Provision is also retained for individuals who have legitimate medical necessity for high numbers of prescription drugs and visits to numerous physicians to appeal a lock-in status and have it removed.

Part XIII
Client Medical Management Program

12VAC30-130-800. Definitions.

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

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

~~"Abuse by recipients" means practices by recipients which are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid Program.~~

~~"Abuse by providers" means practices which are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.~~

"Abuse" or "abusive practices" means practices by individuals or providers that are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid program.

"Card-sharing" means the intentional sharing of ~~a recipient~~ an individual's eligibility card for use by someone other than the ~~recipient~~ individual for whom it was issued, or a pattern of repeated unauthorized use of ~~a recipient~~ an individual's eligibility card by one or more persons other than the ~~recipient~~ individual for whom it was issued due to the failure of the ~~recipient~~ individual to safeguard the card.

"Client Medical Management Program ~~(CMM)~~ for ~~recipients~~ individuals" or "CMM Program for individuals" means the ~~recipients'~~ individuals' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized ~~recipients~~ individuals through restriction to one primary care provider, one pharmacy, ~~and one transportation provider,~~ or any combination of these ~~three~~ designated providers. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers for restricted individuals.

"Client Medical Management Program ~~(CMM)~~ for providers" or "CMM Program for providers" means the providers' utilization control program designed to complement the ~~recipient~~ individual abuse and utilization control program in promoting improved and cost efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted ~~recipients~~ individuals. Restricted providers may not serve as referral or covering providers for restricted ~~recipients~~ individuals.

"Code of Federal Regulations" or "CFR" means the source where Medicaid federal regulations are located (42 CFR Part 430 through Part 505).

~~"Contraindicated medical care" means treatment which is medically improper or undesirable and which results in duplicative or excessive utilization of services.~~

"Contraindicated use of ~~drugs~~ medication" means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.

"Controlled substance" means a substance that has a potential for abuse because physical and psychic dependence and tolerance may develop upon repeated administration and are classified as Schedules I through V drugs.

~~"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.~~

"DMAS" means the Department of Medical Assistance Services. The Department of Medical Assistance Services is the state agency designated by the General Assembly to administer Title XIX of the Social Security Act.

"Dental services" means covered dental services available to Medicaid/FAMIS eligible children as well as the limited, emergency services available to Medicaid eligible adults.

"Designated ~~provider~~ physician/pharmacy" means the provider who agrees to be the designated ~~primary~~ physician~~, designated~~ or pharmacy~~, or designated transportation provider~~ from whom the restricted ~~recipient~~ individual must first attempt to seek ~~health care~~ medical or pharmaceutical services. Other providers may be established as designated physician or pharmacy providers with the approval of DMAS.

"Diagnostic category" means the broad classification of diseases and injuries found in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) which is commonly used by providers in billing for medical services.

"Diagnosis" means (i) the process of determining by examination the nature and circumstances of a diseased condition; and (ii) the decision reached from such examination.

"Drug" means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners are concurrently ~~treat~~ treating the same or similar medical problems or conditions falling into the same diagnostic category, but excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Eligibility card" means the document issued to each Medicaid individual listing the name and Medicaid number (either the identification or billing number) of the eligible individual. This document may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.

"Emergency hospital services" means those hospital services that are necessary to treat a medical emergency. Hospital treatment of a medical emergency necessitates the use of the most accessible hospital available that is equipped to furnish the required services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment Program which is federally mandated for eligible individuals ~~under the age of 21~~ younger than 21 years of age.

"Essential medical services" means quality medical services, including but not limited to preventive care, emergency services, maternity care, hospital and physician services, and prescription drug services as set out in the State Plan for Medical Assistance.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the ~~recipient~~ individual or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in greater than generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from more than one practitioner.

~~"Excessive transportation services" means obtaining or rendering greater than necessary transportation services such that unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services.~~

"FAMIS" means the Family Access to Medical Insurance Security program as created by Title XXI of the Social Security Act.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered ~~services~~ service, including equipment~~,~~ or supplies~~, or transportation services,~~ provided by any ~~individual~~ person, organization, or entity that participates in the Virginia Medical Assistance Program.

"Home and community-based services" means a range of community services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to individuals as an alternative to institutionalization.

"Hospice services" means services, pursuant to § 1905(o) of the Act, that are reasonable and necessary for the palliation or management of the terminal illness, if the terminal illness runs its normal course.

"Immunization" means the creation of immunity against a particular disease using a vaccination.

"Individual" means the recipient of Medicaid covered services that are provided under the authority of Title XIX of the Social Security Act.

"Java-Server Utilization Review System" or "JSURS" means a computer subsystem of the Virginia Medicaid Management Information System (VAMMIS) that collects claims data and computes statistical profiles of individual and provider activity and compares them with that of their particular peer group.

"Managed Care Organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed agreement with the department to provide services covered under the Medallion II (pursuant to 12VAC30-120-360 et seq.) and FAMIS (pursuant to 12VAC30-141) programs.

"Medical emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that in the absence of immediate medical attention could reasonably be expected to result in (i) placing the ~~client's~~ individual's health in serious jeopardy, (ii) serious impairment of the individual's bodily functions, or (iii) serious dysfunction of any bodily organ or part.

~~"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient.~~

"Medically necessary" means services that are reasonable and necessary for the diagnosis or treatment of an illness, condition, injury, or to improve the function of a disability, consistent with community standards of medical practice and in accordance with Medicaid/FAMIS policies.

"Noncompliance" means failing to follow Client Medical Management Program policies and procedures, or a pattern of utilization which is inconsistent with sound fiscal or medical practices. Noncompliance includes, but is not limited to, failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; requests for medical services or medications which are not medically necessary~~; or excessive use of transportation services~~.

~~"Not medically necessary" means an item or service which is not consistent with the diagnosis or treatment of the patient's condition or an item or service which is duplicative, contraindicated, or excessive.~~

"Pattern" means a combination of qualities, acts, or tendencies that result in duplication or frequent occurrence.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe, and administer drugs or otherwise treat medical conditions.

"Primary care provider" or "PCP" means ~~the designated primary physician responsible for medical management of essential health care for the restricted recipient~~ a physician or nurse practitioner practicing in accordance with state law who is responsible for supervising, coordinating, and providing initial and primary medical care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care.

"Provider" means ~~the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services~~ a person, organization, or institution with a current, valid license or certification, as applicable, and participation agreement with DMAS who or which will (i) render service to Medicaid individuals who are eligible for covered services, (ii) submit a claim or claims for the rendered services, and (iii) accept as payment in full the amount paid by the Virginia Medicaid/FAMIS program.

"Psychotropic drugs" means drugs ~~which~~ that alter the mental ~~state~~ activity, behavior, or perception. ~~Such~~ Examples of such drugs include~~, but are not limited to,~~ morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

~~"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.~~

~~"Recipient eligibility card" means the document issued to each Medicaid enrollee; an individual document issued to each Medicaid recipient listing the name and Medicaid number (either the identification or billing number) of the eligible individual. This document may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.~~

"Renal dialysis services" means services that aid the process of diffusing blood across a semi-permeable membrane to remove substances that a normal kidney would eliminate, including poisons, drugs, urea, uric acid, and creatinine. Renal dialysis services help to restore electrolytes and acid-base imbalances.

"Restriction" means an administrative action imposed on ~~a recipient which~~ an individual that limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted ~~recipients~~ individuals.

"Social Security Act" means the Act, enacted by the 74th Congress on August 14, 1935, which provides for the general welfare by establishing a system of federal old age benefits, and by enabling the states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the ~~document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act~~ comprehensive written statement submitted by the department to the Centers for Medicare and Medicaid Services (CMS) for approval, describing the nature and scope of the Virginia Medicaid program and giving assurance that it will be administered in conformity with the requirements, standards, procedures, and conditions for obtaining federal financial participation.

~~"Surveillance and Utilization Review Subsystem (SURS)" or "Automated Exception Analysis (AEA)" means a computer subsystem of the Medicaid Management Information System (MMIS) which collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.~~

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Under-use" or "under-utilization" means an occurrence where there is evidence that a patient did not receive a service or procedure whose benefits exceeded the risks.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

12VAC30-130-810. Client Medical Management Program for ~~recipients~~ individuals.

A. Purpose. The Client Medical Management Program is ~~a utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care~~ designed to assist and educate Medicaid individuals in appropriately using medical and pharmacy services. Individuals who use these services excessively or inappropriately, as determined by DMAS, may be assigned to a single physician or pharmacy, or both. CMM also monitors individual compliance with program guidelines.

B. Authority.

1. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program ~~and 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by recipients~~ that (i) safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments, (ii) assesses the quality of those services, (iii) provides for the control of the utilization of all services provided under the Plan, and

(iv) provides for the control of the utilization of inpatient services.

2. Federal regulations at 42 CFR 431.54(e) allow states to restrict ~~recipients~~ individuals to designated providers when the ~~recipients~~ individuals have utilized services at a frequency or amount that is not medically necessary in accordance with utilization guidelines established by the state. ~~42 CFR 455.16(c)(4) provides for imposition of sanctions for instances of abuse identified by the agency.~~

C. Identification of Client Medical Management Program participants. DMAS shall identify ~~recipients~~ individuals for review from computerized reports such as but not limited to ~~Recipient SURS or AEA~~ individual Java-Server Utilization Review System (JSURS), VAMMIS, Oracle or by written referrals from agencies, health care professionals, or other ~~individuals~~ persons. Certain individuals reviewed may not be restricted when evidence indicates that the prescription or medical service utilization patterns, or both, are for appropriate therapy.

D. ~~Recipient~~ Individual evaluation for restriction.

1. DMAS shall ~~review recipients~~ utilize data as indicated in subsection C of this section to conduct a review of individuals to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which is not medically necessary or which exceeds the thresholds established ~~in these regulations~~ by the department. Evaluation of utilization patterns can include but is not limited to review by the department ~~staff~~ of medical records or computerized reports, or both, generated by the department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab ~~and~~ or diagnostic procedures, or both, and hospital admissions~~, and referrals~~.

2. Restricted individuals shall have reasonable access to all essential medical services. These restrictions shall not apply to hospital emergency services.

~~2.~~ 3. Abusive activities shall be investigated and, if appropriate, the ~~recipient~~ individual shall be reviewed for educational intervention or restriction, or both. ~~Recipients demonstrating questionable patterns of utilization or exceeding reasonable levels of utilization shall be reviewed for restriction.~~

a. Lock-in. If DMAS' review determines that an individual's data is either (i) inappropriate, (ii) questionable patterns of utilization exist, or (iii) reasonable levels of utilization are exceeded, then the department shall initiate the individual's restriction to either a physician or pharmacy, or both.

(1) Once an individual is locked-in, this period shall last for 24 months from the enrollment date. During this lock-in period, the individual shall be required to use the services of the designated physician or pharmacy, or both.

(2) The individual may visit physicians or specialists other those who are designated only by a written referral.

(3) The individual may obtain prescriptions from pharmacies other than the designated pharmacy only in an emergency when the designated pharmacy is closed or when the designated pharmacy does not stock, or is not able to obtain in a timely manner, the required medication.

b. DMAS may restrict an individual if any of the following activities or patterns or levels of utilization are identified. These activities, patterns, or levels of utilization include but shall not be limited to:

(1) Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day;

(2) Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three-month period;

(3) Receiving more than a total of 24 prescriptions in a three-month period;

(4) Receiving more than 12 psychotropic prescriptions, more than 12 analgesic prescriptions, or more than 12 prescriptions for controlled drugs that have the potential for abuse, in a three-month period;

(5) Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class, which have been prescribed by two or more practitioners, for a period exceeding four weeks;

(6) Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceeding four weeks;

(7) Receiving narcotic prescriptions from two or more prescribers without supporting diagnoses indicative of use;

(8) Utilizing three or more different physicians of the same type or specialty in a three-month period for treatment of the same or similar condition or conditions;

(9) Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis;

(10) One or more providers recommend restriction for medical management because the individual has demonstrated inappropriate utilization practices;

(11) Duplicative, excessive, or contraindicated utilization of medication, medical supplies, medical visits, procedures, diagnostic tests, or appliances dispensed by or prescribed by more than one provider for the time period specified by DMAS;

(12) Use of emergency hospital services for three or more emergency room visits for non-emergency care during a three-month period;

(13) A pattern of noncompliance or utilization of services that is inconsistent with sound fiscal or medical practices. Noncompliance or inappropriate utilization can be characterized by, for example:

(a) Failure to disclose to a provider any treatment or services provided by another provider;

(b) Failure to follow a drug regimen or other recommended treatment;

(c) Requests for medications or medical services that are not medically necessary;

(d) Use of hospital emergency services for self-referral, non-acute episodes of care, or solely for non-acute management of chronic diagnoses/symptoms; or

(e) Under-use or under-utilization of medically necessary services that result in higher costs for the management of the medical condition;

(14) One or more documented occurrences of the use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to, purchase or attempt to purchase drugs via a forged or altered prescription;

(15) One or more documented occurrences of card-sharing or documented occurrences of alteration of the individual eligibility care, or both; or

(16) One or more documented occurrences of paying cash for controlled substances, analgesic drugs, or psychotropic drugs in addition to the use of the eligibility card to obtain similar or duplicative controlled substances.

~~3. DMAS may restrict recipients if any of the following activities or patterns or levels of utilization are identified. These activities or patterns or levels of utilization include but shall not be limited to:~~

~~a. Exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks.~~

~~b. Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day.~~

~~c. Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three month period.~~

~~d. Receiving more than 24 prescriptions in a three month period.~~

~~e. Receiving more than 12 psychotropic prescriptions or more than 12 analgesic prescriptions or more than 12 prescriptions for controlled drugs with potential for abuse in a three month period.~~

~~f. Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks. In addition, such drugs must be prescribed by two or more practitioners.~~

~~g. Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceeding four weeks.~~

~~h. Utilizing three or more different physicians of the same type or specialty in a three month period for treatment of the same or similar conditions.~~

~~i. Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.~~

~~j. Duplicative, excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by or prescribed by more than one provider for the time period specified by DMAS.~~

~~k. Duplicative, excessive, or contraindicated utilization of medical visits, procedures, or diagnostic tests from more than one provider for the time period specified by DMAS.~~

~~l. Use of emergency hospital services for three or more emergency room visits for nonemergency care during a three month period.~~

~~m. One or more providers recommends restriction for medical management because the recipient has demonstrated inappropriate utilization practices.~~

~~n. A pattern of noncompliance which is inconsistent with sound fiscal or medical practices. Noncompliance is characterized by, but not limited to:~~

~~(1) Failure to disclose to a provider any treatment or services provided by another provider;~~

~~(2) Failure to follow a drug regimen or other recommended treatment;~~

~~(3) Requests for medical services or medications which are not medically necessary;~~

~~(4) Excessive use of transportation services; or~~

~~(5) Use of transportation services with no corresponding medical services.~~

~~o. One or more documented occurrences of use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to the purchase or attempt to purchase drugs via a forged or altered prescription.~~

~~p. One or more documented occurrences of card sharing.~~

~~q. One or more documented occurrences of alteration of the recipient eligibility card.~~

E. ~~Recipient~~ Individual restriction procedures.

1. DMAS shall advise affected ~~recipients~~ individuals by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of restriction procedures and the ~~recipient's~~ individual's right to appeal the proposed action.

2. The ~~recipient~~ individual shall have the opportunity to select designated physician or pharmacy providers, or both. If ~~a recipient~~ an individual fails to respond by the date specified in the restriction notice, DMAS shall select designated ~~providers~~ physician or pharmacy providers, or both.

3. DMAS shall not implement restriction if a valid appeal, consistent with 12VAC30-110-210, is noted. (See subsection K of this section.)

4. DMAS shall restrict ~~recipients~~ individuals to their designated ~~providers~~ physician or pharmacy, or both, for ~~36~~ 24 months.

F. Designated providers.

1. A designated ~~primary~~ physician or pharmacy, or both, must be a ~~physician who~~ provider that is enrolled ~~as an individual practitioner~~ in Virginia Medicaid and ~~who~~ that is unrestricted by DMAS.

2. ~~A designated pharmacy provider must be a pharmacy that is enrolled as a community pharmacy and that is unrestricted by DMAS.~~ Physicians or pharmacy providers, or both, who are under the CMM Program for providers shall not serve as designated providers, shall not provide services through referral, and shall not serve as covering providers for restricted individuals.

3. ~~A designated transportation provider must be enrolled as a taxi, registered driver, or wheelchair van and be unrestricted by DMAS. Recipients shall be assigned to the type of provider who meets the appropriate level of transportation that is medically necessary.~~

~~4. Providers restricted through the Client Medical Management Program may not serve as designated providers, may not provide services through referral, and may not serve as covering providers for restricted recipients.~~

~~5.~~ Physicians with practices limited to the delivery of emergency room services may not serve as designated primary providers.

~~6.~~ 4. Restricted ~~recipients~~ individuals shall have reasonable access to all essential medical services. These restrictions shall not apply to hospital emergency services.

~~7.~~ 5. Other ~~provider types~~ physicians or pharmacies, or both, may be established as designated providers as needed but only with the approval of DMAS.

G. Provider reimbursement.

1. DMAS shall reimburse for covered ~~outpatient~~ medical~~,~~ or pharmaceutical, or both, and physician services for restricted individuals only when they are provided by the designated providers, or by physicians seen on a written referral from the PCP, or in a medical emergency consistent with the methodologies established for such services in the State Plan for Medical Assistance. ~~Prescriptions may be filled by a nondesignated pharmacy only in emergency situations when the designated pharmacy is closed, or when the designated pharmacy does not stock, or is unable to obtain the drug in a timely manner.~~

2. DMAS shall require a written referral, in accordance with published procedures, from the PCP for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate hospital treatment. Services exempt from these referral requirements include:

a. Family planning services;

b. Annual or routine vision examinations (under age 21);

c. Dental services (under age 21);

d. Emergency services;

e. EPSDT well-child exams/screenings (under age 21);

f. Immunizations (under age 21);

g. Home- and community-based care waiver services such as private duty nursing or respite services;

h. Renal dialysis services;

i. Expanded prenatal services, including prenatal group education, nutrition services, and homemaker services for pregnant women and care coordination for high-risk pregnant women and infants up to age two; and

j. Hospice services.

~~3. When a transportation restriction is implemented, DMAS shall reimburse for covered transportation services only when they are provided by the designated transportation provider, or on referral from the designated transportation provider, or in a medical emergency~~.

~~4.~~ 3. Designated primary care providers (PCPs) shall receive a monthly case management fee for each assigned ~~recipient~~ individual.

~~H. Client medical management identification material. DMAS shall provide an individual recipient eligibility card listing the recipient's designated primary care providers or a plastic card for each restricted recipient. DMAS shall provide correspondence to the recipient listing the name, address, and telephone number of each designated provider and the effective date of restriction to each provider.~~

~~I.~~ H. Changes in designated providers.

1. DMAS must give prior ~~authorization~~ approval to all changes of designated providers.

2. The ~~recipient~~ individual or the designated provider may initiate requests for change for the following reasons:

a. Relocation of the ~~recipient~~ individual or provider.

b. Inability of the provider to meet the routine health or pharmaceutical needs of the ~~recipient~~ individual.

c. Breakdown of the ~~recipient/provider~~ individual/provider relationship.

3. If the designated provider initiates the request and the ~~recipient~~ individual does not select a new ~~provider~~ physician or pharmacy, or both, by established deadlines, DMAS shall select a provider, subject to concurrence from the provider or providers.

4. If DMAS denies the ~~recipient's~~ individual's request for a particular physician or pharmacy, or both, the ~~recipient~~ individual shall be notified in writing and given the right to appeal the decision. (See subsection K of this section.)

~~J.~~ I. Review of ~~recipient~~ individual restriction status.

1. During the restriction period, DMAS shall monitor ~~the recipient's~~ an individual's utilization no less frequently than every 12 months and follow up with the ~~recipient~~ individual to promote appropriate utilization patterns.

2. DMAS shall also review ~~a recipient's~~ an individual's utilization prior to the end of the restriction period to determine restriction termination or continuation. ~~(See subsection D of this section.)~~

a. DMAS shall extend utilization control restrictions for ~~36~~ 12 months if any of the following conditions is identified:

(1) The ~~recipient's~~ individual's utilization patterns include one or more conditions listed in subdivision D 3 b of this section.

(2) The ~~recipient~~ individual has not complied with ~~Client Medical Management Program~~ CMM procedures resulting in services or medications received from ~~one or more~~ any nondesignated providers, as demonstrated by their submitted claims, without a written referral or in the absence of a medical emergency.

(3) The ~~recipient~~ individual has not complied with ~~Client Medical Management Program~~ CMM procedures as demonstrated by a pattern of documented attempts to receive ~~services or~~ medications from ~~one or more~~ any nondesignated ~~providers without a written referral or~~ provider in the absence of a medical emergency when the designated pharmacy is closed, or when the designated pharmacy does not stock, or is unable to obtain the medication in a timely manner.

(4) One or more of the designated providers recommends continued restriction status because the ~~recipient~~ individual has demonstrated noncompliant behavior which is being controlled by ~~Client Medical Management~~ CMM Program restrictions.

(5) Any changes of designated provider have been made due to the breakdown of the ~~recipient/provider~~ individual/provider relationship as a result of the ~~recipient's~~ individual's noncompliance.

b. DMAS shall notify the ~~recipient~~ individual and designated physician or pharmacy, or both, provider in writing of the review decision. If restrictions are continued, written notice shall include the ~~recipient's~~ individual's right to appeal the proposed action. (See subsection K of this section.)

c. DMAS shall not implement the continued ~~recipient~~ individual restriction if a valid appeal is noted pending the completion of the appeal action. Should the outcome of the appeal action support implementation of the restriction, it shall be promptly implemented.

J. Member education of service utilization. If an individual's utilization merits concern because his patterns exceed limits, but do not fully meet the criteria for restriction, then monitoring or education, or both, shall be an option.

K. ~~Recipient~~ Individual appeals.

1. ~~Recipients~~ Individuals shall have the right to appeal any adverse action taken by DMAS under these regulations.

2. ~~Recipient~~ Individual appeals shall be held pursuant to the provisions of Part I (12VAC30-110-10 et seq.) of ~~12VAC30 Chapter 110~~ 12VAC30-110, Eligibility and Client Appeals.

12VAC30-130-820. Client Medical Management Program for providers.

A. Purpose. The ~~Client Medical Management Program~~ CMM Program is a utilization control program designed to promote improved and cost-efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by providers.

2. Federal regulations at 42 CFR 431.54~~-~~(f) allow states to restrict providers' participation in the Medicaid program if the agency finds that providers of items or services under the State Plan have provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or have provided items or services of a quality that do not meet professionally recognized standards of health care.

C. Identification of ~~Client Medical Management Program~~ CMM Program participants. DMAS shall identify providers for review through computerized reports such as but not limited to ~~Provider SURS or AEA~~ JSURS, Oracle, VAMMIS, or by written referrals from agencies, health care professionals, or other individuals.

D. Provider evaluation for restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that

is not medically necessary or that are not of a quality to meet professionally recognized standards of health care. Evaluation of utilization patterns can include but is not limited to review by the department ~~staff~~ of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, hospital admissions, and referrals.

2. DMAS may restrict providers if any one or more of the following conditions is identified in a significant number or proportion of cases. These conditions include but shall not be limited to the following:

a. Visits billed at a frequency or level exceeding that which is medically necessary;

b. Diagnostic tests billed in excess of what is medically necessary;

c. Diagnostic tests billed which are unrelated to the diagnosis;

d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;

e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis.

f. The provider's license to practice in any state has been revoked or suspended.

~~g. Excessive transportation services rendered such that unnecessary costs to the Virginia Medicaid Program ensue from the accumulation of services.~~

E. Provider restriction procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the ~~Client Medical Management Program~~ CMM Program. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider for ~~recipients~~ individuals in the ~~Client Medical Management Program~~ CMM Program for 24 months.

3. DMAS shall notify the Centers for Medicare and Medicaid Services (CMS) and the general public of the restriction and its duration.

4. DMAS shall not implement provider restriction if a valid appeal is noted.

F. Review of provider restriction status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See subsection D of this section). DMAS shall extend provider restriction for 24 months in one or more of the following situations:

a. Where abuse by the provider is identified.

b. Where the practices which led to restriction continue.

2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-month claims history is available for evaluation.

3. If DMAS continues restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See subsection E of this section).

4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and action as appropriate.

G. Provider appeals.

1. Providers shall have the right to appeal any adverse action taken by the department under these regulations.

2. Provider appeals shall be held pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

VA.R. Doc. No. R14-2290; Filed December 16, 2013, 12:28 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Proposed Regulation

Title of Regulation: **18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-70, 18VAC15-20-470, 18VAC15-20-520).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

February 27, 2014 - 11 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Richmond, Virginia 23233

Public Comment Deadline: March 14, 2014.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, prevent deceptive or misleading practices by

practitioners, and effectively administer the regulatory system administered by the board.

Section 54.1-501 of the Code of Virginia states that the board shall promulgate regulations regarding the professional qualifications of home inspector applicants, the requirements necessary for passing home inspector examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Purpose: In response to the Governor's Regulatory Reform Initiative, the Board for Asbestos, Lead, and Home Inspectors reviewed its current regulations to identify, amend, or repeal any regulations that are unnecessary or no longer in use and reduce unnecessary regulatory burdens on regulated groups. The purpose of the amendments is to lessen restrictions on regulants without compromising public health, safety, or welfare.

Substance: Currently, any licensee or accredited asbestos training provider who fails to renew his license or accredited asbestos training program approval within six months after the expiration must apply as a new applicant. The proposed amendment extends this grace period to 12 months. The second amendment increases the time period from 24 hours to 10 business days for accredited asbestos training providers to submit course participant lists. The third amendment eliminates the requirement to have a minimum of two instructors for all initial accredited asbestos training programs except for initial worker.

Issues: The primary advantage to businesses is eliminating the burden on training providers to submit participant lists within 24 hours, which may prove difficult if a training course ends at 5 p.m. on a Friday. Also, since initial training courses have fewer participants, except for initial worker, it will lessen the burden for training providers by not requiring two instructors per initial program. There are no disadvantages to the public since these individuals cannot work with an expired license and training providers cannot offer or conduct training programs with expired approvals. This action poses no advantages or disadvantages to the Commonwealth. The primary advantage to those individuals and training providers whose license or approval has expired is having an additional six months to renew before having to apply as a new applicant.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to allow a licensee or an accredited asbestos training provider to renew a license or accredited asbestos training program up to 12 months after the expiration of the license or accreditation without reapplying as a new applicant. The Board also proposes to allow more than 24 hours for accredited asbestos training providers to submit course participant lists. Finally, the Board proposes to no longer require two instructors for most initial accredited asbestos training programs.

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

Estimated Economic Impact. Late renewal - Under the current regulations, Each license and each approved accredited asbestos training program not renewed within six months after the expiration date shall not be renewed and the licensee or approved accredited asbestos training program shall apply for a new license or new approval. Licensees who seek to renew late, but not more than six months late, are required to pay the renewal fee ($25 or $40, depending on license) and late renewal fee ($25), and submit a copy of a current refresher training course certificate or take another initial training course if their most recent training has been expired for more than twelve months. Licensees who are more than six months late must apply as a new applicant, pay the application fee ($25 or $40, depending on license), submit verification of their experience (if applicable), and submit copies of their initial training course and all subsequent refresher training course certificates or take another initial training course if their most recent training has been expired for more than twelve months.

The Board proposes to change the six months to twelve months; licensees who are between six and 12 months late must apply as a new applicant under the currents regulations, but would qualify to renew late under the proposed regulations. These individuals could save time, effort and other administrative costs associated with submitting documentation. Licensees who are between six and 12 months late would pay $25 more in fees with the proposed change,[1] but would save the time, effort and other administrative costs associated with submitting documentation.

Unlike for licensure, the application fees for asbestos training provider accreditation are more than $25 higher than the renewal fees. Thus the proposal to change the six months to twelve months will reduce net fees for accredited asbestos training providers who are between six and twelve months late in seeking to renew accreditation.[2]

Training program participant list - Under the current regulations, the manager of each accredited asbestos training program must provide to the board the program participant list no later than 24 hours following the training program completion. The Board proposes to change the requirement to providing the program participant list no later than 10 business days following the training program completion. This would be significantly less burdensome for training providers and is considered sufficient by the Board. Therefore this proposed change should produce a net benefit for the Commonwealth.

Number of instructors - Under the current regulations, At least two instructors shall be used for each supervisor,

inspector, management planner, project designer and project monitor initial accredited asbestos training program. The Board proposes to eliminate the requirement to have two instructors for these initial accredited asbestos training programs by deleting the above sentence from the regulations. The Board has determined that these training programs tend to have small numbers of participants per class. Thus the current requirement for two instructors is overly burdensome and unnecessary. This proposed change should produce a net benefit for the Commonwealth.

Businesses and Entities Affected. The proposed amendments potentially affect the 33 accredited asbestos training providers and 4,154 individuals licensed as an asbestos worker, asbestos supervisor, asbestos inspector, asbestos management planner, asbestos project designer, asbestos project monitor or asbestos contractor in the Commonwealth.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

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

Effects on the Use and Value of Private Property. The proposed amendments will moderately reduce costs for asbestos training providers.

Small Businesses: Costs and Other Effects. The proposed amendments will moderately reduce costs for small asbestos training providers.

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

[1] The only fee paid by new applicants is the application fee. The application fees and the renewal fees are the same. Those renewing late pay a $25 late fee in addition to the renewal fee.

[2] The application fee for accredited asbestos training program approval is $400 per day of training, while the renewal fee is $50 and the late fee is $25.

Agency's Response to Economic Impact Analysis: The Board for Asbestos, Lead, and Home Inspectors concurs with approval.

Summary:

The proposed amendments (i) allow a licensee or an accredited asbestos training provider to renew a license or accredited asbestos training program up to 12 months after the expiration of the license or accreditation without reapplying as a new applicant, (ii) extend the time frame for accredited asbestos training providers to submit course participant lists to 10 business days, and (iii) no longer require two instructors for most initial accredited asbestos training programs.

18VAC15-20-70. Procedures for renewal.

A. The department shall mail a renewal notice to each licensee and to each approved accredited asbestos training program at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee or the approved accredited asbestos training program of the obligation to renew in a timely fashion.

B. Prior to the expiration date shown on the license or approval letter, each licensed asbestos contractor and licensed asbestos analytical laboratory desiring to renew the license shall return the renewal notice together with the appropriate fee specified in 18VAC15-20-53 to the department. Should the licensee fail to receive the renewal notice, a copy of the current license may be submitted with the required fee.

C. Prior to the expiration date shown on the individual's current license, the individual desiring to renew that license shall provide evidence of meeting the annual refresher training requirement for license renewal and the appropriate fee specified in 18VAC15-20-53. The board will accept any asbestos training programs that are approved by EPA/AHERA or the board. A copy of the training certificate documenting the successful completion of the refresher training for the license discipline being renewed and meeting the requirements outlined in this chapter shall accompany the renewal notice and fee.

D. Prior to the expiration date shown on the approval letter, each accredited asbestos training program desiring to renew

the approval shall return the renewal notice to the department together with the following:

1. Appropriate fee specified in 18VAC15-20-53.

2. Any changes made to the training program.

3. Dates on which the training material was last updated.

4. Statement indicating that the training program continues to meet the regulation requirements established in this chapter.

Should an approved accredited asbestos training program fail to receive the renewal notice, a letter indicating the desire to renew and the applicable fee may be submitted.

E. Project monitors who also hold a valid Virginia asbestos supervisor or project designer license may meet the renewal training requirements by completing the supervisor refresher or project designer refresher, whichever is applicable. Project monitors who hold only a project monitor license shall complete an accredited asbestos project monitor refresher training program to meet the renewal training requirements.

F. Annual refresher training certificates shall only be used once to renew an individual license.

G. Each license and each accredited asbestos training program approval that is not renewed within 30 days of the expiration date on the license or approval shall be subject to late renewal fees as established in 18VAC15-20-53.

H. Each license and each approved accredited asbestos training program not renewed within ~~six~~ 12 months after the expiration date shall not be renewed and the licensee or approved accredited asbestos training program shall apply for a new license or new approval.

18VAC15-20-470. Recordkeeping and provision of records to the board.

A. The training manager shall notify the board no less than 48 hours prior to the start date of any accredited asbestos training program.

B. The training manager shall provide an updated notification when an accredited asbestos training program will begin on a date other than the start date specified in the original notification as follows:

1. For accredited asbestos training programs beginning prior to the start date provided to the board, an updated notification must be received by the board at least 48 hours before the new start date.

2. For accredited asbestos training programs beginning after the start date provided to the board, an updated notification must be received by the board at least 48 hours before the start date provided to the board.

C. The training manager shall update the board of any change in location of an accredited asbestos training program at least 48 hours prior to the start date provided to the board.

D. The training manager shall update the board regarding any accredited asbestos training program cancellations or any other change to the original notification at least 48 hours prior to the start date provided to the board. This requirement shall not apply to situations or circumstances beyond the control of the training provider.

E. Each notification, including updates, shall include the following:

1. Notification type (original, update, cancellation).

2. Training program name, Virginia accreditation number, address, and telephone number.

3. Course discipline, type (initial/refresher), and the language in which the instruction will be given.

4. Dates and times of training.

5. Training locations, telephone number, and address.

6. Principal instructor's name.

7. Training manager's name and signature.

F. For all accredited asbestos training programs approved by the board, the training provider shall keep a training program participant list of all of the individuals attending the accredited asbestos training program. The training program participant list shall contain the following minimum information:

1. Training program name, Virginia accreditation number, address, and telephone number.

2. Course discipline and type (initial/refresher).

3. Dates of training.

4. Location of training program presentation.

5. Each participant's name, address, social security number, course completion certificate number, and course test score.

6. Principal instructor's name.

7. Training manager's name and signature.

G. The training program participant list shall be completed by the training program principal instructor and training program participants daily.

H. The training program participant list shall be retained by the training provider for three years following the date of completion of the training program.

I. The training manager shall provide to the board the accredited asbestos training program participant list no later than ~~24 hours~~ 10 business days following the training program completion.

J. Notifications and training program participant lists shall be submitted electronically in the manner established by the board specifically to receive this documentation using a sample form designed by and available from the board. Any variation upon this procedure shall be approved by the board prior to submission.

K. The training provider shall retain all examinations completed by training program participants for a period of three years.

L. The department shall not recognize training certificates from approved training providers that fail to notify or fail to provide a training program participant list.

18VAC15-20-520. Number of instructors required to provide training.

A. The board strongly recommends a minimum of two instructors to teach an accredited asbestos initial worker training program.

~~B. At least two instructors shall be used for each supervisor, inspector, management planner, project designer and project monitor initial accredited asbestos training program.~~

~~C.~~ B. One instructor is adequate per accredited asbestos refresher training program.

~~D.~~ C. At least one instructor shall be in the classroom and available to the students at all times during the accredited asbestos training program.

VA.R. Doc. No. R13-3645; Filed December 18, 2013, 4:17 p.m.

Proposed Regulation

Title of Regulation: **18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-167, 18VAC15-30-400).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

February 27, 2014 - 11 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Richmond, VA 23233

Public Comment Deadline: March 14, 2014.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the board.

Section 54.1-501 of the Code of Virginia states that the board shall promulgate regulations regarding the professional qualifications of home inspector applicants, the requirements necessary for passing home inspector examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Purpose: In response to the Governor's Regulatory Reform Initiative, the Board for Asbestos, Lead, and Home Inspectors reviewed its current regulations to identify, amend, or repeal any regulations that are unnecessary or no longer in use and reduce unnecessary regulatory burdens on regulated groups. The purpose of the amendments is to lessen restrictions on regulants without compromising public health, safety, and welfare.

Substance: Currently, any licensee or accredited lead training provider who fails to renew his license or accredited lead training program approval within six months after the expiration must apply as a new applicant. The proposed amendment extends this grace period to 12 months. The second amendment eliminates the requirement that certificates of completion for accredited lead training programs contain two unique identification numbers.

Issues: This action poses no advantages to the public. There are no disadvantages to the public since these individuals cannot work with an expired license and training providers cannot offer or conduct training programs with expired approvals. This action poses no advantages or disadvantages to the Commonwealth. The primary advantage to those individuals and training providers whose license or approval have expired is having an additional six months to renew before having to apply as a new applicant.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. These regulations contain procedures and requirements for the accreditation of lead-based paint activities training programs and providers, procedures and requirements for the licensure of individuals and firms engaged in lead-based paint activities in target housing and child-occupied facilities, and standards for performing such activities. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to allow a licensee or an accredited lead training provider to renew a license or accreditation up to twelve months after the expiration of the license or accreditation without reapplying as a new applicant. The Board also proposes to require only one unique number for certificates of completion issued at the conclusion of training programs by accredited lead training providers.

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

Estimated Economic Impact. Late renewal - Under the current regulations, "Any licensee or accredited lead training provider who fails to renew his license or accredited lead training program approval within six months after the expiration date on the license or approval shall not be permitted to renew and shall apply as a new applicant." Licensees who seek to renew late, but not more than six months late, are required to pay the renewal fee ($25 or $40, depending on license) and late renewal fee ($25), and submit a copy of a current refresher training course certificate or take another initial training course if their most recent training has been expired for more than three months. Licensees who are more than six months late must apply as a new applicant, pay the application fee ($25 or $40, depending on license), if applicable retake the

exam (fee up to $75), submit verification of their experience (if applicable), and submit copies of their initial training course and all subsequent refresher training course certificates or take another initial training course if their most recent training has been expired for more than three months.

The Board proposes to change the "six months" to "twelve months"; licensees who are between six and 12 months late must apply as a new applicant under the currents regulations, but would qualify to renew late under the proposed regulations. These individuals could save time, effort and other administrative costs associated with submitting documentation, as well as the time and effort preparing and retaking the licensure exam (for those licenses that have an exam). In net, those seeking renewal of a license that has an associated exam would also save about $50 in fees.[1] Licensees who are between six and 12 months late and whose license does not require an exam would actually pay $25 more in fees with the proposed change,[2] but would still save the time, effort and other administrative costs associated with submitting documentation.

Unlike for licensure, the application fees for lead training provider accreditation are more than $25 higher than the renewal fees. Thus the proposal to change the "six months" to "twelve months" will reduce net fees for accredited lead training providers who are between six and twelve months late in seeking to renew accreditation.[3]

Certificates of completion - Accredited lead training programs must issue unique course completion certificates to each individual who successfully completes the course requirements. Under the current regulations, the course completion certificate must include the following:

1. A unique certificate number.

2. The name, a unique identification number, and address of the individual.

3. The name of the particular course that the individual completed.

4. Dates of course completion/test passage.

5. Expiration date. Training certificates shall expire three years from the date of course completion. If the accredited lead training program offers a proficiency test, the training certificates shall expire five years from the date of course completion.

6. Name, address, and telephone number of the training provider.

7. Name and signature of the training manager and principal instructor.

The Board proposes to remove the requirement for certificates of completion to contain a unique identification number for the course participant. The requirement for two different unique numbers (the certificate number and the identification number) is more stringent than federal regulations (40 CFR Part 745) and therefore unenforceable. This proposed change will remove a small burden for accredited lead training programs and will not have any negative impact on public safety. Thus it will create a small net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect the 21 accredited lead training providers and the 896 individuals licensed as a lead abatement worker, lead abatement supervisor, lead inspector, lead risk assessor, lead project designer, or lead abatement contractor in the Commonwealth.

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

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

Effects on the Use and Value of Private Property. The proposed amendments will moderately reduce costs for some lead-based paint activities training programs and providers and some individuals licensed to work in the industry.

Small Businesses: Costs and Other Effects. The proposed amendment will moderately reduce costs for some small lead-based paint activities training programs and providers.

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

Real Estate Development Costs. The proposed amendments may modestly reduce costs for the development of properties that require lead abatement.

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

[1] The regulations state that the "The examination shall not exceed a cost of $75 to the candidate." Those renewing late (not applying as a new applicant) pay a $25 late fee. The application fees and the renewal fees are the same. Thus, renewing late rather than applying as a new applicant saves about $50 in fees.

[2] The only fee paid by new applicants for licenses that do not have an associated exam is the application fee. The application fees and the renewal fees are the same. Those renewing late pay a $25 late fee.

[3] The application fee for accredited lead training program approval is $400 per day of training, while the renewal fee is $100 and the late fee is $25.

Agency's Response to Economic Impact Analysis: The Board for Asbestos, Lead, and Home Inspectors concurs with approval.

Summary:

The proposed amendments (i) allow a licensee or an accredited lead training provider to renew a license or accreditation up to 12 months after the expiration of the license or accreditation without reapplying as a new applicant and (ii) require only one unique number for certificates of completion issued at the conclusion of training programs by accredited lead training providers.

18VAC15-30-167. Late renewal.

A. If the renewal fee is not received by the board within 30 days after the expiration date printed on the license or accredited lead training program approval, a late renewal fee shall be required in addition to the renewal fee.

B. Any licensee or accredited lead training provider who fails to renew his license or accredited lead training program approval within ~~six~~ 12 months after the expiration date on the license or approval shall not be permitted to renew and shall apply as a new applicant.

18VAC15-30-400. Certificates of completion.

Accredited lead training programs shall issue unique course completion certificates to each individual who successfully completes the course requirements. The course completion certificate shall include:

1. A unique certificate number.

2. The name~~, a unique identification number,~~ and address of the individual.

3. The name of the particular course that the individual completed.

4. Dates of course completion/test passage.

5. Expiration date. Training certificates shall expire three years from the date of course completion. If the accredited lead training program offers a proficiency test, the training certificates shall expire five years from the date of course completion.

6. Name, address, and telephone number of the training provider.

7. Name and signature of the training manager and principal instructor.

VA.R. Doc. No. R13-3644; Filed December 18, 2013, 4:17 p.m.

Proposed Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-30).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

February 27, 2014 - 11 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Richmond, Virginia 23233

Public Comment Deadline: March 14, 2014.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the board.

Section 54.1-501 states that the board shall promulgate regulations regarding the professional qualifications of home inspector applicants, the requirements necessary for passing home inspector examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Purpose: The purpose of the amendment is to remove the requirement that training courses be taken in a classroom setting in order to meet certified home inspector entry requirements. The fact that distance learning is not acceptable as an entry requirement but is acceptable as a renewal requirement may create confusion among the regulant population. In addition, the desire to complete distance learning courses, online courses specifically, has grown in popularity. The cost reduction from not having to travel, find lodging, and take time away from work could be substantial for some individuals. With advancement in technology, the number of home inspector online courses has increased and are readily available. At the same time, classroom courses are becoming more difficult to find compared to online courses, which creates a barrier to certification. The board feels there will be no loss in the required skills resulting from the switch to distance learning.

Substance: The amendments remove the requirement that restricts training courses to be conducted in a classroom setting to meet the certified home inspector entry requirements.

Issues: The primary advantage to the public is a more flexible training entry requirement, which may allow for additional

certified home inspectors. There are no disadvantages to the public as precertification training is still a requirement.

The primary advantage to the Commonwealth is a more flexible training entry requirement, which may allow for additional certified home inspectors. There are no disadvantages to the Commonwealth as precertification training is still a requirement.

The primary advantage to those wishing to become certified home inspectors is that the barrier of completing classroom instruction is removed and more flexible and more available precertification training options, such as online courses, will now be accepted by the board.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to remove the requirement that training courses have to be taken in a classroom setting to be accepted as meeting the certified home inspector entry requirements.

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

Estimated Economic Impact. Under the current regulations required training for the initial home inspector license must be in a classroom. The Board proposes to allow the initial training to be via distance learning including, but not limited to, online courses. The cost reduction from not having to travel, find lodging, and spend time away from work could be substantial for some individuals. Additionally, the Board has determined that there would be no loss in the required skills resulting from the newly permitted switch to distance learning. Thus, the proposed amendment should produce a net benefit.

Businesses and Entities Affected. The proposed amendment affects applicants for initial home inspector certification, as well as providers of training for home inspectors. There were 41 applicants in fiscal year 2012.[1]

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

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

Effects on the Use and Value of Private Property. The proposed amendment will moderately reduce costs for some home inspector certification applicants. Providers of classroom training who do not also provide distance learning will likely lose some business, while some providers of online training or other distance learning will likely receive additional demand for their services.

Small Businesses: Costs and Other Effects. The proposed amendments will reduce costs for some small home inspector firms. Small providers of classroom training who do not also provide distance learning will likely lose some business, while some small providers of online training or other distance learning will likely receive additional demand for their services.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small home inspector firms. Small providers of classroom training who do not also provide distance learning will likely lose some business, but there is no alternative method that reduces the adverse impact to these firms and still accomplishes the policy goal of reduced costs for initial training of home inspectors.

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

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

[1] Data source: Department of Professional and Occupational Regulation

Agency's Response to Economic Impact Analysis: The Board for Asbestos, Lead, and Home Inspectors concurs with approval.

Summary:

The proposed amendments remove the requirement that training courses to meet the certified home inspector entry requirements be taken in a classroom setting. These amendments allow for distance learning options, including, but not limited to, online courses, and make the regulations regarding precertification training more

consistent with continuing professional education requirements.

18VAC15-40-30. Qualifications for certification.

Every applicant for an individual home inspector certificate shall have the following qualifications:

1. The applicant shall be at least 18 years old.

2. The applicant shall meet the following educational and experience requirements:

a. High school diploma or equivalent; and

b. One of the following:

(1) Completed 35 contact hours of ~~classroom~~ instruction and have completed a minimum of 100 home inspections;

(2) Completed 35 contact hours of ~~classroom~~ instruction and have completed a minimum of 50 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection;

(3) Completed 70 contact hours of ~~classroom~~ instruction and have completed a minimum of 50 home inspections; or

(4) Completed 70 contact hours of ~~classroom~~ instruction and have completed a minimum of 25 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection.

Instruction courses shall cover the content areas of the board-approved examinations.

An applicant who cannot fulfill the ~~classroom~~ instruction requirement as outlined in this subsection may provide documentation of a minimum of 10 years of experience as a home inspector with a minimum of 250 home inspections completed in substantial compliance with this chapter to satisfy this requirement. The documentation is subject to board review and approval.

3. The applicant shall have passed a written competency examination approved by the board.

4. The board may accept proof of membership in good standing, in a national or state professional home inspectors association approved by the board, as satisfaction of subdivisions 1, 2, and 3 of this section, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.

5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a home inspector in such a manner as to safeguard the interests of the public.

6. The applicant shall disclose whether a certificate or license as a home inspector from any jurisdiction where certified or licensed has ever been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The board may deny certification to any applicant so disciplined after examining the totality of the circumstances.

7. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Subject to the provisions of § 54.1-204 of the Code of Virginia, the board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of residential home inspections. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

8. Procedures and appropriate conduct established by either the board or any testing service administering an examination approved by the board or both shall be followed by the applicant. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

9. Applicants shall show evidence of having obtained general liability insurance with minimum limits of $250,000.

VA.R. Doc. No. R13-2848; Filed December 18, 2013, 4:18 p.m.

Proposed Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-90).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

February 27, 2014 - 11 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Richmond, Virginia 23233

Public Comment Deadline: March 14, 2014.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors,

9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the board.

Section 54.1-501 states that the board shall promulgate regulations regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Purpose: In response to the Governor's Regulatory Reform Initiative, the Board for Asbestos, Lead, and Home Inspectors reviewed its current regulations to identify, amend, or repeal any regulations that are unnecessary or no longer in use and reduce unnecessary regulatory burdens on regulated groups.

Substance: Currently, home inspectors whose certificates have been expired for more than two years must apply as new applicants and retake the examination. The proposed amendment removes the requirement for these individuals to retake the examination.

Issues: The primary advantage to the public is that the cost for having to retake the examination will not be passed along to the home inspector's clients. There are no disadvantages to the public since these individuals have already met the examination requirement. This action poses no advantages or disadvantages to the Commonwealth. The primary advantage to those home inspectors who must reapply is the elimination of the expense of having to retake the examination.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to remove the requirement that home inspectors whose certificates have been expired for more than two years retake a written competency examination when applying as a new applicant.

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

Estimated Economic Impact. The Board believes that requiring the applicant who must reapply as a new applicant to retake the examination serves no purpose and places an unnecessary and costly burden upon the applicant. Since eliminating this requirement reduces costs for the affected home inspectors and does not produce any new costs, the proposal should produce a net benefit.

Businesses and Entities Affected. The proposed amendment potentially affects the 284 certified home inspectors in the Commonwealth.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment is unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment will reduce costs for home inspectors whose certificates have been expired for more than two years.

Small Businesses: Costs and Other Effects. The proposed amendments may moderately reduce costs for small home inspection firms that may consider employing a home inspector who is returning to the industry after having been away for more than two years.

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

Real Estate Development Costs. The proposed amendment is 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, a determination of the public benefit, 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 an 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 Virginia Board for Asbestos, Lead, and Home Inspectors concurs with the approval.

Summary:

The proposed amendments remove the requirement that home inspectors whose certificates have been expired for

more than two years retake a written competency examination when applying as a new applicant.

18VAC15-40-90. Reinstatement.

A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within six months after the expiration date noted on the certificate, a reinstatement fee shall be required.

B. All applicants for reinstatement shall meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72 and 18VAC15-40-80.

C. A certificate may be reinstated for up to two years following the expiration date with payment of the reinstatement fee. After two years, the certificate shall not be reinstated under any circumstances and the applicant shall apply as a new applicant~~, requiring the applicant to retake the examination~~.

VA.R. Doc. No. R13-3643; Filed December 18, 2013, 4:18 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce various licensure fees for (i) barbers, cosmetologists, and nail technicians and (ii) barber, cosmetology, and nail technician instructors, facilities, and schools.

Part III
Fees

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	~~$140~~ $105	With application
License by Endorsement	~~$140~~ $105	With application
Renewal:		
Barber	~~$140~~ $105	With renewal card prior to expiration date
Cosmetologist	~~$140~~ $105	With renewal card prior to expiration date
Nail technician	~~$140~~ $105	With renewal card prior to expiration date
Reinstatement	~~$280*~~ $210* *includes ~~$140~~ $105 renewal fee and ~~$140~~ $105 reinstatement fee	With reinstatement application
Instructors:		
Application	~~$150~~ $125	With application
License by Endorsement	~~$150~~ $125	With application
Renewal	$150	With renewal card prior to expiration date
Reinstatement	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Facilities:		
Application	~~$225~~ $190	With application
Renewal	~~$225~~ $190	With renewal card prior to expiration date
Reinstatement	~~$450*~~ $380* *includes ~~$225~~ $190 renewal fee and ~~$225~~ $190 reinstatement fee	With reinstatement application
Schools:		
Application	~~$255~~ $220	With application
Add Program	~~$125~~ $100	With application

Renewal	~~$255~~ $220	With renewal card prior to expiration date
Reinstatement	~~$510*~~ $440* *includes ~~$255~~ $220 renewal fee and ~~$255~~ $220 reinstatement fee	With reinstatement application

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 of a form with a hyperlink 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 (18VAC41-20)

Barber – Barber Instructor Examination & Instructor Application, A425-1301_02EXLIC (eff. 9/11)

Cosmetology – Cosmetology Instructor Examination & License Application, A425-1201_04EXLIC (eff. 9/11)

Nail Technician – Nail Technician Instructor Examination & License Application, A425-1206_07EXLIC (eff. 9/11)

Temporary Permit Application, A425-1213TP (eff. 9/11)

~~License by Endorsement Application, A425-1213END (eff. 9/11)~~

License by Endorsement Application, A425-1213END (rev. 2/14)

Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)

~~Reinstatement Application, A425-1213REI (eff. 9/11)~~

~~Salon, Shop, Spa & Parlor License Application A425-1213BUS (eff. 9/11)~~

Reinstatement Application, A425-1213REI (rev. 2/14)

Salon, Shop, Spa & Parlor License Application A425-1213BUS (rev. 2/14)

Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP (eff. 9/11)

~~Instructor Certification Application, A425-1213INST (eff. 9/11)~~

~~School License Application, A425-1213SCHL (eff. 9/11)~~

Instructor Certification Application, A425-1213INST (rev. 2/14)

School License Application, A425-1213SCH (rev. 2/14)

School Self Inspection Form, A425-1213SCH_INSP (eff. 9/11)

~~Licensure Fee Notice, A425-1213FEE (eff. 9/11)~~

Licensure Fee Notice, A425-1213FEE (rev. 2/14)

VA.R. Doc. No. R14-3917; Filed December 20, 2013, 11:55 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-40. Wax Technician Regulations (amending 18VAC41-40-120).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce various licensure fees for wax technicians and wax technician instructors, schools, and facilities.

Part III
Fees

18VAC41-40-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	~~$140~~ $105	With application
License by Endorsement	~~$140~~ $105	With application
Renewal	~~$140~~ $105	With renewal card prior to expiration date
Reinstatement	~~$280*~~ $210* *includes ~~$140~~ $105 renewal fee and ~~$140~~ $105 reinstatement fee	With reinstatement application
Instructors:		
Application	~~$150~~ $125	With application
License by Endorsement	~~$150~~ $125	With application

Renewal	$150	With renewal card prior to expiration date
Reinstatement	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Facilities:		
Application	~~$225~~ $190	With application
Renewal	~~$225~~ $190	With renewal card prior to expiration date
Reinstatement	~~$450*~~ $380* *includes ~~$225~~ $190 renewal fee and ~~$225~~ $190 reinstatement fee	With reinstatement application
Schools:		
Application	~~$255~~ $220	With application
Renewal	~~$255~~ $220	With renewal card prior to expiration date
Reinstatement	~~$510*~~ $440* *includes ~~$255~~ $220 renewal fee and ~~$255~~ $220 reinstatement fee	With reinstatement application

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FORMS (18VAC41-40)

Wax Technician – Wax Technician Instructor Examination & License Application, A425-1214_15EXLIC (eff. 9/11)

Temporary Permit Application, A425-1213TP (eff. 9/11)

~~License by Endorsement Application, A425-1213END (eff. 9/11)~~

License by Endorsement Application, A425-1213END (rev. 2/14)

Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)

~~Reinstatement Application, A425-1213REI (eff. 9/11)~~

~~Salon, Shop, Spa & Parlor License Application, A425-1213BUS (eff. 9/11)~~

Reinstatement Application, A425-1213REI (rev. 2/14)

Salon, Shop, Spa & Parlor License Application, A425-1213BUS (rev. 2/14)

Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP (eff. 9/11)

~~Instructor Certification Application, A425-1213INST (eff. 9/11)~~

Instructor Certification Application, A425-1213INST (rev. 2/14)

~~School License Application, A425-1213SCHL (eff. 9/11)~~

School License Application, A425-1213SCHL (rev. 2/14)

School Self Inspection Form, A425-1213SCH_INSP (eff. 9/11)

~~Licensure Fee Notice, A425-1213FEE v2 (eff. 9/11)~~

Licensure Fee Notice, A425-1213FEE (rev. 2/14)

VA.R. Doc. No. R14-3918; Filed December 20, 2013, 11:56 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce various licensure fees for tattooers, tattooing instructors, and tattooing salons and schools regulated by the Board for Barbers and Cosmetology.

Part III
Fees

18VAC41-50-130. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	~~$140~~ $105	With application

License by Endorsement	~~$140~~ $105	With application
Renewal	~~$140~~ $105	With renewal card prior to expiration date
Reinstatement	~~$280*~~ $210* *includes ~~$140~~ $105 renewal fee and ~~$140~~ $105 reinstatement fee	With reinstatement application
Instructors:		
Application	~~$150~~ $125	With application
License by Endorsement	~~$150~~ $125	With application
Renewal	$150	With renewal card prior to expiration date
Reinstatement	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Parlors or salons:		
Application	~~$225~~ $190	With application
Renewal	~~$225~~ $190	With renewal card prior to expiration date
Reinstatement	~~$450*~~ $380* *includes ~~$225~~ $190 renewal fee and ~~$225~~ $190 reinstatement fee	With reinstatement application
Schools:		
Application	~~$255~~ $220	With application
Renewal	~~$255~~ $220	With renewal card prior to expiration date
Reinstatement	~~$510*~~ $440* *includes ~~$255~~ $220 renewal fee and ~~$255~~ $220 reinstatement fee	With reinstatement application

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FORMS (18VAC41-50)

Tattooer Examination & License Application, A425-1231EXLIC (eff. 9/11)

Tattoo Training & Experience Verification Form, A425-12TATTREXP (eff. 9/11)

Tattooing Apprenticeship Sponsor Application, A425-12TATSPON (eff. 9/11)

Tattooer Apprenticeship Certification Application, A425-1234TAC (eff. 9/11)

Tattoo Apprenticeship Completion Form, A425-12TAC (eff. 9/11)

Tattoo Client Disclosure Form, A425-12DIS, A425-12TDIS (eff. 9/11)

~~Limited Term Tattooer License Application, A425-1233LIC (eff. 9/11)~~

~~Limited Term Tattoo Parlor License Application, A425-1235LTPAR (eff. 9/11)~~

Limited Term Tattooer License Application, A425-1233LIC (rev. 2/14)

Limited Term Tattoo Parlor License Application, A425-1235LIC (rev. 2/14)

Permanent Cosmetic Tattooer Examination & License Application, A425-1236EXLIC (eff. 9/11)

Master Permanent Cosmetic Tattooer Examination & License Application, A425-1237EXLIC (eff. 9/11)

~~License by Endorsement Application, A425-1213END (eff. 9/11)~~

License by Endorsement Application, A425-1213END (rev. 2/14)

Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)

~~Reinstatement Application, A425-1213REI (eff. 9/11)~~

~~Salon, Shop, Spa & Parlor License Application A425-1213BUS (eff. 9/11)~~

~~Instructor Certification Application, A425-1213INST (eff. 9/11)~~

~~School License Application, A425-1213SCHL (eff. 9/11)~~

~~Licensure Fee Notice, A425-1213FEE v2 (eff. 9/11)~~

Salon, Shop, Spa & Parlor License Application A425-1213BUS (rev. 2/14)

Licensure Fee Notice, A425-1213FEE (rev. 2/14)

Instructor Certification Application, A425-1213INST (rev. 2/14)

Reinstatement Application, A425-1213REI (rev. 2/14)

School License Application, A425-1213SCHL (rev. 2/14)

VA.R. Doc. No. R14-3919; Filed December 20, 2013, 11:56 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-90).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce various licensure fees for body piercers and body piercing salons regulated by the Board for Barbers and Cosmetology.

Part III
Fees

18VAC41-60-90. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	~~$140~~ $105	With application
License by endorsement	~~$140~~ $105	With application
Renewal:	~~$140~~ $105	With renewal card prior to expiration date
Reinstatement	~~$280*~~ $210* *includes ~~$140~~ $105 renewal fee and ~~$140~~ $105 reinstatement fee	With reinstatement application
Salons:		
Application	~~$225~~ $190	With application
Renewal	~~$225~~ $190	With renewal card prior to expiration date
Reinstatement	~~$450*~~ $380* *includes ~~$225~~ $190 renewal fee and ~~$225~~ $190 reinstatement fee	With reinstatement application

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FORMS (18VAC41-60)

Body Piercer Examination & License Application, A425-1241EXLIC (eff. 9/11)

Body-Piercing Training & Experience Verification Form, A425-12BPTREXP (eff. 9/11)

Body-Piercing Apprenticeship Sponsor Application, A425-12BPSPON (eff. 9/11)

Body-Piercing Apprentice Certification Application, A425-1244BPAC (eff. 9/11)

Body-Piercing Apprenticeship Completion Form, A425-12BPAC (eff. 9/11)

Body-Piercing Client Disclosure Form, A425-12BPDIS (eff. 9/11)

Body Piercer Ear Only License Application, A425-1245LIC (eff. 9/11)

License by Endorsement Application, A425-1213END (eff. 9/11)

Body Piercer Ear Only License Application, A450-1245LIC (rev. 2/14)

License by Endorsement Application, A425-1213END (rev. 2/14)

Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)

Reinstatement Application, A425-1213REI (eff. 9/11)

Salon, Shop, Spa & Parlor License Application A425-1213BUS (eff. 9/11)

Licensure Fee Notice, A425-1213FEE-v2 (eff. 9/11)

Salon, Shop, Spa & Parlor License Application A425-1213BUS (rev. 2/14)

Licensure Fee Notice, A425-1213FEE (rev. 2/14)

Reinstatement Application, A425-1213REI (rev. 2/14)

VA.R. Doc. No. R14-3920; Filed December 20, 2013, 11:57 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-70. Esthetics Regulations (amending 18VAC41-70-120).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments reduce various licensure fees for estheticians, master estheticians, esthetician and master esthetician instructors, and esthetics spas and schools regulated by the Board for Barbers and Cosmetology.

Part III
Fees

18VAC41-70-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	~~$140~~ $105	With application
License by Endorsement	~~$140~~ $105	With application
Renewal	~~$140~~ $105	With renewal card prior to expiration date
Reinstatement	~~$280*~~ $210* *includes ~~$140~~ $105 renewal fee and ~~$140~~ $105 reinstatement fee	With reinstatement application
Instructors:		
Application	~~$150~~ $125	With application
License by Endorsement	~~$150~~ $125	With application
Renewal	$150	With renewal card prior to expiration date
Reinstatement	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Spas:		
Application	~~$225~~ $190	With application
Renewal	~~$225~~ $190	With renewal card prior to expiration date
Reinstatement	~~$450*~~ $380* *includes ~~$225~~ $190 renewal fee and ~~$225~~ $190 reinstatement fee	With reinstatement application
Schools:		
Application	~~$255~~ $220	With application
Renewal	~~$255~~ $220	With renewal card prior to expiration date
Reinstatement	~~$510*~~ $440* *includes ~~$255~~ $220 renewal fee and ~~$255~~ $220 reinstatement fee	With reinstatement application

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FORMS (18VAC41-70)

Esthetician – Esthetics Instructor Examination & License Application, A425-1261_62EXLIC (eff. 9/11)

Master Esthetician – Master Esthetics Instructor Examination & License Application, A425-1264_65EXLIC (eff. 9/11)

Temporary Permit Application, A425-1213TP (eff. 9/11)

~~License by Endorsement Application, A425-1213END (eff. 9/11)~~

License by Endorsement Application, A425-1213END (rev. 2/14)

Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)

~~Reinstatement Application, A425-1213REI (eff. 9/11)~~

~~Salon, Shop, Spa & Parlor License Application A425-1213BUS (eff. 9/11)~~

Reinstatement Application, A425-1213REI (rev. 2/14)

Salon, Shop, Spa & Parlor License Application A425-1213BUS (rev. 2/14)

Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP (eff. 9/11)

~~Instructor Certification Application, A425-1213INST (eff. 9/11)~~

~~School License Application, A425-1213SCHL (eff. 9/11)~~

Instructor Certification Application, A425-1213INST (rev. 2/14)

School License Application, A425-1213SCHL (rev. 2/14)

School Self Inspection Form, A425-1213SCH_INSP (eff. 9/11)

~~Licensure Fee Notice, A425-1213FEE (eff. 9/11)~~

Licensure Fee Notice, A425-1213FEE (rev. 2/14)

VA.R. Doc. No. R14-3921; Filed December 20, 2013, 11:57 a.m.

CEMETERY BOARD

Final Regulation

Title of Regulation: **18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-70, 18VAC47-20-140).**

Statutory Authority: §§ 54.1-201 and 54.1-2311 of the Code of Virginia.

Effective Date: March 1, 2014.

Agency Contact: Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email cemetery@dpor.virginia.gov.

Summary:

The amendments increase all fees paid by licensees and registrants subject to the authority of the Cemetery Board including initial licenses, registrations, renewals, and reinstatements for cemetery companies and cemetery salespersons.

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

18VAC47-20-70. Application ~~Fees~~ fees.

Application fees are nonrefundable.

Cemetery company license	~~$50~~ [~~$200~~ $580] per cemetery
Addition of cemetery	~~$50~~ [~~$200~~ $580] per cemetery
Sales personnel registration	~~$20~~ [~~$75~~ $60] per cemetery

18VAC47-20-140. Renewal and reinstatement fees.

All fees required by the board are nonrefundable. The date on which the fee is received by the department or its agent shall determine whether the licensee or registrant is eligible for renewal or reinstatement or must reapply as a new applicant.

Renewal of cemetery company license	~~$50~~ [~~$200~~ $580] per cemetery
Renewal of sales personnel registration	~~$20~~ [~~$75~~ $60] per cemetery
Reinstatement of cemetery company license	~~$50~~ [~~$200~~ $580] per cemetery
Reinstatement of sales personnel registration	~~$20~~ [~~$75~~ $60] per cemetery

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FORMS (18VAC47-20)

~~Compliance Agent/Director/Officer Change Form, 49ADOCHG (eff. 7/05).~~

~~Cemetery Addition Form, 49CADD (eff. 1/06).~~

~~Cemetery Company License Application, 49LIC (eff. 1/06).~~

~~New Trustee/Transfer of Funds Notification Form, 49NEWTR (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Instructions, 49PCTINS (eff.7/03).~~

~~Perpetual Care Fidelity Bond Form, 49PCFBND (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report, 49PCTFR (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Schedule A (Statement of Receipts and Expenses), 49PCTFRA (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Schedule B (Statement of Required Deposits), 49PCTFRB (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment and Administration of Cemeteries), 49PCTFRC (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Schedule D (Statement of Investment Securities), 49PCTFRD (eff. 7/05).~~

~~Perpetual Care Trust Fund Financial Report Schedule E (Cemeteries Covered by Trust Fund), 49PCTFRE (eff. 7/05).~~

~~Preneed Trust Fund Financial Report Instructions, 49PTINS (eff. 7/03).~~

~~Preneed Fidelity Bond Form, 49PFBND (eff. 7/05).~~

~~Preneed Trust Fund Financial Report, 49PTFR (eff. 7/05).~~

~~Preneed Trust Fund Financial Report Schedule A (Statement of Receipts and Expenses), 49PTFRA (eff. 7/05).~~

~~Preneed Trust Fund Financial Report Schedule B (Statement of Financial Deposits), 49PTFRB (eff. 7/05).~~

~~Preneed Trust Fund Financial Report Schedule C (Statement of Investment Securities), 49PTFRC (eff. 7/05).~~

~~Cemetery Company Renewal/Reinstatement Application, 49RENREI (eff. 1/06).~~

~~Sales Personnel Registration Form, 49SLSREG (eff. 1/06).~~

~~Perpetual Care Trust Fund Trustee Verification, 49TRVER (eff. 7/05).~~

~~Trustee Approval Application, 49TRAPP (eff. 7/05).~~

~~Preneed Burial Contract, 49PCTRCT (eff. 7/03).~~

~~Compliance Agent Designee Application, 49CADAPP (eff. 2/05).~~

[~~Cemetery Addition Form, 49CADD4 (rev. 1/09).~~

~~Cemetery Company License Application, 49LIC (rev. 9/11).~~

~~Cemetery Company Renewal/Reinstatement Application, 49RENREI (rev. 1/09).~~

~~Compliance Agent Designee Application, 49CADAPP (rev. 6/12).~~

~~Compliance Agent/Director/Officer Change Form, 49ADOCHG (rev. 1/09).~~

~~New Trustee/Transfer of Funds Notification Form, 49NEWTR4 (rev. 1/09).~~

~~Perpetual Care Fidelity Bond Form, 49PCFBND v1 (rev. 6/12).~~

~~Perpetual Care Trust Fund Financial Report Instructions, 49PCTINS v1 (rev. 12/09).~~

~~Perpetual Care Trust Fund Financial Report, 49PCTFR v1 (rev. 1/09).~~

~~Perpetual Care Trust Fund Financial Report Schedule A (Statement of Receipts and Expenses), 49PCTFRA v1 (rev. 1/10).~~

~~Perpetual Care Trust Fund Financial Report Schedule B (Statement of Required Deposits), 49PCTFRB v1 (rev. 1/09).~~

~~Perpetual Care Trust Fund Financial Report Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment, and Administration of Cemeteries), 49PCTFRC v1 (rev. 1/09).~~

~~Perpetual Care Trust Fund Financial Report Schedule D (Statement of Investment Securities), 49PCTFRD v1 (rev. 10/09).~~

~~Perpetual Care Trust Fund Financial Report Schedule E (Cemeteries Covered by Trust Fund), 49PCTFRE v1 (rev. 1/09).~~

~~Perpetual Care Trust Fund Trustee Verification, 49TRVER v1 (rev. 1/09).~~

~~Preneed Burial Contract, 49PCTRCT v1 (rev. 8/07).~~

~~Preneed Fidelity Bond Form, 49PFBND v1 (rev. 1/09).~~

~~Preneed Trust Fund Financial Report Instructions, 49PTINS v1 (rev. 12/09).~~

~~Preneed Trust Fund Financial Report, 49PTFR v1 (rev. 1/09).~~

~~Preneed Trust Fund Financial Report Schedule A (Statement of Receipts and Expenses), 49PTFRA v1 (rev. 4/12).~~

~~Preneed Trust Fund Financial Report Schedule B (Statement of Financial Deposits), 49PTFRB v1 (rev. 1/09).~~

~~Preneed Trust Fund Financial Report Schedule C (Statement of Investment Securities), 49PTFRC v1 (rev. 10/09).~~

~~Sales Personnel Registration Form, 49SLSREG4 (rev. 1/09).~~

~~Trustee Approval Application, 49TRAPP v1 (rev. 1/09).~~

Cemetery Company/Personnel Forms

Cemetery Company License Application, 4901LIC-v2 (rev. 1/14)

Cemetery Company Renewal/Reinstatement Application, 4901RENREI-v2 (rev. 1/14)

Sales Personnel Registration Form, 4903REG-v3 (rev. 1/14)

Compliance Agent Designee Application, 49CAD-v1 (rev. 9/13)

Compliance Agent/Officer/Director Change Form, 49ADO_CHG-v1 (rev.9/13)

Cemetery Addition Form, 4901ADD-v3 (rev. 1/14)

Perpetual Care Forms

Perpetual Care Fidelity Bond Form, 49PCFBND-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report, 49PCTFR-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report Instructions, 49PCTINS-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), 49PCTFRA-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report - Schedule B (Statement of Required Deposits), 49PCTFRB-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report - Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment, and Administration of Cemeteries), 49PCTFRC-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report - Schedule D (Statement of Investment Securities), 49PCTFRD-v1 (rev. 9/13)

Perpetual Care Trust Fund Financial Report - Schedule E (Cemeteries Covered by Trust Fund), 49PCTFRE-v1 (rev. 9/13)

Preneed Forms

Preneed Burial Contract (undated)

Preneed Fidelity Bond Form, 49PFBND-v1 (rev. 9/13)

Preneed Trust Fund Financial Report, 49PTFR-v1 (rev. 9/13)

Preneed Trust Fund Financial Report Instructions, 49PTINS-v1 (rev. 9/13)

Preneed Trust Fund Financial Report - Schedule A (Statement of Receipts and Expenses), 49PTFRA-v1 (rev. 9/13)

Preneed Trust Fund Financial Report - Schedule B (Statement of Financial Deposits), 49PTFRB-v1 (rev. 9/13)

Preneed Trust Fund Financial Report - Schedule C (Statement of Investment Securities), 49PTFRC-v1 (rev. 9/13)

Trustee Forms

Perpetual Care Trust Fund Trustee Verification, 49TRVER-v1 (rev. 9/13)

Trustee Approval Application, 49TRAPP-v1 (rev. 9/13)

New Trustee/Transfer of Funds Notification Form, 4901NEWTR-v1 (rev. 9/13)]

VA.R. Doc. No. R11-2767; Filed December 19, 2013, 5:01 p.m.

BOARD OF DENTISTRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Dentistry is claiming an exemption from Article 2 of 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 Dentistry will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

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

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

Effective Date: February 12, 2014.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendment removes March as the deadline for renewal of a faculty license to conform to the June renewal deadline established by Chapters 20 and 116 of the 2012 Acts of Assembly.

Part II
Renewal and Fees

18VAC60-20-20. Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration ~~or a faculty license~~ shall, on or before March 31, renew his license or registration. Every person holding a temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $75. The fee for renewal of registration as a dental assistant II shall be $50.

2. The fee for renewal of an inactive license shall be $145 for dentists and $40 for dental hygienists. The fee for renewal of an inactive registration as a dental assistant II shall be $25.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for temporary resident's license shall be $60. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $100 for dentists with an active license, $25 for dental hygienists with an active license, and $20 for a dental assistant II with active registration. The late fee shall be $50 for dentists with an inactive license, $15 for dental hygienists with an inactive license, and $10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of $500 for dentists, $200 for dental hygienists, or $125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and

18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of $1,000 for dentists, $500 for dental hygienists, and $300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $750 for dentists, $400 for dental hygienists, and $250 for dental assistants II.

VA.R. Doc. No. R14-3860; Filed December 16, 2013, 4:33 p.m.

BOARD OF NURSING

Fast-Track Regulation

Titles of Regulations: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-35, 18VAC90-20-190, 18VAC90-20-200, 18VAC90-20-271, 18VAC90-20-280; adding 18VAC90-20-34, 18VAC90-20-37; repealing 18VAC90-20-240, 18VAC90-20-270, 18VAC90-20-370, 18VAC90-20-380, 18VAC90-20-390, 18VAC90-20-400, 18VAC90-20-410).**

18VAC90-21. Medication Administration Training and Immunization Protocol (adding 18VAC90-21-10 through 18VAC90-21-50).

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the health regulatory boards to promulgate regulations that are reasonable and necessary to administer the regulatory system. Section 54.1-3005 of the Code of Virginia authorizes the Board of Nursing to promulgate regulations for certification of nurse aides.

Purpose: The purpose of the amendments is to update language and simplify the process of applying for licensure. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation for licensure or registration as a volunteer nurse for a nonprofit organization. The goal is to enable qualified applicants to obtain licensure, which provides the public with some assurance of competency and accountability in the delivery of nursing services.

Rationale for Using Fast-Track Process: The amendments are less restrictive and not controversial. They are consistent with the intent and purpose of regulatory reform.

Substance: Regulations are amended to facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, eliminate burdensome timelines and documentation for certain applicants, and clarify regulations. This action also relocates requirements for medication administration training and immunization protocols into a separate chapter (18VAC90-21).

Issues: The primary advantage to the public is facilitation of applications and renewals and elimination of confusing, outdated language. There are no disadvantages. The advantage to the Commonwealth is clarity in the regulations, which reduces queries to board staff.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As part of the regulatory reform initiative, the Board of Nursing (Board) proposes to amend its Regulations Governing the Practice of Nursing to: 1) allow a certificate of naturalization as proof of legal name change, 2) allow applicants for licensure 12 months from the date that their application is filed with the Board, rather than the currently allowed 6 months, to take their licensure examination and also to establish eligibility, 3) allow applicants for registration for voluntary practice by out-of-state licensees to provide an electronic copy of current licensure and to provide attestations that the applicants are in compliance with the current controlling statute and 4) repeal sections of these regulations that govern medication aide administration training programs and replace them with a new concurrently promulgated regulatory chapter.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Currently, licensees who are seeking to change their name with the Board must provide a copy of a marriage certificate or a court order for name change as proof that the requested name change is legal. The Board now proposes to allow a certificate of naturalization to also serve as proof. No entity is likely to incur costs on account of this change. Licensees who are changing their names will benefit as the proposed regulation will give them more flexibility.

Current regulations require that applicants for licensure prove eligibility for licensure and take their licensure examination within 6 months of application. The Board proposes to extend

this time frame to 12 months. No entity is likely to incur additional costs on account of these changes. Applicants for licensure will benefit from the extra flexibility afforded by this change and may save money as they will not have to pay an additional application for licensure fee if they miss the 6 month window (the fee is $190 for registered nurses and $170 for licensed practical nurses).

Currently, an out-of-state licensee who is volunteering for nursing duties in the Commonwealth must provide a complete record of professional licensure in each state in which he has held a license and a copy of every current license and also must provide a notarized statement from a representative of the non-profit organization with which he is volunteering that the organization is in compliance with subdivision 11 of 54.1-3001 of the Code of Virginia. The Board now proposes to ease these requirements by allowing out-of-state licensees to submit electronic evidence of unrestricted licensure in a U.S. jurisdiction and by allowing non-profit organizations to attest to their compliance with the controlling law. These changes will make it slightly easier for nurses licensed out-of-state to volunteer in Virginia and may save non-profits the small amount of money (probably less than $5) that it may cost to get a statement notarized. No entity is likely to incur costs on account of these changes.

Current regulations include rules that govern medication aide training programs. The Board proposes to repeal these rules in this chapter and promulgate them in a separate chapter (18VAC90-21, Medication Administration Training and Immunization Protocols) so that they are easier to search for and find. While these rules are being moved, they are not being changed. Therefore, no entity is likely to incur costs on account of this Board action.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are 100,608 registered nurses, 31,276 licensed practical nurses, 426 clinical nurse specialists 5,250 registered medication aides and 201 approved medication aide training programs in the Commonwealth. All of these entities, as well as out-of-state licensees who are volunteering their skills and time in the state, will be affected by these regulatory changes.

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

Projected Impact on Employment. These proposed regulatory changes are unlikely to have an appreciable impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur and additional expense on account of these regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur and additional expense on account of these regulatory changes.

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, a determination of the public benefit, 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 an 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 Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-20, Regulations Governing the Practice of Nursing.

Summary:

The amendments (i) allow a certificate of naturalization as proof of legal name change, (ii) extend the time applicants for licensure may take their licensure examination and establish eligibility from six months to 12 months from the date that their application is filed with the board, (iii) allow applicants for registration for voluntary practice by out-of-state licensees to provide an electronic copy of current licensure and to provide attestations that the applicants are in compliance with the current controlling statute, and (iv) relocate provisions governing medication aide administration training programs to a new chapter numbered 18VAC90-21.

18VAC90-20-34. Duplicate license.

A duplicate license for the current renewal period shall be issued by the board upon receipt of the required information and fee.

18VAC90-20-35. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name and the appropriate title for the license, certification, or registration issued to such person by the board under which he is practicing in that setting. Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for patients in custody of state or local law-enforcement agencies may use identification badges of first name and first letter only of last name and appropriate title.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

C. Each licensee shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted by a licensee electronically or in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address of record on file with the board.

18VAC90-20-37. Supervision of licensed practical nurses.

Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse, or a licensed dentist.

Part III
Licensure and Practice

18VAC90-20-190. Licensure by examination.

A. The board shall authorize the administration of examinations for registered nurse licensure and examinations for practical nurse licensure.

B. A candidate shall be eligible to take the NCLEX examination (i) upon receipt by the board of the completed application, fee and an official transcript from the nursing education program; and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee.

2. Arrange for the board to receive an official transcript from the nursing education program which shows either:

a. That the degree or diploma has been awarded and the date of graduation or conferral; or

b. That all requirements for awarding the degree or diploma have been met and specifies the date of conferral.

3. File a new application and reapplication fee if:

a. The examination is not taken within ~~six~~ 12 months of the date that the board determines the applicant to be eligible; or

b. Eligibility is not established within ~~six~~ 12 months of the original filing date.

D. The minimum passing standard on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to determine eligibility for licensure or reexamination.

F. Practice of nursing pending receipt of examination results.

1. A graduate who has filed a completed application for licensure in Virginia and has received an authorization letter issued by the board may practice nursing in Virginia from the date of the authorization letter. The period of practice shall not exceed 90 days between the date of successful completion of the nursing education program, as documented on the applicant's transcript, and the publication of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in subdivision 1 of this subsection shall use the designation "R.N. Applicant" or "L.P.N. Applicant" on a nametag or when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following receipt of the authorization letter from the board or who have failed the examination.

G. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required board application and reapplication fee ~~no later than 60 days prior to the first day of the month in which the applicant expects to take the examination~~ in order to establish eligibility for reexamination.

3. Applicants who have failed the examination for licensure in another U.S. jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply

for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

18VAC90-20-200. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the same requirements for registered nurse or practical nurse licensure as those seeking initial licensure in Virginia. Applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours, as specified in 18VAC90-20-120, may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with an active, unencumbered license in another U.S. jurisdiction.

1. A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination (CRNE) and holds an unrestricted license in Canada.

2. An applicant for licensure by endorsement who has ~~not~~ passed a licensing examination other than NCLEX may only be issued a single state license to practice in Virginia.

B. An applicant for licensure by endorsement who has submitted the required application and fee and submitted the required form to the appropriate credentialing agency for verification of licensure may practice for 30 days upon receipt of an authorization letter from the board. If an applicant has not received a Virginia license within 30 days and wishes to continue practice, he shall seek an extension of authorization to practice by submitting a request and evidence that he has requested verification of licensure.

C. If the application is not completed within one year of the initial filing date, the applicant shall submit a new application and fee.

18VAC90-20-240. ~~Duplicate license.~~ (Repealed.)

~~A duplicate license for the current renewal period shall be issued by the board upon receipt of the required information and fee.~~

18VAC90-20-270. ~~Supervision of licensed practical nurses.~~ (Repealed.)

~~Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist.~~

18VAC90-20-271. Registration for voluntary practice by out-of-state licensees.

Any licensed nurse who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide ~~a complete record of professional licensure in each state in which he has held a license and a copy of every current license~~ evidence of current, unrestricted licensure in a U.S. jurisdiction;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide ~~a notarized statement~~ an attestation from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 11 of § 54.1-3001 of the Code of Virginia.

18VAC90-20-280. Clinical nurse specialist registration.

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;

2. Submit evidence of a graduate degree in nursing from an approved program as defined in 18VAC90-20-275;

3. Submit evidence of current specialty certification as a clinical nurse specialist from a national certifying organization acceptable to the board or has an exception available from March 1, 1990, to July 1, 1990; and

4. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed. If registered as a clinical nurse specialist with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

2. The clinical nurse specialist shall complete the renewal form and submit it with the required fee ~~and evidence~~. An attestation of current specialty certification is required unless registered in accordance with an exception.

3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed or the multistate licensure privilege is lapsed and may be reinstated upon:

a. Reinstatement of R.N. license or multistate licensure privilege;

b. Payment of reinstatement and current renewal fees; and

c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

Part VI

Medication Administration Training Program (Repealed)

18VAC90-20-370. ~~Establishing a medication administration training program.~~ (Repealed.)

~~A. A program provider wishing to establish a medication administration training program pursuant to § 54.1-3408 of the Code of Virginia shall submit an application to the board at least 90 days in advance of the expected beginning date.~~

~~B. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.~~

~~C. If approval is denied, the program provider may request a hearing before the board, and the provisions of the Administrative Process Act shall apply (§ 2.2-4000 et seq. of the Code of Virginia).~~

18VAC90-20-380. ~~Qualifications of instructional personnel.~~ (Repealed.)

~~Instructors shall be licensed health care professionals who, consistent with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), are authorized to administer, prescribe or dispense drugs and who have completed a program designed to prepare the instructor to teach the course as it applies to the clients in the specific setting in which those completing the course will administer medications.~~

18VAC90-20-390. ~~Content.~~ (Repealed.)

~~The curriculum shall include a minimum of 32 hours of classroom instruction and practice in the following:~~

~~1. Preparing for safe administration of medications to clients in specific settings by:~~

~~a. Demonstrating an understanding of the client's rights regarding medications, treatment decisions and confidentiality.~~

~~b. Recognizing emergencies and other health-threatening conditions and responding accordingly.~~

~~c. Identifying medication terminology and abbreviations.~~

~~2. Maintaining aseptic conditions by:~~

~~a. Implementing universal precautions.~~

~~b. Insuring cleanliness and disinfection.~~

~~c. Disposing of infectious or hazardous waste.~~

~~3. Facilitating client self-administration or assisting with medication administration by:~~

~~a. Reviewing administration records and prescriber's orders.~~

~~b. Facilitating client's awareness of the purpose and effects of medication.~~

~~c. Assisting the client to interpret prescription labels.~~

~~d. Observing the five rights of medication administration and security requirements appropriate to the setting.~~

~~e. Following proper procedure for preparing medications.~~

~~f. Measuring and recording vital signs to assist the client in making medication administration decisions.~~

~~g. Assisting the client to administer oral medications.~~

~~h. Assisting the client with administration of prepared instillations and treatments of:~~

~~(1) Eye drops and ointments.~~

~~(2) Ear drops.~~

~~(3) Nasal drops and sprays.~~

~~(4) Topical preparations.~~

~~(5) Compresses and dressings.~~

~~(6) Vaginal and rectal products.~~

~~(7) Soaks and sitz baths.~~

~~(8) Inhalation therapy.~~

~~(9) Oral hygiene products.~~

~~i. Reporting and recording the client's refusal to take medication.~~

~~j. Documenting medication administration.~~

~~k. Documenting and reporting medication errors.~~

~~l. Maintaining client records according to facility policy.~~

~~m. Sharing information with other staff orally and by using documents.~~

~~n. Storing and securing medications.~~

~~o. Maintaining an inventory of medications.~~

~~p. Disposing of medications.~~

~~4. Facilitating client self-administration or assisting with the administration of insulin. Instruction and practice in the administration of insulin shall be included only in those settings where required by client needs and shall include:~~

~~a. Cause and treatment of diabetes.~~

~~b. The side effects of insulin.~~

~~c. Preparation and administration of insulin.~~

18VAC90-20-400. ~~Post-course examination.~~ (Repealed.)

~~The program provider shall require that each student shall pass a written and practical examination at the conclusion of the training which measures minimum competency in medication administration.~~

Part VII
Protocol for Adult Immunization (Repealed)

18VAC90-20-410. ~~Requirements for protocol for administration of adult immunization.~~ (Repealed.)

~~Pursuant to provisions of § 54.1 3408 of the Code of Virginia, a protocol shall be submitted to the board prior to the administration of an adult immunization program that includes the following:~~

~~1. Purpose and objectives of immunization program.~~

~~2. Target population.~~

~~3. Name and address of medical director.~~

~~4. A signed and dated medical directive.~~

~~5. Screening criteria for inclusion and exclusion.~~

~~6. Informed consent form.~~

~~7. Immunization procedures.~~

~~a. Dosage.~~

~~b. Single or multiple dose administration.~~

~~c. Injection site.~~

~~d. Vaccine storage.~~

~~e. Biohazardous waste disposal.~~

~~f. Standard precautions.~~

~~8. Post immunization instructions.~~

~~9. Emergency guidelines, including a signed medical directive for emergency treatment.~~

~~10. Qualification of immunization providers.~~

~~a. Virginia licensure as a registered nurse, licensed practical nurse, or pharmacist.~~

~~b. Supervision of LPN provider.~~

~~c. Current cardiopulmonary resuscitation training.~~

~~11. Resource personnel and supervision.~~

~~12. Sample of patient record with date, vaccine, dose, site, expiration date, lot number, and administering person's signature.~~

CHAPTER 21
MEDICATION ADMINISTRATION TRAINING AND IMMUNIZATION PROTOCOL

18VAC90-21-10. Establishing a medication administration training program.

A. A program provider wishing to establish a medication administration training program pursuant to subsection L of § 54.1-3408 of the Code of Virginia shall submit an application to the board at least 90 days in advance of the expected beginning date.

B. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

C. If approval is denied, the program provider may request a hearing before the board, and the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall apply.

18VAC90-21-20. Qualifications of instructional personnel.

Instructors shall be licensed health care professionals who, consistent with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), are authorized to administer, prescribe, or dispense drugs and who have completed a program designed to prepare the instructor to teach the course as it applies to the clients in the specific setting in which those completing the course will administer medications.

18VAC90-21-30. Content of medication administration training.

The curriculum shall include a minimum of 32 hours of classroom instruction and practice in the following:

1. Preparing for safe administration of medications to clients in specific settings by:

a. Demonstrating an understanding of the client's rights regarding medications, treatment decisions, and confidentiality.

b. Recognizing emergencies and other health-threatening conditions and responding accordingly.

c. Identifying medication terminology and abbreviations.

2. Maintaining aseptic conditions by:

a. Implementing universal precautions.

b. Insuring cleanliness and disinfection.

c. Disposing of infectious or hazardous waste.

3. Facilitating client self-administration or assisting with medication administration by:

a. Reviewing administration records and prescriber's orders.

b. Facilitating client's awareness of the purpose and effects of medication.

c. Assisting the client to interpret prescription labels.

d. Observing the five rights of medication administration and security requirements appropriate to the setting.

e. Following proper procedure for preparing medications.

f. Measuring and recording vital signs to assist the client in making medication administration decisions.

g. Assisting the client to administer oral medications.

h. Assisting the client with administration of prepared instillations and treatments of:

(1) Eye drops and ointments.

(2) Ear drops.

(3) Nasal drops and sprays.

(4) Topical preparations.

(5) Compresses and dressings.

(6) Vaginal and rectal products.

(7) Soaks and sitz baths.

(8) Inhalation therapy.

(9) Oral hygiene products.

i. Reporting and recording the client's refusal to take medication.

j. Documenting medication administration.

k. Documenting and reporting medication errors.

l. Maintaining client records according to facility policy.

m. Sharing information with other staff orally and by using documents.

n. Storing and securing medications.

o. Maintaining an inventory of medications.

p. Disposing of medications.

4. Facilitating client self-administration or assisting with the administration of insulin. Instruction and practice in the administration of insulin shall be included only in those settings where required by client needs and shall include:

a. Cause and treatment of diabetes.

b. The side effects of insulin.

c. Preparation and administration of insulin.

18VAC90-21-40. Post-course examination.

The program provider shall require that each student shall pass a written and practical examination at the conclusion of the training that measures minimum competency in medication administration.

18VAC90-21-50. Requirements for protocols for administration of adult immunizations.

Pursuant to provisions of subsection I of § 54.1-3408 of the Code of Virginia, a protocol shall be submitted to and approved by the board prior to the administration of an adult immunization program that includes the following:

1. Purpose and objectives of immunization program.

2. Target population.

3. Name and address of medical director.

4. A signed and dated medical directive.

5. Screening criteria for inclusion and exclusion.

6. Informed consent form.

7. Immunization procedures.

a. Dosage.

b. Single or multiple dose administration.

c. Injection site.

d. Vaccine storage.

e. Biohazardous waste disposal.

f. Standard precautions.

8. Post-immunization instructions.

9. Emergency guidelines, including a signed medical directive for emergency treatment.

10. Qualification of immunization providers.

a. Virginia licensure as a registered nurse, licensed practical nurse, or pharmacist.

b. Supervision of a licensed practical nurse provider.

c. Current cardiopulmonary resuscitation training.

11. Resource personnel and supervision.

12. Sample of patient record with date, vaccine, dose, site, expiration date, lot number, and administering person's signature.

VA.R. Doc. No. R14-3680; Filed December 18, 2013, 9:13 a.m.

Fast-Track Regulation

Titles of Regulations: **18VAC90-25. Regulations Governing Certified Nurse Aides (amending 18VAC90-25-10, 18VAC90-25-15, 18VAC90-25-71, 18VAC90-25-72, 18VAC90-25-120; repealing 18VAC90-25-20, 18VAC90-25-30, 18VAC90-25-40, 18VAC90-25-50, 18VAC90-25-60, 18VAC90-25-90).**

18VAC90-26. Regulations for Nurse Aide Education Programs (adding 18VAC90-26-10 through 18VAC90-26-70).

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the health regulatory boards to promulgate regulations that are reasonable and necessary to administer the regulatory system. Section 54.1-3005 of the Code of Virginia authorizes the Board of Nursing to promulgate regulations for certification of nurse aides.

Purpose: The purpose of the amendments is to update language and simplify the process of applying for registration as a certified nurse aide. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation. The goal is to enable qualified applicants to obtain certification, which provides the public with some assurance of competency and accountability in the delivery of nurse aide services. The changes to the process of initial approval, continued approval, and conditional approval will result in a more efficient system to avoid unnecessary delay in the provision of educational programs for training new nurse aides. Requirements for education, practical training, and evaluation of persons seeking certification are not being

changed and will continue to ensure minimal competency to serve patients with safety and skill.

Rationale for Using Fast-Track Process: The amendments are less restrictive and not controversial. They are consistent with the intent and purpose of regulatory reform.

Substance: Regulations are amended to clarify the regulations, facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, and allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration.

This action will also repeal 18VAC90-25-20 through 18VAC90-25-60 to move the requirements for nurse aide education programs into a separate chapter, promulgated as Chapter 26 (18VAC90-26). In 18VAC90-26, the administrative processes for initial board approval, continued approval, and denial of approval are revised for consistency with current delegation of authority to professional staff for nursing education programs and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Requirements for curriculum, instructors, course hours, and other essential elements of an approved program are identical to those currently in Chapter 25 (18VAC90-25).

Issues: The primary advantage to the public is facilitation of applications and elimination of outdated language. The Board of Nursing will be able to approve nurse aide education programs in a timelier manner, thus making qualified programs available to persons interested in becoming certified nurse aides. There are no disadvantages.

The advantage to the Commonwealth is clarity in the regulations, which reduces queries to board staff.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to 1) accept a certificate of naturalization as evidence of a name change for nurse aides, 2) allow electronic submission of an address change, 3) allow for electronic verification of registration, certification, or licensure by another state for applicants seeking certification by endorsement, 4) allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration, and 5) streamline the initial and continued approval processes for nurse aide education programs.

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

Estimated Economic Impact. Several proposed changes will reduce the regulatory burden on the nurse aides. These include allowing the Board to accept a certificate of naturalization as evidence of a name change in addition to a marriage certificate or a court order, allowing electronic submission of an address change rather than requiring the information be sent in writing, and allowing for electronic verification of registration, certification, or licensure by another state for applicants seeking certification by endorsement instead of requiring submission of written verification. These proposed changes will reduce the costs associated with time and effort the nurse aides would normally incur to produce and submit required documents and information to the Board. In addition, electronic submission and verification of documents and information may reduce administrative costs of the Department of Health Professions (DHP) by a small margin.

One of the proposed changes will also allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration instead of requiring current enrollment in a nursing education program. This change will allow an applicant to qualify for registration without incurring the time and costs of completing a nurse aide education course for a possible savings of $200.

Finally, the proposed changes will streamline the initial and continued approval processes for nurse aide education programs. Currently, a committee of the Board (Education Special Conference Committee) receives and reviews the initial applications and makes a recommendation to the Board. If the recommendation is to deny approval, the program must request a hearing before the full Board or a panel. Under the proposed changes, initial approval may be issued upon determination that requirements for establishing a program have been met by the Board's professional staff. If the program is denied approval following the staff review, then no further action will be necessary unless the program requests an informal conference with the committee of the Board. If the decision of the committee is to uphold the denial, the program may request a hearing before the full Board or the panel. This proposed change will eliminate the need to convene the committee of the Board and the possible delay in the approval process. In case of a denial following the staff review, an informal conference instead of a hearing before the full Board or a panel will be utilized.

Similarly, current regulations require the committee to receive and review the report of the site visit or program evaluation report and make a recommendation to the Board to grant continued approval, place a program on conditional approval, or deny continued approval. Under the proposed regulation, the Board will be able to delegate that determination to the professional staff, so there would be no need to convene the committee and no delay in continued approval process. Also, an informal conference instead of a hearing before the full Board or a panel will be utilized in cases of denial or conditional approval.

The proposed, more streamlined, initial and continued approval processes are expected to shift a significant portion of the review and appeal process from the Board members to the Board staff and provide administrative cost savings and reduce possible delays.

Businesses and Entities Affected. There are currently 53,877 registered certified nurse aides and 230 nurse aide education programs in the Commonwealth.

Localities Particularly Affected. The proposed regulations do not affect any particular locality more than others.

Projected Impact on Employment. The proposed electronic submission and verification of documents may provide small savings in staff time at DHP. However, the proposed changes to initial and continued approval process for nurse aide education programs will shift some administrative workload from Board members to the staff.

Effects on the Use and Value of Private Property. To the extent streamlined initial and continued approval and appeal process reduce compliance costs, a positive impact on the asset value of nurse aide education programs may be expected.

Small Businesses: Costs and Other Effects. Most of the 230 nurse aide education programs in the Commonwealth are likely to be small businesses. The proposed changes do not impose costs on them.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-25 and 18VAC90-26, relating to regulations for certified nurse aides and nurse aide education programs.

Summary:

The amendments (i) provide that a certificate of naturalization may be accepted as evidence of a name change for nurse aides; (ii) allow for electronic submission of an address change; (iii) allow for electronic verification of registration, certification, or licensure by another state for applicants seeking certification by endorsement; (iv) allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration; and (v) relocate requirements for nurse aide education programs into a separate chapter and streamline the initial and continued approval processes for nurse aide education programs.

Part I

~~Nurse Aide Education Programs~~ General Provisions

18VAC90-25-10. Definitions.

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

"Board" means the Virginia Board of Nursing.

"Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.

~~"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § 2.2-4019 of the Code of Virginia.~~

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

~~"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.~~

~~"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.~~

~~"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.~~

~~"Program provider" means an entity that conducts a nurse aide education program.~~

18VAC90-25-15. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name and the appropriate title issued to such person by the board under which he is practicing in that setting. Any person practicing in hospital emergency departments, psychiatric and

mental health units and programs, or in health care facilities units offering treatment for patients in custody of state or local law-enforcement agencies may use identification badges of first name and first letter only of last name and appropriate title.

B. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence.

C. Each certificate holder shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted in writing or electronically to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address of record on file with the board.

18VAC90-25-20. ~~Establishing and maintaining a nurse aide education program.~~ (Repealed.)

~~A. Establishing a nurse aide education program.~~

~~1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.~~

~~2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.~~

~~3. The committee shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the application and shall make a recommendation to the board to grant or deny approval.~~

~~4. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.~~

~~B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:~~

~~1. Demonstrate evidence of compliance with the following essential elements:~~

~~a. Curriculum content and length as set forth in subsection A of 18VAC90-25-40 and subsection C of 18VAC90-25-50.~~

~~b. Maintenance of qualified instructional personnel as set forth in 18VAC90-25-30.~~

~~c. Classroom facilities that meet requirements set forth in subsection D of 18VAC90-25-50.~~

~~d. Maintenance of records as set forth in subsection A of 18VAC90-25-50.~~

~~e. Skills training experience in a nursing facility that has not been subject to penalty or penalties as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation and Paid Feeding Assistants, revised October 1, 2005) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law.~~

~~f. Agreement that board representatives may make unannounced visits to the program.~~

~~g. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.~~

~~h. Completion and submission of biennial on-site review reports and program evaluation reports as requested by the board.~~

~~2. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.~~

~~3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes that pose a barrier to such employment.~~

~~4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include, but not be limited to, a change in the program coordinator, primary instructor, program ownership, physical location of the program or licensure status.~~

~~5. Provide each student with a copy of his certificate of completion.~~

18VAC90-25-30. ~~Requirements for instructional personnel.~~ (Repealed.)

~~A. Program coordinator.~~

~~1. Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.~~

~~2. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.~~

~~3. The primary instructor may be the program coordinator in any nurse aide education program.~~

~~B. Primary instructor.~~

~~1. Each program shall have a primary instructor who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.~~

~~2. Qualifications. The primary instructor, who does the majority of the actual teaching of the students shall:~~

a. Hold a current, unrestricted Virginia license as a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege; and

b. Have two years of experience as a registered nurse within the previous five years and at least one year of experience in the provision of long-term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

3. Responsibilities. The primary instructor is responsible for the teaching and evaluation of students and, in addition, shall:

a. Participate in the planning of each learning experience;

b. Ensure that course objectives are accomplished;

c. Ensure that the provisions of subsection F of this section are maintained;

d. Maintain records as required by subsection A of 18VAC90-25-50;

e. Perform other activities necessary to comply with subsection B of 18VAC90-25-20; and

f. Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

C. Other instructional personnel.

1. Instructional personnel who assist the primary instructor in providing classroom or clinical supervision shall be registered nurses or licensed practical nurses.

a. A registered nurse shall:

(1) Hold a current, unrestricted Virginia license as a registered nurse; and

(2) Have had at least one year of direct patient care experience as a registered nurse.

b. A licensed practical nurse shall:

(1) Hold a current, unrestricted Virginia license as a practical nurse;

(2) Hold a high school diploma or equivalent;

(3) Have been graduated from a state-approved practical nursing program; and

(4) Have had at least two years of direct patient care experience as a licensed practical nurse.

2. Responsibilities. Other instructional personnel shall provide instruction under the supervision of the primary instructor.

D. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

1. Satisfactory completion of a course in teaching adults that includes (i) basic principles of adult learning; (ii) teaching methods and tools for adult learners; and (iii) evaluation strategies and measurement tools for assessing the learning outcomes; or

2. Have experience in teaching adults or high school students.

E. To meet planned program objectives, the program may, under the direct, on site supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.

F. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor.

18VAC90-25-40. Requirements for the curriculum. (Repealed.)

A. Curriculum content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact with a nursing facility client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas:

a. Communication and interpersonal skills.

b. Infection control.

c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.

d. Promoting client independence.

e. Respecting clients' rights.

2. Basic skills.

a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.

b. Measuring and recording routine vital signs.

c. Measuring and recording height and weight.

d. Caring for the clients' environment.

e. Measuring and recording fluid and food intake and output.

f. Performing basic emergency measures.

g. Caring for a client when death is imminent.

3. Personal care skills.

a. Bathing and oral hygiene.

b. Grooming.

c. Dressing.

d. Toileting.

e. Assisting with eating and hydration, including proper feeding techniques.

f. Caring for skin, to include prevention of pressure ulcers.

g. Transfer, positioning and turning.

4. Individual client's needs, including mental health and social service needs.

a. Modifying the aide's behavior in response to the behavior of clients.

b. Identifying developmental tasks associated with the aging process.

c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

d. Demonstrating skills supporting age appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.

e. Utilizing the client's family or concerned others as a source of emotional support.

f. Responding appropriately to the client's behavior; including, but not limited to, aggressive behavior and language.

g. Providing appropriate clinical care to the aged and disabled.

h. Providing culturally sensitive care.

5. Care of the cognitively or sensory (visual and auditory) impaired client.

a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

b. Communicating with cognitively or sensory impaired clients.

c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.

d. Using methods to reduce the effects of cognitive impairment.

6. Skills for basic restorative services.

a. Using assistive devices in transferring, ambulation, eating and dressing.

b. Maintaining range of motion.

c. Turning and positioning, both in bed and chair.

d. Bowel and bladder training.

e. Caring for and using prosthetic and orthotic devices.

f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.

7. Clients' rights.

a. Providing privacy and maintaining confidentiality.

b. Promoting the client's right to make personal choices to accommodate individual needs.

c. Giving assistance in resolving grievances and disputes.

d. Providing assistance necessary to participate in client and family groups and other activities.

e. Maintaining care and security of the client's personal possessions.

f. Promoting the client's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.

g. Avoiding the need for restraints in accordance with current professional standards.

8. Legal and regulatory aspects of practice as a certified nurse aide, including, but not limited to, consequences of abuse, neglect, misappropriation of client property and unprofessional conduct.

9. Occupational health and safety measures.

10. Appropriate management of conflict.

B. Unit objectives.

1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.

2. Objectives shall be reviewed with the students at the beginning of each unit.

C. Curriculum changes. Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the on site visit or with the report submitted by the program coordinator in the intervening year.

18VAC90-25-50. ~~Other program requirements.~~ (Repealed.)

A. Records.

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall provide each nurse aide with a copy of this record and a certificate of completion from the program.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

B. Student identification. The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student."

C. Length of program.

1. The program shall be at least 120 clock hours in length.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours of providing direct client care. Five of the clinical hours may be in a setting other than a nursing home. Hours

~~of observation shall not be included in the required 40 hours of skills training.~~

~~4. Employment orientation to facilities used in the education program must not be included in the 120 hours allotted for the program.~~

~~D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:~~

~~1. Comfortable temperatures.~~

~~2. Clean and safe conditions.~~

~~3. Adequate lighting.~~

~~4. Adequate space to accommodate all students.~~

~~5. Instructional technology and equipment needed for simulating client care.~~

18VAC90-25-60. ~~Requirements for continued approval; interruption or closing of a program.~~ (Repealed.)

~~A. Program review.~~

~~1. Each nurse aide education program shall be reviewed annually either by a visit on site by an agent of the board or by a written program evaluation. Each program shall be reviewed by an on-site visit at least every two years following initial review or whenever deemed necessary by the board to ensure continued compliance.~~

~~2. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on-site review is not conducted.~~

~~B. Decision on continued approval. The committee, in accordance with § 2.2-4019 of the Code of Virginia, shall receive and review the report of the on-site visit or program evaluation report and shall make recommendations to the board to grant continued approval, place a program on conditional approval or deny continued approval.~~

~~a. Granting continued approval. A nurse aide education program shall continue to be approved provided the requirements set forth in subsection B of 18VAC90-25-20 are maintained.~~

~~b. Placing a program on conditional approval. If the committee determines that a nurse aide education program has not filed its program evaluation report or is not maintaining the requirements of subsection B of 18VAC90-25-20, the committee may recommend to the board that the program be placed on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies.~~

~~(1) The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing corrections of deficiencies, make a recommendation to the board to grant continued approval.~~

~~(2) If the program provider fails to correct the identified deficiencies within the time specified by the committee or the board, the board or a panel thereof may withdraw approval following a hearing in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.~~

~~(3) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.~~

~~c. Denying continued approval. If the committee determines that a nurse aide education program is not maintaining the requirements of subsection B of 18VAC90-25-20, it may recommend that continued approval be denied and refer the matter to the board or a panel of the board for a hearing in accordance with § 2.2-4020 of the Code of Virginia.~~

~~C. Interruption of program.~~

~~1. When a program provider does not hold classes for a period not to exceed one year, the provider may request that the program be placed on inactive status and shall not be subject to compliance with subsection B of 18VAC90-25-20 for the specified time.~~

~~2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the one-year period and be subject to the requirements of subsection D of this section.~~

~~3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection D of this section.~~

~~D. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:~~

~~1. Notify the board of the date of closing.~~

~~2. Submit to the board a list of all graduates with the date of graduation of each.~~

18VAC90-25-71. Certification by examination.

To be placed on the registry and certified by examination, the nurse aide must:

1. ~~(i) Satisfactorily complete~~ Have satisfactorily completed:

~~a~~ a. A nurse aide education program approved by the board;

~~(ii) be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, and have satisfactorily completed at~~ b. At least one clinical nursing course that includes at least 40 hours of clinical experience involving direct client care within the past 12 months while enrolled in a nursing education program preparing for registered nurse or practical nurse licensure; or

~~(iii) have completed a~~ c. A nursing education program preparing for registered nurse licensure or practical nurse licensure;

2. Pass the competency evaluation required by the board; and

3. Submit the required application and testing fee as prescribed by the board.

18VAC90-25-72. Certification by endorsement.

To be placed on the registry and be certified by endorsement, the nurse aide shall:

1. Be a graduate of a state-approved nurse aide education program that meets the requirements for clinical training and competency set forth in 42 CFR 483.152;

2. Have satisfactorily completed a competency evaluation program;

3. Be currently registered in another state, with no finding of abuse, neglect or misappropriation of property;

4. Submit the required application; and

5. Submit the required verification form to the credentialing agency in each state in which the applicant has been registered, certified, or licensed, unless electronic verification is available.

18VAC90-25-90. ~~Requirements for certified nurse aides.~~ (Repealed.)

~~A. Evidence of change of name. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.~~

~~B. Requirements for current mailing address.~~

~~1. All notices required by law and by this chapter to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.~~

~~2. Each certificate holder shall maintain a record of his current mailing address with the board.~~

~~3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.~~

18VAC90-25-120. Renewal and reinstatement of certification as an advanced certified nurse aide.

A. Current certification as a nurse aide in Virginia must be maintained in order to hold certification as an advanced certified nurse aide.

B. Renewal. If an individual is not eligible to renew as a certified nurse aide, certification as an advanced certified nurse aide may not be renewed. An advanced certification shall be renewed concurrently with the ~~biennial~~ renewal of the basic certification as a nurse aide in Virginia by:

1. Submitting a completed renewal form and renewal fee of $20; and

2. Attesting to completion of at least three contact hours per year of continuing education and training in any of the competency areas identified in the advanced certification training program. The board may grant an extension or waiver of the continuing education requirement based on good cause shown by the certified nurse aide.

C. Late renewal. An advanced certified nurse aide may renew certification for 90 days following the expiration date by meeting the requirements of subsection A of this section.

D. Reinstatement. If an advanced certification has not been renewed for 90 days following the expiration date, it shall only be reinstated if the applicant for reinstatement:

1. Holds current certification as a nurse aide in Virginia;

2. Submits a completed reinstatement application on a form provided by the board;

3. Pays the reinstatement fee of $30; and

4. Provides evidence that he has completed all required hours of continuing education and training.

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 of a form with a hyperlink 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 (18VAC90-25)

Instructions for Application for Nurse Aide Certification by Endorsement (rev. 1/11)

Application for Nurse Aide Certification by Endorsement (rev. 8/08)

Nurse Aide Certification Verification Form (rev. 11/07)

Instructions and Application for Certification as Advanced Certified Nurse Aide (rev. 8/07)

Instructions and Application for Reinstatement of Nurse Aide Certification (rev. 8/08)

Instructions and Application for Reinstatement of Advanced Nurse Aide Certification (rev. 8/07)

~~Application to Establish Nurse Aide Education Program (rev. 7/11)~~

~~Application to Establish an Advanced Certification Nurse Aide Education Program (rev. 8/07)~~

~~Nurse Aide Education Program Evaluation Report (rev. 8/07)~~

~~Nurse Aide Education Program On-site Review Report (rev. 8/07)~~

~~Advanced Certification Nurse Aide Education Program Evaluation Report (rev. 8/08)~~

~~Advanced Certification Nurse Aide Education Program On-site Review Report (rev. 8/07)~~

~~Request for Statistical Information (rev. 6/08)~~

CHAPTER 26
REGULATIONS FOR NURSE AIDE EDUCATION PROGRAMS

18VAC90-26-10. Definitions.

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

"Board" means the Virginia Board of Nursing.

"Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.

"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § 2.2-4019 of the Code of Virginia.

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity that conducts a nurse aide education program.

18VAC90-26-20. Establishing and maintaining a nurse aide education program.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.

3. Initial approval may be granted when all documentation of the program's compliance with requirements as set forth in subsection B of this section has been submitted and deemed satisfactory to the board.

4. If approval is denied, the program may request, within 30 days of the mailing of the decision, an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.

5. If denial is recommended following an informal conference, which is accepted by the board or a panel thereof, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

6. If the decision of the board or a panel thereof following a formal hearing is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

a. Curriculum content and length as set forth in subsection A of 18VAC90-26-40 and subsection C of 18VAC90-26-50.

b. Maintenance of qualified instructional personnel as set forth in 18VAC90-26-30.

c. Classroom facilities that meet requirements set forth in subsection D of 18VAC90-26-50.

d. Maintenance of records as set forth in subsection A of 18VAC90-26-50.

e. Skills training experience in a nursing facility that has not been subject to penalty or penalties as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation and Paid Feeding Assistants, October 1, 2013 edition) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law.

f. Agreement that board representatives may make unannounced visits to the program.

g. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.

h. Completion and submission of biennial onsite review reports and program evaluation reports as requested by the board.

2. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.

3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes that pose a barrier to such employment.

4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include, but not be limited to, a change in the program coordinator, primary instructor, program ownership, physical location of the program, or licensure status.

5. Provide each student with a copy of his certificate of completion.

18VAC90-26-30. Requirements for instructional personnel.

A. Program coordinator.

1. Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.

2. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing services may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.

3. The primary instructor may be the program coordinator in any nurse aide education program.

B. Primary instructor.

1. Qualifications. Each program shall have a primary instructor who does the majority of the actual teaching of the students and who shall:

a. Hold a current, unrestricted Virginia license as a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege; and

b. Have two years of experience as a registered nurse within the previous five years and at least one year of experience in the provision of long-term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting. Experience should include varied responsibilities, such as direct client care, supervision, and education.

2. Responsibilities. The primary instructor is responsible for the teaching and evaluation of students and, in addition, shall:

a. Participate in the planning of each learning experience;

b. Ensure that course objectives are accomplished;

c. Ensure that the provisions of subsection F of this section are maintained;

d. Maintain records as required by subsection A of 18VAC90-26-50;

e. Perform other activities necessary to comply with subsection B of 18VAC90-26-20; and

f. Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

C. Other instructional personnel.

1. Instructional personnel who assist the primary instructor in providing classroom or clinical supervision shall be registered nurses or licensed practical nurses.

a. A registered nurse shall:

(1) Hold a current, unrestricted Virginia license as a registered nurse; and

(2) Have had at least one year of direct patient care experience as a registered nurse.

b. A licensed practical nurse shall:

(1) Hold a current, unrestricted Virginia license as a practical nurse;

(2) Hold a high school diploma or equivalent;

(3) Have been graduated from a state-approved practical nursing program; and

(4) Have had at least two years of direct patient care experience as a licensed practical nurse.

2. Responsibilities. Other instructional personnel shall provide instruction under the supervision of the primary instructor.

D. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

1. Satisfactory completion of a course in teaching adults that includes:

a. Basic principles of adult learning;

b. Teaching methods and tools for adult learners; and

c. Evaluation strategies and measurement tools for assessing the learning outcomes; or

2. Have experience in teaching adults or high school students.

E. To meet planned program objectives, the program may, under the direct, onsite supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.

F. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor.

18VAC90-26-40. Requirements for the curriculum.

A. Curriculum content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact with a nursing facility client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas:

a. Communication and interpersonal skills.

b. Infection control.

c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.

d. Promoting client independence.

e. Respecting clients' rights.

2. Basic skills.

a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.

b. Measuring and recording routine vital signs.

c. Measuring and recording height and weight.

d. Caring for the client's environment.

e. Measuring and recording fluid and food intake and output.

f. Performing basic emergency measures.

g. Caring for a client when death is imminent.

3. Personal care skills.

a. Bathing and oral hygiene.

b. Grooming.

c. Dressing.

d. Toileting.

e. Assisting with eating and hydration, including proper feeding techniques.

f. Caring for skin, to include prevention of pressure ulcers.

g. Transfer, positioning, and turning.

4. Individual client's needs, including mental health and social service needs.

a. Modifying the aide's behavior in response to the behavior of clients.

b. Identifying developmental tasks associated with the aging process.

c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.

e. Utilizing the client's family or concerned others as a source of emotional support.

f. Responding appropriately to the client's behavior including, but not limited to, aggressive behavior and language.

g. Providing appropriate clinical care to the aged and disabled.

h. Providing culturally sensitive care.

5. Care of the cognitively or sensory (visual and auditory) impaired client.

a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

b. Communicating with cognitively or sensory impaired clients.

c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.

d. Using methods to reduce the effects of cognitive impairment.

6. Skills for basic restorative services.

a. Using assistive devices in transferring, ambulation, eating, and dressing.

b. Maintaining range of motion.

c. Turning and positioning, both in bed and chair.

d. Bowel and bladder training.

e. Caring for and using prosthetic and orthotic devices.

f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.

7. Clients' rights.

a. Providing privacy and maintaining confidentiality.

b. Promoting the client's right to make personal choices to accommodate individual needs.

c. Giving assistance in resolving grievances and disputes.

d. Providing assistance necessary to participate in client and family groups and other activities.

e. Maintaining care and security of the client's personal possessions.

f. Promoting the client's rights to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate staff.

g. Avoiding the need for restraints in accordance with current professional standards.

8. Legal and regulatory aspects of practice as a certified nurse aide including, but not limited to, consequences of abuse, neglect, misappropriation of client property, and unprofessional conduct.

9. Occupational health and safety measures.

10. Appropriate management of conflict.

B. Unit objectives.

1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.

2. Objectives shall be reviewed with the students at the beginning of each unit.

C. Curriculum changes. Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the onsite visit or with the report submitted by the program coordinator in the intervening year.

18VAC90-26-50. Other program requirements.

A. Records.

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall

provide each nurse aide with a copy of this record and a certificate of completion from the program.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

B. Student identification. The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student."

C. Length of program.

1. The program shall be at least 120 clock hours in length.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours of providing direct client care. Five of the clinical hours may be in a setting other than a nursing home. Hours of observation shall not be included in the required 40 hours of skills training.

4. Employment orientation to facilities used in the education program must not be included in the 120 hours allotted for the program.

D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. Instructional technology and equipment needed for simulating client care.

18VAC90-26-60. Requirements for continued approval.

A. Program review.

1. Each nurse aide education program shall be reviewed annually either by a visit on site by an agent of the board or by a written program evaluation. Each program shall be reviewed by an onsite visit at least every two years following initial review or whenever deemed necessary by the board to ensure continued compliance.

2. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an onsite review is not conducted.

B. Decision on continued approval.

1. The board shall receive and review the report of the onsite visit or program evaluation report and may grant continued approval, place a program on conditional approval or deny continued approval.

a. Granting continued approval. A nurse aide education program shall continue to be approved provided the requirements set forth in subsection B of 18VAC90-26-20 are maintained.

b. Placing a program on conditional approval. If the board determines that a nurse aide education program has not filed its program evaluation report or is not maintaining the requirements of subsection B of 18VAC90-26-20, as evidenced by the onsite report, the board may place the program on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies. The program may request, within 30 days of the mailing of a decision on conditional approval, an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.

(1) The board shall receive and review reports of progress toward correcting identified deficiencies. When a final report is received at the end of the specified time showing corrections of deficiencies, the board may grant continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the board, a committee may recommend withdrawing approval following an informal conference held in accordance with § 2.2-4019 of the Code of Virginia.

(3) If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.

(4) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

c. Denying continued approval. If the board determines that a nurse aide education program is not maintaining the requirements of subsection B of 18VAC90-26-20, an informal conference will be convened in accordance with § 2.2-4019 of the Code of Virginia. If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.

2. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

18VAC90-26-70. Interruption or closing of a program.

A. Interruption of program.

1. When a program provider does not hold classes for a period of one year, the program shall be placed on inactive status and shall not be subject to compliance with subsection B of 18VAC90-26-20 for the specified time.

2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the inactive period and be subject to the requirements of subsection B of this section.

3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection B of this section.

B. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

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 of a form with a hyperlink 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 (18VAC90-26)

Application to Establish Nurse Aide Education Program (rev. 7/11)

Nurse Aide Education Program - Program Evaluation Report (rev. 8/07)

Nurse Aide Education Program - On-Site Review Report (rev. 8/07)

Application to Establish an Advanced Certification Nurse Aide Education Program (rev. 8/07)

Advanced Certification Nurse Aide Education Program - Program Evaluation Report (rev. 8/08)

Advanced Certification Nurse Aide Education Program - On-Site Review Report (rev. 8/07)

Request for Statistical Information (rev. 6/08)

VA.R. Doc. No. R14-3553; Filed December 18, 2013, 9:13 a.m.

BOARD OF PHARMACY

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-240, 18VAC110-20-250, 18VAC110-20-270).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: February 12, 2014.

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.

Summary:

The amendments (i) add a definition of "on-hold prescription," (ii) allow a prescription to be filed either by the date of initial dispensing or by the date it is entered into an automated data processing system if the prescription is an on-hold prescription until the patient needs the prescription, (iii) require verification of the accuracy of the prescription information entered into the data system by the pharmacist who enters the on-hold prescription, and (iv) require a prospective drug review by the pharmacist who subsequently dispenses the on-hold prescription.

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

18VAC110-20-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application in accordance with 21 CFR Part 1300 and is transmitted to a pharmacy as an electronic data file.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"On-hold prescription" means a valid prescription that is received and maintained at the pharmacy for initial dispensing on a future date.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container

but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

Part VI
Drug Inventory and Records

18VAC110-20-240. Manner of maintaining records, prescriptions, inventory records.

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy. Each pharmacy shall maintain a perpetual inventory of all Schedule II drugs received and dispensed, with reconciliation at least monthly. Electronic monitoring at the pharmacy or by another entity that provides alerts for discrepancies between drugs received and drugs dispensed is acceptable provided such alerts are reviewed at least monthly.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. All executed order forms, prescriptions, and inventories of Schedule II through V drugs shall be maintained at the same address as the stock of drugs to which the records pertain. If authorized by DEA, other records pertaining to Schedule II through V drugs, such as invoices, may be maintained in an off-site database or in secured storage. All records in off-site storage shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

4. All inventories required by § 54.1-3404 of the Code of Virginia shall be signed and dated by the person taking the inventory and shall indicate whether the inventory was taken prior to the opening of business or after close of business. A 24-hour pharmacy with no opening or closing of business shall clearly document whether the receipt or distribution of drugs on the inventory date occurred before or after the inventory was taken.

5. Invoices or other records showing receipts of Schedule VI drugs shall be maintained, but may be stored in an electronic database or record as an electronic image that provides an exact, clearly legible, image of the document or in secured storage either on or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

6. All records required by this section shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing or by date of initial entry into the automated data processing system in compliance with 18VAC110-20-250 if such a system is employed by the pharmacy.

2. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

3. Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

C. Chart orders.

1. A chart order written for a patient in a hospital or long-term care facility, a patient receiving home infusion services, or a hospice patient pursuant to § 54.1-3408.01 A of the Code of Virginia shall be exempt from having to contain all required information of a written prescription provided:

a. This information is contained in other readily retrievable records of the pharmacy; and

b. The pharmacy maintains a current policy and procedure manual that sets out where this information is maintained and how to retrieve it and the minimum requirements for chart orders consistent with state and federal law and accepted standard of care.

2. A chart order may serve as the hard copy prescription for those patients listed in subdivision 1 of this subsection.

3. Requirements for filing of chart orders.

a. Chart orders shall be filed chronologically by date of initial dispensing with the following exception: If dispensing data can be produced showing a complete audit trail for any requested drug for a specified time period and each chart order is readily retrievable upon request, chart orders may be filed using another method.

Such alternate method shall be clearly documented in a current policy and procedure manual.

b. If a single chart order contains both an order for a Schedule II drug and one or more orders for a drug in another schedule, where the Schedule II drug is not floor stocked, but is dispensed from the pharmacy pursuant to this order for the specific patient, the original order must be filed with records of dispensing of Schedule II drugs and a copy of the order placed in the file for other schedules.

18VAC110-20-250. Automated data processing records of prescriptions.

A. An automated data processing system may be used for the storage and retrieval of original and refill dispensing information for prescriptions instead of manual record keeping requirements, subject to the following conditions:

1. A prescription shall be placed on file as set forth in 18VAC110-20-240 B with the following provisions:

a. In lieu of a hard copy file for Schedule VI prescriptions, an electronic image of a prescription may be maintained in an electronic database provided it preserves and provides an exact image of the prescription that is clearly legible and made available within 48 hours of a request by a person authorized by law to have access to prescription information. Storing electronic images of prescriptions for [~~Schedule II-V~~ Schedules II through V] controlled substances instead of the hard copy shall only be authorized if such storage is allowed by federal law.

b. If the pharmacy system's automated data processing system fields are automatically populated by an electronic prescription, the automated record shall constitute the prescription and a hard copy or electronic image is not required.

c. For [~~Schedule II-V~~ Schedules II through V] controlled substances, electronic prescriptions shall be maintained in accordance with federal law and regulation.

2. Any computerized system shall provide retrieval (via computer monitor display or printout) of original prescription information for those prescriptions which are currently authorized for dispensing.

3. Any computerized system shall also provide retrieval via computer monitor display or printout of the dispensing history for prescriptions dispensed during the past two years.

4. Documentation ~~of the fact that the information entered into the computer each time a pharmacist fills a prescription for a drug is correct shall be provided by the individual pharmacist who makes use of such system~~ indicating that the information entered into the computer system is correct for each on-hold prescription or for each prescription that is dispensed shall be provided by the individual pharmacist who makes use of such system. If a printout is maintained of each day's prescription dispensing data or data entry of an on-hold prescription, the printout shall be verified, dated, and signed by the individual pharmacist who dispensed the prescription or verified the accuracy of the data entry. The individual pharmacist shall verify that the data indicated is correct and then sign the document in the same manner as his name appears on his pharmacist license (e.g., J. H. Smith or John H. Smith).

If a bound log book~~,~~ or separate file is maintained rather than a printout, each individual pharmacist involved in dispensing shall sign a statement each day in the log, in the manner previously described, attesting to the fact that the dispensing information and data entry of on-hold prescriptions entered into the computer that day ~~has~~ have been reviewed by him and ~~is~~ are correct as shown.

B. Printout of dispensing data requirements. Any computerized system shall have the capability of producing a printout of any dispensing data which the user pharmacy is responsible for maintaining under the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) and ~~such~~ any data entry of on-hold prescriptions. Such printout shall be provided within 48 hours of a request of an authorized agent.

Part VII
Prescription Order and Dispensing Standards

18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; supervision of pharmacy technicians.

A. In addition to the acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.

B. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time; however, no pharmacist shall supervise more than four persons acting as pharmacy technicians at one time.

C. After the prescription has been prepared and prior to the delivery of the order, a pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction. If more than one pharmacist is involved in verifying the accuracy of the prescription product, a record shall be maintained identifying the date of dispensing, each pharmacist involved in the process, and the individual task for which he is responsible for verifying the accuracy. Such record showing verification of accuracy shall be maintained on a pharmacy record and, if necessary, an alternate record consistent with 18VAC110-20-255 for the required time period of two years, unless otherwise specified in regulation. If the dispensing involves central or remote processing, records of pharmacist verification shall be maintained in a

manner consistent with 18VAC110-20-276 and 18VAC110-20-515.

D. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

E. If a pharmacist determines from a prescriber or by other means, including the use of his professional judgment, that a prescription presented for dispensing is a forgery, the pharmacist shall not return the forged prescription to the person presenting it. The forged prescription may be given to a law-enforcement official investigating the forgery; or it shall be retained for a minimum of 30 days before destroying it, in the event it is needed for an investigative or other legitimate purpose.

F. An on-hold prescription shall be entered into the automated data processing system if such system is employed by the pharmacy, and the pharmacist on-duty shall verify the accuracy of the data entry at that time. The pharmacist subsequently dispensing the on-hold prescription on a future date shall, at a minimum, conduct a prospective drug review consistent with § 54.1-3319 A of the Code of Virginia. If an on-hold prescription is returned to a patient prior to the initial dispensing of the drug, the pharmacist shall delete the entry in the automated data processing system.

VA.R. Doc. No. R11-2768; Filed December 18, 2013, 8:43 a.m.

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-490).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: February 12, 2014.

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.

Summary:

The amendments (i) reorganize and clarify the provisions for using automated dispensing devices (ADDs); (ii) distinguish "audits" from "reviews" so pharmacies understand more clearly when each action is required; (iii) limit the required monthly audit for ADDs with perpetual monitoring systems to discrepancies or exceptions identified through the ADDs; and (iv) provide an exception to the monthly inspection of ADDs if the ADD is capable of performing self-inspections that meet criteria set by the board.

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.

18VAC110-20-490. Automated devices for dispensing and administration of drugs.

A. A hospital may use automated devices for the dispensing and administration of drugs pursuant to § 54.1-3301 of the Code of Virginia and §§ 54.1-3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420, or 18VAC110-20-460 as applicable. ~~The following conditions shall apply:~~

B. Policy and procedure manual; access codes.

1. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.

2. Personnel allowed access to an automated dispensing device shall have a specific access code that records the identity of the person accessing the device. The device may verify access codes using biometric identification or other coded identification after the initial log-on in order to eliminate sharing or theft of access codes.

C. Distribution of drugs from the pharmacy.

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device which shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2. At the time of loading any Schedule II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for reconciliation of the discrepancy or properly reporting of a loss.

D. Distribution of drugs from the device.

~~3.~~ 1. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution which shall show patient name, drug name and strength, dose withdrawn, ~~dose to be administered,~~ date and time of withdrawal from the device, and identity of person withdrawing the drug. The record shall be filed in chronological order from date of issue.

2. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

E. Discrepancy reports. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand

in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

F. Reviews and audits.

1. The PIC or his designee shall conduct at least a monthly review for compliance with written policy and procedures that are consistent with § 54.1-3434.02 A of the Drug Control Act for security and use of the automated dispensing devices, to include procedures for timely termination of access codes when applicable, accuracy of distribution from the device, and proper recordkeeping.

~~4.~~ 2. The PIC or his designee shall conduct at least a monthly audit to review distribution ~~and administration~~ of Schedule II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedule II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. ~~A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act~~ If a pharmacy has an ongoing method for perpetually monitoring drugs in Schedule II through V to ensure drugs dispensed from the pharmacy have been loaded into the device and not diverted, such as with the use of perpetual inventory management software, then the audit required in this subsection may be limited to the discrepancies or exceptions as identified by the method for perpetually monitoring the drugs.

3. The PIC or his designee shall conduct at least a monthly audit to review administration of Schedule II through V drugs from each automated dispensing device as follows:

~~c.~~ a. The audit shall include a review of ~~a sample of~~ administration records from each device per month for possible diversion by fraudulent charting. ~~A sample~~ The review shall include all Schedule ~~II V~~ II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

~~d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.~~

~~e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.~~

~~f.~~ b. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

~~5. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.~~

c. The PIC or his designee shall be exempt from requirements of this audit if reconciliation software that provides a statistical analysis is used to generate reports at least monthly. The statistical analysis shall be based on:

(1) Peer-to-peer comparisons of use for that unit or department; and

(2) Monitoring of overrides and unresolved discrepancies.

d. The report shall be used to identify suspicious activity, which includes, but is not limited to, usage beyond three standard deviations in peer-to-peer comparisons. A focused audit of the suspicious activity and individuals associated with the activity shall be performed whenever suspicious activity is identified from the reports.

4. The PIC or his designee shall maintain a record of compliance with the reviews and audits in accordance with subsection H of this section.

~~6.~~ G. Inspections. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes. The PIC or his designee shall maintain documentation of the inspection in accordance with subsection H of this section. With the exception of a monthly physical review of look-alike and sound-alike drugs stored within matrix drawers or open access areas within the device, such monthly inspection shall not require physical inspection of the device if the device is capable of and performs the following:

1. At least daily monitoring of refrigerator or freezer storage with documented temperature ranges, variances, and resolutions;

2. Automatic identification and isolation of the location of each drug within the device using a machine readable product identifier, such as barcode technology, and generation of a report verifying the applicable settings;

3. Electronic tracking of drug expiration dates and generation of proactive reports allowing for the replacement of drugs prior to their expiration date; and

4. Electronic detection of the opening of the device, identification of the person accessing the device, automatic denial of access to the device during malfunctions and mechanical errors, and generation of reports of any malfunction and mechanical error.

H. Records.

~~7. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.~~

~~8. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.~~

~~9.~~ 1. All records required by this section shall be ~~filed in chronological order from date of issue and~~ maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital except~~: a. Manual~~ manual Schedule VI distribution records, reports auditing for indications of suspicious activity, and focused audits, all of which may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

~~b.~~ 2. Distribution and delivery records and required ~~signatures~~ initials may be generated or maintained electronically provided:

~~(1)~~ a. The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

~~(2)~~ b. The records are maintained in a read-only format that cannot be altered after the information is recorded.

~~(3)~~ c. The system used is capable of producing a hard-copy printout of the records upon request.

~~c.~~ 3. Schedule ~~II V~~ II through V distribution and delivery records may ~~only~~ also be stored offsite or electronically ~~as described in subdivisions 9 a and b of this section~~ in compliance with requirements of subdivision 1 of this subsection and if authorized by DEA or in federal law or regulation.

~~d.~~ 4. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R11-45; Filed December 18, 2013, 8:44 a.m.

BOARD OF PHYSICAL THERAPY

Fast-Track Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-60, 18VAC112-20-65, 18VAC112-20-90, 18VAC112-20-120, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140; adding 18VAC112-20-27; repealing 18VAC112-20-150).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system.

Specific authority for regulation of physical therapy is found in § 54.1-3474 of the Code of Virginia, which requires the board to promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the board may determine to be necessary.

Purpose: The purpose of the amended regulation is to address some inconsistencies in the clinical practice requirements for applicants by reactivation, reinstatement, or licensure by endorsement and to make the traineeship less burdensome. The amendments will not reduce the responsibility of supervisors for trainees and will continue to protect the health and safety of the public. Additionally, changes to the evaluation responsibilities of physical therapists will not affect public safety because the language is more clarifying and consistent with current practice.

Rationale for Using Fast-Track Process: The action is less restrictive regulation for applicants and practitioners. It will resolve some issues relating to evaluation of patients by physical therapists and be more consistent with current practices. It will not be controversial.

Substance: The amendments (i) eliminate specific remedial requirements for persons who fail the licensure examination three times; (ii) reduce the traineeship hours required for applicants by endorsement, reactivation, or reinstatement; (iii) clarify that a reevaluation of patients is required at certain

intervals of care; and (iv) eliminate the requirement that traineeships be served in facilities approved as clinical sites for students enrolled in an accredited education program.

Issues: There are no advantages or disadvantages to the public. The public continues to be protected by assurances that applicants will have clinical competency evidenced by hours of active practice in another jurisdiction or hours under supervision in a traineeship.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (Board) proposes to: 1) eliminate specific remedial requirements for persons who fail the licensure examination three times, 2) reduce the traineeship hours required for applicants by endorsement, reactivation or reinstatement, 3) no longer require that applicants for licensure by endorsement have active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia if the applicant did not take the same examination, 4) eliminate the requirement that traineeships be served in facilities approved as clinical sites for students enrolled in an accredited education program, 5) amend the requirement for evaluation of those patients who have been receiving care for the same condition or injury for six months or longer to require evaluation at least every 90 days from the last evaluation, 6) establish that if a patient is discharged from a health care facility without the opportunity for the physical therapist to evaluate the patient, the final note in the patient record may document patient status, and 7) amend language for clarification.

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

Estimated Economic Impact. Under the current regulations, an applicant for licensure who has failed the national examination three times must:

1. Provide the board with a copy of the deficiency report from the examination;

2. Review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas; and

3. Take an examination review course and the practice examination.

The Board proposes to repeal these requirements. According to the Department of Health Professions (Department), The requirement to review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas was very problematic for applicants and programs, which are not organized to assume that responsibility. The Board determined that remedial steps following failure of an examination should be left to the individual. The first exam review course listed by the American Physical Therapy Association is from TherapyEd (http://www.therapyed.com/ptmain.htm#ptreg). TherapyEd charges $265 for their review course. Thus, if the applicant determined that taking the review course was not his/her best course of action, then the proposed repeal would save approximately $265 in fees. Since the applicant will still not become licensed without passing the exam, there is no reduction in required knowledge to become a licensed physical therapist. Therefore the proposed repeal of these requirements should produce a net benefit.

The current regulations require applicants by endorsement, reactivation or reinstatement to have completed a 480 hour internship/traineeship if they do not have at least 320 hours of active practice in another jurisdiction. The board proposes to amend the internship/traineeship requirement to 320 hours for consistency with the active practice requirement and to enable the applicant to become fully licensed more quickly. If the applicant completes the Practice Review Tool (PRT) offered by the Federation of State Boards of Physical Therapy (FSBPT), he can reduce the internship hours to 160 (amended from the current requirement of 320 hours). This significantly reduces the burden to obtain licensure for these individuals who previously were licensed in Virginia.

For individuals applying for licensure by endorsement, the existing regulations require active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia if the applicant did not take the same examination Virginia required at the time of initial licensure in another state. The Board believes passage of the examination required for licensure in the other state is adequate evidence of competency. Additionally, all states have required the FSBPT examination for many years; so the likelihood of receiving an application from a person who passed only a state examination is decreasing. This proposed change eliminates a burden without in practice making any significant change in qualification; thus this proposed change should also provide net benefit.

Presently, traineeship must be held in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia. The Board has determined that that requirement is too limiting and burdensome and substantially reduces the physical therapy settings in which an applicant or graduate may serve a traineeship. Thus the Board proposes to eliminate that provision in the requirements but retain the requirement that the traineeship be under direction and supervision of a licensed physical therapist to assure patient safety.

For patients in settings other than in-patient, the current regulations require that the physical therapist evaluate the patient not less than once out of 12 visits made to the patient during a 30-day period, or once every 30 days from the last evaluation, whichever occur first. The Board believes that the

requirement for evaluation every 30 days is burdensome for patients who have been receiving physical therapy care for the same condition or injury over an extended period of time. For example, children with physical disabilities who are receiving physical therapy in school settings may not need evaluation every 30 days. There will not be enough significant progress within that time frame to warrant an evaluation by the physical therapist. Therefore, the Board proposes to amend the requirement for evaluation of those patients who have been receiving care for the same condition or injury for six months or longer to require evaluation at least every 90 days from the last evaluation. This proposed amendment should produce net benefits in that it will eliminate the nonproductive use of time by both physical therapists and their patients.

The regulations require physical therapists to document the status of the patient at the time of discharge, including the response to therapeutic intervention. The Department notes that the patient often is discharged from a health care facility without the opportunity for the physical therapist to evaluate the patient. So the Board proposes to amend the regulations to allow the final note in the patient record to document patient status.

Businesses and Entities Affected. The proposed amendments potentially affect the 6,580 licensed physical therapists and 2,692 physical therapist assistants currently licensed in the Commonwealth, as well as future licensure applicants.

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

Projected Impact on Employment. The proposed amendments reduce some burdens in obtaining licensure, and may therefore moderately increase the number of licensed physical therapists in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed amendments reduce some burdens in obtaining licensure and allow physical therapy practices additional discretion in how often to see patients.

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 impact small businesses.

Real Estate Development Costs. The proposed amendments will not 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, a determination of the public benefit, 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 an 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 Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC112-20, Regulations Governing the Practice of Physical Therapy, relating to regulatory reform.

Summary:

The amendments (i) eliminate specific remedial requirements for persons who fail the licensure examination three times; (ii) reduce the traineeship hours required for applicants by endorsement, reactivation, or reinstatement; (iii) eliminate the requirement that applicants for licensure by endorsement have active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia; (iv) eliminate the requirement that traineeships be served in facilities approved as clinical sites for students enrolled in an accredited education program; (v) amend the requirement for evaluation of those patients who have been receiving care for the same condition or injury for six months or longer to require evaluation at least every 90 days from the last evaluation; and (vi) establish that the final note in the patient record may document patient status if a patient is discharged from a health care facility without the opportunity for the physical therapist to evaluate the patient.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory,

administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"FSBPT" means the Federation of State Boards of Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"PRT" means the Practice Review Tool for competency assessment developed and administered by FSBPT.

"Reevaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to determine a patient's response to the treatment plan and care provided.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-27. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be $140 for a physical therapist and $100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be $140 for a physical therapist and $100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be $135 and for a physical therapist assistant shall be $70 and shall be due by December 31 in each even-numbered year.

2. The fee for an inactive license renewal for a physical therapist shall be $70 and for a physical therapist assistant shall be $35 and shall be due by December 31 in each even-numbered year.

3. A fee of $50 for a physical therapist and $25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be $180 for a physical therapist and $120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be $1,000; the fee for an application for reinstatement of a license that has been suspended shall be $500.

2. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

3. The fee for a returned check shall be $35.

4. The fee for a letter of good standing/verification to another jurisdiction shall be $10.

F. Direct access certification fees.

1. The application fee shall be $75 for a physical therapist to obtain certification to provide services without a referral.

2. The fee for renewal on a direct access certification shall be $35 and shall be due by December 31 in each even-numbered year.

3. A fee of $15 for processing a late renewal of certification within one renewal cycle shall be paid in addition to the renewal fee.

18VAC112-20-60. Requirements for licensure by examination.

~~A.~~ Every applicant for initial licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18VAC112-20-40 or 18VAC112-20-50;

2. The required application, fees and credentials to the board; and

3. Documentation of passage of the national examination as prescribed by the board.

~~B. If an applicant fails the national examination three times, he shall apply for approval to sit for any subsequent examination by submission of evidence satisfactory to the board of having successfully completed the following requirements:~~

~~1. Provide the board with a copy of the deficiency report from the examination;~~

~~2. Review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas; and~~

~~3. Take an examination review course and the practice examination.~~

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;

2. The required application, fees, and credentials to the board;

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) ~~and a current report from the National Practitioner Data Bank (NPDB)~~;

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; ~~and~~

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state ~~and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.~~; and

~~For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.~~

~~C. A physical therapist seeking licensure by endorsement who has not actively practiced~~ 6. Documentation of active practice in physical therapy in another U.S. jurisdiction for at least 320 hours within the four years immediately preceding his application for licensure. A physical therapist who does not meet the active practice requirement shall:

~~1.~~ a. Successfully complete ~~480~~ 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

~~2.~~ b. Document that he meets the standard of the PRT within the two years preceding application for licensure in Virginia and successfully complete ~~320~~ 160 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

~~D.~~ C. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-90. General responsibilities.

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

1. The initial evaluation for each patient and its documentation in the patient record; ~~and~~

2. Periodic ~~evaluations~~ reevaluation, including documentation of the patient's response to therapeutic intervention~~.~~; and

3. The documented status of the patient at the time of discharge, including the response to therapeutic intervention. If a patient is discharged from a health care facility without the opportunity for the physical therapist to reevaluate the patient, the final note in the patient record may document patient status.

B. The physical therapist shall communicate the overall plan of care to the patient or his legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, nurse practitioner or physician assistant to the extent required by § 54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

E. A physical therapist providing services with a direct access certification as specified in § 54.1-3482 of the Code of Virginia shall utilize the Direct Access Patient Attestation and Medical Release Form prescribed by the board or otherwise include in the patient record the information, attestation and written consent required by subsection B of § 54.1-3482 of the Code of Virginia.

18VAC112-20-120. Responsibilities to patients.

A. The initial patient visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care.

B. The physical therapist assistant's first visit with the patient shall only be made after verbal or written communication with the physical therapist regarding patient status and plan of care. Documentation of such communication shall be made in the patient's record.

C. Documentation of physical therapy interventions shall be recorded on a patient's record by the physical therapist or physical therapist assistant providing the care.

D. The physical therapist shall reevaluate the patient as needed, but not less than according to the following schedules:

1. For inpatients in hospitals as defined in § 32.1-123 of the Code of Virginia, it shall be not less than once every seven consecutive days.

2. For patients in other settings, it shall be not less than one of 12 visits made to the patient during a 30-day period, or once every 30 days from the last ~~evaluation~~ reevaluation, whichever occurs first.

3. For patients who have been receiving physical therapy care for the same condition or injury for six months or longer, it shall be at least every 90 days from the last reevaluation.

Failure to abide by this subsection due to the absence of the physical therapist in case of illness, vacation, or professional meeting, for a period not to exceed five consecutive days, will not constitute a violation of these provisions.

E. The physical therapist shall be responsible for ongoing involvement in the care of the patient to include regular communication with a physical therapist assistant regarding the patient's plan of treatment.

18VAC112-20-135. Inactive license.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee ~~of $70 for a physical therapist and $35 for a physical therapist assistant~~, be issued an inactive license. ~~The fee for the renewal of an inactive license due December 31, 2010, shall be $60 for a physical therapist and $30 for a physical therapist assistant.~~

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated;

2. Providing proof of 320 active practice hours in another jurisdiction ~~equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive~~ within the four years immediately preceding application for reactivation.

a. If the inactive physical therapist licensee does not meet the requirement for active practice, the license may be reactivated by completing ~~480~~ 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting that he has met the standard of the PRT within the two years preceding application for reactivation of licensure in Virginia and successfully completing ~~320~~ 160 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If the inactive physical therapist assistant licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

3. Completing the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

18VAC112-20-136. Reinstatement requirements.

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Apply for reinstatement and pay the fee specified in 18VAC112-20-150;

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years; and

3. Have actively practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement.

a. If a physical therapist licensee does not meet the requirement for active practice, the license may be reinstated by completing ~~480~~ 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting that he has met the standard of the PRT within the two years preceding application for licensure in Virginia and successfully completing ~~320~~ 160 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If a physical therapist assistant licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140.

18VAC112-20-140. Traineeship requirements.

A. The traineeship shall be ~~(i) in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii)~~ approved by the board~~,~~ and ~~(iii)~~ under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.

2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.

3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

18VAC112-20-150. ~~Fees.~~ (Repealed.)

~~A. Unless otherwise provided, fees listed in this section shall not be refundable.~~

~~B. Licensure by examination.~~

~~1. The application fee shall be $140 for a physical therapist and $100 for a physical therapist assistant.~~

~~2. The fees for taking all required examinations shall be paid directly to the examination services.~~

~~C. Licensure by endorsement. The fee for licensure by endorsement shall be $140 for a physical therapist and $100 for a physical therapist assistant.~~

~~D. Licensure renewal and reinstatement.~~

~~1. The fee for active license renewal for a physical therapist shall be $135 and for a physical therapist assistant shall be $70 and shall be due by December 31 in each even numbered year. The fee for renewal of an active license due December 31, 2010, shall be $100 for a physical therapist and $60 for a physical therapist assistant.~~

~~2. A fee of $25 for a physical therapist assistant and $50 for a physical therapist for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.~~

~~3. The fee for reinstatement of a license that has expired for two or more years shall be $180 for a physical therapist and $120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.~~

~~E. Other fees.~~

~~1. The fee for an application for reinstatement of a license that has been revoked shall be $1,000; the fee for an application for reinstatement of a license that has been suspended shall be $500.~~

~~2. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.~~

~~3. The fee for a returned check shall be $35.~~

~~4. The fee for a letter of good standing/verification to another jurisdiction shall be $10.~~

~~F. Direct access certification fees.~~

~~1. The application fee shall be $75 for a physical therapist to obtain certification to provide services without a referral.~~

~~2. The fee for renewal on a direct access certification shall be $35 and shall be due by December 31 in each even numbered year. The fee for direct access certification due December 31, 2010, shall be $30.~~

~~3. A fee of $15 for processing a late renewal of certification within one renewal cycle shall be paid in addition to the renewal fee.~~

VA.R. Doc. No. R14-3816; Filed December 18, 2013, 9:14 a.m.

BOARD OF PSYCHOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC125-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC125-15-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 12, 2014.

Effective Date: February 27, 2014.

Agency Contact: Catherine Chappell, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email catherine.chappell@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations and the authority to delegate an informal conference to an agency subordinate.

Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. Delegation of informal conferences to an agency subordinate, who is either a former board member or former board staff, would allow the Board of Psychology to bring closure to cases to protect the health and safety of the public.

In § 2.2-4019 of the Administrative Process Act, provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case, including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." While certain standard of care cases would continue to be heard by board members appointed to a special conference committee, a decision to delegate cases that may involve standards of practice must be approved by the probable cause committee. The ability to have the chair of the discipline committee (currently, the board does not have a "probable cause" committee) make decisions on delegation will facilitate scheduling of proceedings before an agency subordinate, thus ensuring resolution in a timelier manner and reserving board member time for hearing more serious matters.

Rationale for Using Fast-Track Process: The amendment is less restrictive and not controversial. The board does not currently utilize agency subordinates, but a simplified process for delegation may facilitate resolution of cases arising out of violations such as failure to complete continuing education. The board unanimously agreed to the revision.

Substance: The amendments allow approval by the chair of the discipline committee in consultation with the board chair for delegation to an agency subordinate cases that involve a violation of standards of practice.

Issues: The primary advantage to the public is more timely resolution of disciplinary cases, and there are no disadvantages to the public. The advantage to the Commonwealth is facilitation of the delegation process and preservation of board member time for proceedings that involve more serious allegations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will authorize the Board of Psychology's (Board) chair of the discipline committee to delegate informal fact finding conferences involving violations of standards of practice to an agency subordinate.

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

Estimated Economic Impact. The proposed changes will authorize the Board's chair of the discipline committee in consultation with the Board chair to delegate informal fact-finding conferences involving violations of standards of practice to an agency subordinate. The agency subordinate could be a former board member or a former board staff member. The ability to delegate some of the cases is expected to facilitate the scheduling of proceedings, thus helping ensure resolution in a timelier manner and reserve board member time for hearing more serious matters. The Department of Health Professions (DHP) estimates approximately 10 cases per year may be delegated to an agency subordinate. DHP does not anticipate an adverse impact on the quality of the investigations if they are conducted by a subordinate. Thus, no negative impact on health and safety of the public is expected.

Businesses and Entities Affected. These regulations currently apply to 3,572 licensees and certificate holders regulated under the Board. Approximately 10 cases a year involving violations of standards of practice may be delegated to an agency subordinate.

Localities Particularly Affected. The proposed regulations do not affect any locality disproportionately.

Projected Impact on Employment. The proposed changes are expected to shift the administrative responsibilities associated with about 10 informal fact-finding conferences per year from Board members to an agency subordinate.

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

Small Businesses: Costs and Other Effects. No costs on small businesses are expected. However, in about 10 cases per year, regulated psychology practices that are small businesses may benefit from expedited disciplinary investigations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes are not anticipated to have an adverse impact on small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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 an 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 Psychology concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment allows approval by the chair of the discipline committee, in consultation with the chair of the Board of Psychology, to delegate to an agency subordinate cases that involve a violation of standards of practice.

18VAC125-15-20. Criteria for delegation.

Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in regulations governing each profession certified or licensed by the board, except as may otherwise be determined by the ~~probable cause~~ chair of the discipline committee in consultation with the board chair.

VA.R. Doc. No. R14-3735; Filed December 18, 2013, 9:16 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Psychology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Psychology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-30).**

18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-20).

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Effective Date: February 12, 2014.

Agency Contact: Catherine Chappell, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@dhp.virginia.gov.

Summary:

The amendments provide for a one-time fee reduction applicable to the 2014 renewal cycle for licensees and certificate holders.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists-limited
1. Registration of residency (per residency request)	$50	- -
2. Add or change supervisor	$25	- -
3. Application processing and initial licensure	$200	$85
4. Annual renewal of active license	$140	$70
5. Annual renewal of inactive license	$70	$35
6. Late renewal	$50	$25
7. Verification of license to another jurisdiction	$25	$25
8. Duplicate license	$5	$5

9. Additional or replacement wall certificate	$15	$15
10. Returned check	$35	$35
11. Reinstatement of a lapsed license	$270	$125
12. Reinstatement following revocation or suspension	$500	$500

B. Fees shall be made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Between April 30, 2014, and June 30, 2014, the following renewal fees shall be in effect:

1. For an active license as a clinical, applied, or school psychologist, it shall be $95. For an inactive license as a clinical, applied, or school psychologist, it shall be $45.

2. For an active license as a school psychologist-limited, it shall be $45. For an inactive license as a school psychologist-limited, it shall be $23.

18VAC125-30-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of sex offender treatment providers:

Registration of supervision	$50
Add or change supervisor	$25
Application processing and initial certification fee	$90
Certification renewal	$75
Duplicate certificate	$5
Late renewal	$25
Reinstatement of an expired certificate	$125
Replacement of or additional wall certificate	$15
Returned check	$35
Reinstatement following revocation or suspension	$500
One-time reduction in fee for renewal on June 30, ~~2010~~ 2014	~~$37~~ $52

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Psychology. All fees are nonrefundable.

VA.R. Doc. No. R14-3895; Filed December 16, 2013, 3:50 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Proposed Regulation

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-97).**

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Public Hearing Information:

February 27, 2014 - 10:30 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Richmond, VA 23233

Public Comment Deadline: March 14, 2014.

Agency Contact: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board. Section 54.1-2301 of the Code of Virginia provides the authority for the board to promulgate regulations for the licensure of onsite sewage system professionals, waterworks operators, and wastewater works operators.

Purpose: In response to the Governor's Regulatory Reform initiative, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals reviewed its current regulations to identify, amend, or repeal any regulations that are unnecessary or no longer in use and reduce unnecessary regulatory burdens on regulated groups while still protecting the health, safety, and welfare of the public. The board has determined that the requirement that an applicant for a conventional onsite sewage system installer license provide documentation of experience from a list of specific professionals when applying for waiver of the examination can be eliminated.

Substance: As an entry requirement for licensure as a conventional onsite sewage system installer, applicants who qualify for the conventional onsite sewage system installer exam waiver must demonstrate active engagement in performing the duties of a conventional onsite sewage system installer. The proposed amendment eliminates the need to provide documentation by specific professionals as currently required by 18VAC160-20-97 C 2 a, thereby allowing more latitude to consider applicants that have the required

experience but have not worked with one of the specified professionals.

Issues: The primary advantage of the proposed amendment is that it allows more individuals who have the required experience to perform the services of a conventional onsite sewage system installer. This provides a larger pool of qualified individuals from which a consumer can select when hiring a conventional onsite sewage system installer. The primary advantage to the agency, which ultimately is an advantage to the board's regulants, is that individuals who apply for a conventional onsite sewage system installer with exam waiver currently would have to go through the administrative process to have their applications considered if one of the specified professionals could not verify their experience. This change will eliminate the need for, and costs associated with, a hearing to consider otherwise compliant applications. There are no disadvantages to the public, agency, or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The current regulations require an applicant for a conventional onsite sewage system installer license who is applying for waiver of the examination to provide documentation of experience from a list of specific professionals. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (Board) proposes to eliminate this requirement.

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

Estimated Economic Impact. Code of Virginia § 54.1-2301 states that:

> The Board shall not require applicants for initial licensure as a conventional onsite sewage system installer to pass an examination prior to issuance of such license provided that the applicant satisfactorily demonstrates to the Board that he has been actively engaged in performing the duties of a conventional onsite sewage system installer for at least eight years within the 12-year period immediately preceding the date of application for licensure.

Repealing the requirement for documentation by specific professionals will leave language in the regulations that is similar to that in the Code of Virginia quoted above. Eliminating the need to provide documentation by specific professionals allows more latitude to consider applicants that have the required experience, but have not worked with one of the specified professionals. Also, the time and effort associated with obtaining and processing the documentation would be eliminated. Since the Board believes the documentation is unnecessary, it seems to have little value. Thus the proposal to eliminate the documentation requirement should produce a net benefit.

Businesses and Entities Affected. The proposed amendment affects applicants for the conventional onsite sewage system installer license. According to the Department of Professional and Occupational Regulation, there are approximately 200 applicants annually.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposal to eliminate the documentation requirement may moderately increase the number of individuals who seek licensure as a conventional onsite sewage system installer.

Effects on the Use and Value of Private Property. The proposed amendment will moderately reduce application costs for licensure.

Small Businesses: Costs and Other Effects. The proposed amendment does not add cost for small businesses.

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

Real Estate Development Costs. Since the proposal to eliminate the documentation requirement may moderately increase the supply of conventional onsite sewage system installation services, there may be a very modest cost reduction for real estate development that includes septic systems.

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, a determination of the public benefit, 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 an 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 the Department of Planning and Budget's economic impact analysis: The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals concurs with the economic impact analysis.

Summary:

The proposed amendment eliminates the need for an applicant for a conventional onsite sewage system installer license, who is applying for waiver of the examination, to provide documentation of experience attained working with professionals from a specific list.

18VAC160-20-97. Qualifications for licensure - onsite sewage system installers.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section for the license desired.

B. Each applicant holding a valid interim onsite sewage system installer license shall submit documentation of compliance with the continuing professional education requirements of this chapter at the time of application.

C. Specific entry requirements.

1. Conventional onsite sewage system installer. Each individual applying for an initial conventional onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years under the direct supervision of a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

b. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

c. Have documentation certifying that the applicant is competent to install conventional onsite sewage systems. Certification must be provided by any combination of three of the following individuals:

(1) VDH Authorized Onsite Soil Evaluators (AOSE) for work performed prior to July 1, 2009;

(2) Licensed interim onsite soil evaluators;

(3) Licensed conventional or alternative onsite soil evaluators;

(4) Licensed conventional or alternative onsite sewage system installers; or

(5) Virginia licensed professional engineers.

2. Conventional onsite sewage system installer. The examination requirement provided for in subdivision 1 of this subsection shall not apply to applicants seeking initial licensure as a conventional onsite sewage system installer provided that:

a. The applicant is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application. ~~Documentation of being actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application shall be provided by one or more of the following:~~

~~(1) VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;~~

~~(2) Licensed interim onsite soil evaluator;~~

~~(3) Licensed conventional or alternative onsite soil evaluator;~~

~~(4) Licensed conventional or alternative onsite sewage system installer; or~~

~~(5) Virginia licensed professional engineer; and~~

b. The department receives a completed application no later than June 30, 2016. An individual who fails to have his application in the department's possession by June 30, 2016, shall be required to pass the board-approved examination provided for in subdivision 1 of this subsection.

3. Alternative onsite sewage system installer. Each individual applying for an initial alternative onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Provide contractor completion statements and associated operation permits issued by the VDH for work performed after June 30, 2009. The statements and permits must verify that the applicant had successfully installed 36 onsite sewage systems during the preceding three years, six of which must be alternative systems. All contractor completion statements and associated VDH operation permits shall be certified by either a licensed alternative onsite soil evaluator, a licensed conventional or alternative onsite sewage system installer, or a Virginia licensed professional engineer;

b. Provide contractor completion statements and associated operation permits issued by the VDH for work performed on or before June 30, 2009. The statements and permits must verify that the applicant successfully installed 12 alternative onsite sewage systems during the past three years. All contractor completion statements and associated VDH operation permits shall be certified

by either an authorized onsite soil evaluator or a Virginia licensed professional engineer;

c. Have two years of full-time experience installing sewage systems as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems;

d. Have two years of full-time experience installing sewage systems under the direct supervision a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems; or

e. Have two years of full-time experience as a licensed or interim licensed conventional onsite sewage system installer and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems.

If the applicant is not listed on the completion statement but did perform the installation, then the individual named on the contractor's completion statement and associated operation permit issued by the VDH may certify the applicant's work performed on an alternative onsite sewage system that was installed prior to June 30, 2009, provided that the application is received by the department no later than June 30, 2010.

D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system installer license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system installer training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

VA.R. Doc. No. R13-3570; Filed December 18, 2013, 3:46 p.m.

EXECUTIVE ORDER NUMBER 68 (2013)

Governor's Task Force on Improving Mental Health Services and Crisis Response

Importance of the Initiative

Over the years, including the events of April 16, 2007, Virginians have experienced tremendous heartache as a result of mental health tragedies. In response to the events at Virginia Tech, then-Governor Kaine, the General Assembly and I, as Attorney General, drew on work done by the Virginia Tech Review Panel and the Commission on Mental Health Law Reform to study and investigate the tragedy to strengthen the civil commitment process through legislation so individuals with serious mental illness can receive needed help in a timely manner. The 2008 budget also included an infusion of funds to build core community services such as emergency services, case management and outpatient commitment. Unfortunately, many of these gains were lost as a result of the economic downturn.

Since that time, the General Assembly and I have worked together to bring targeted and impactful investments in community mental health services to help meet critical needs. These services include children's crisis response services, crisis intervention team (CIT) programs, secure assessment centers, child psychiatry and hospital discharge supports. Many of these investments were recommended through the Governor's Taskforce on School and Campus Safety in response to the tragedy at Sandy Hook Elementary School. These services are intended to prevent a developing crisis from escalating and connect individuals currently experiencing a crisis to appropriate services. While these programs and services are indeed demonstrating their effectiveness, we have recently seen that we must continue to find measures to assure the safety of persons suffering mental health crises along with their families, neighbors, and members of the community.

Virginia's mental health system has transformed toward a community based system for individuals to receive treatment in their homes and community as appropriate. The mental health system is extremely complex and difficult to navigate for families seeking assistance and for workers within the system. Though state law helps guide the process, practices and services are determined locally and therefore vary across the Commonwealth. The mental health system for emergency services is dependent upon cooperation and communication from a variety of partners, including community services boards, law enforcement, the judicial system and private hospitals. Effective collaboration among these many parties ensures the most favorable outcomes for people in crisis. While emergency mental health services work for most people, it is critical that the mental health safety net responds effectively to all individuals and families in crisis.

It is now time to improve our understanding of the issues facing our mental health system in order to seek solutions. Because the system is multifaceted, the solutions must be as well.

While bolstering our ability to respond to mental health crises when they occur, we must seek ways to intervene early and prevent crises from developing. When interventions occur before mental illness becomes debilitating, people find treatment more manageable and the outcome can be sustained for longer periods. Virginia already has such crisis prevention services in place, such as outpatient psychiatric consultation, suicide prevention, psychiatric medication treatment plans and rehabilitation services. However, these services are in high demand, and are not consistently available across the commonwealth.

Through this Executive Order, I am calling for leaders in the mental health field, law enforcement communities, the judicial system, private hospitals, and individuals receiving mental health services and their families to seek and recommend solutions that will improve Virginia's mental health crisis services and help prevent crises from developing.

This group must rely on two principles based on numerous studies: that individuals with mental health disorders are not a greater threat to the community than anyone else unless drugs or alcohol are involved, and that even those with the most serious mental illnesses can recover to manage their symptoms and lead productive lives. Nevertheless, should they experience a mental health crisis, our duty is to connect them with needed services immediately to help ensure their safety and the safety of those around them.

Truly improving Virginia's mental health system requires easing the difficult navigation through laws and procedures and facilitating the tremendous need to collaborate among many partners. It also involves reducing the frequency and intensity of acute mental health emergencies through crisis prevention services.

To accomplish this, in accordance with the authority vested in me by Article V of the Constitution of Virginia and by § 2.2-134 of the Code of Virginia, I hereby create the Governor's Task Force on Improving Mental Health Services and Crisis Response.

Governor's Task Force on Improving Mental Health Services and Crisis Response

The Task Force's responsibilities shall include the following:

- Recommend refinements and clarifications of protocols and procedures for community services boards, state hospitals, law enforcement and receiving hospitals.

- Review for possible expansion of the programs and services that assure prompt response to individuals in mental health crises and their families such as emergency

services teams, law enforcement crisis intervention teams (CIT), secure assessment centers, mobile crisis teams, crisis stabilization centers and mental health first aid.

• Examine possible extensions or adjustments to the emergency custody order and the temporary detention order period.

• Explore technological resources and capabilities, equipment, training and procedures to maximize the use of telepsychiatry.

• Examine the cooperation that exists between the courts, law enforcement and mental health systems in communities that have incorporated crisis intervention teams and cross systems mapping.

• Assess the availability of psychiatric beds in Virginia, the assessment process hospitals use to select which patients are appropriate for those beds, and to explore whether psychiatric bed registries and/or census management teams improve the process for locating beds.

• Review for possible expansion those services that will provide ongoing support for individuals with mental illness and reduce the frequency and intensity of mental health crises. These services may include rapid, consistent access to outpatient treatment and psychiatric services, as well as critical supportive services such as wrap-around stabilizing services, peer support services, programs of assertive community treatment, housing, employment and case management.

• Recommend legislative and budget proposals that will enable implementation of the above.

• Recommend how families and friends of a loved one facing a mental health crisis can be taught to improve the environment and safety of an individual in crisis.

• Examine workforce development activities and recommend any improvements to ensure an adequate mental health workforce.

Task Force Membership

The Task Force shall be co-chaired by the Secretary of Health and Human Resources and the Secretary of Public Safety.

Membership shall include the following individuals or representatives:

• The Attorney General of Virginia or his representative;

• Chief Justice of the Supreme Court of Virginia or her representative;

• Commissioner of the Department of Behavioral Health and Developmental Services;

• Commissioner of the Department of Social Services;

• Superintendent of the Virginia State Police;

• At least three community services board emergency services directors;

• At least three law enforcement officers, including at least one sheriff;

• At least two executive directors of community services boards;

• At least two magistrates;

• At least two private hospital emergency department physicians;

• At least two psychiatrists;

• At least one representative of a state mental health facility;

• At least two representatives from Virginia's private hospital system;

• At least two individuals receiving mental health services;

• At least two family members of individuals receiving services; and

• Two members of the House of Delegates and the Senate of Virginia.

The Governor may appoint other members as he deems necessary.

Task Force Staffing and Funding

Necessary staff support for the Task Force's work during its existence shall be furnished by the Office of the Governor, the Office of the Attorney General, and the Offices of the Secretary of Health and Human Resources and the Secretary of Public Safety, as well as such other agencies and offices as designated by the Governor. An estimated 250 hours of staff time will be required to support the work of the Task Force.

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Task Force, as authorized by Section 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are $1,000.00 per year.

The Task Force shall commence its work promptly and send initial recommendations no later than January 31, 2014. The Task Force shall make additional recommendations on an ongoing basis and shall provide a final report to the Governor no later than October 1, 2014. The Task Force shall issue such other reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and pursuant to § 2.2-135 of the Code of Virginia shall remain in

force and effect for one year from its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 10th day of December, 2013.

/s/ Robert F. McDonnell
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Development of Watershed Plan to Restore Water Quality at Fairview Beach

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a watershed plan (WP) for impaired waters at Fairview Beach, located in King George County, Virginia. Fairview Beach (Potomac River) has been on the state's list of dirty, or impaired, waters since 2006.

The use of this beach has been restricted due to excessive bacteria levels, resulting in beach closures at various times over the last nine years. The Virginia Department of Health has issued swimming advisories in order to protect the public from possible exposure to bacteria.

Due to the fact that there is not currently a total maximum daily load (TMDL) for Fairview Beach, a watershed plan will be developed by DEQ and contractors in order to identify measurable goals for restoring water quality. The WP will also include the corrective actions needed and their associated costs, benefits, and environmental impacts. Information presented during a recent informational meeting can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DocumentationforSelectTMDLs.aspx.

Actions to restore water quality at Fairview Beach will be the subject of a public meeting to be held February 20, 2014, from 6 p.m. until 8 p.m. at the Fairview Beach Firehouse, 6060 Riverview Drive, King George, VA 22485. It should be noted that in the event of inclement weather and county school closures on February 20, 2014, the meeting will be rescheduled for February 27, 2014, from 6 p.m. until 8 p.m. at the Fairview Beach Firehouse. At this meeting, bacteria source studies and the process for developing the WP will be discussed, and citizens will learn how they can be a part of the public participation process. DEQ seeks information and involvement of local citizens in developing this plan. After a one-hour public meeting, stakeholders will break into working group sessions to discuss and provide input for the watershed plan.

The 30-day public comment period on the information presented at the meeting will end March 20, 2014. Questions or information requests should be addressed to May Sligh, Department of Environmental Quality, Piedmont Regional Office, telephone (804) 450-3802, or email may.sligh@deq.virginia.gov, or to Jennifer Carlson, Department of Environmental Quality, Northern Regional Office, telephone (703) 583-3859, or email jennifer.carlson@deq.virginia.gov. Though email comments are preferred, written comments and inquiries can also be submitted and should include the name, address, and telephone number of the person submitting the comments. Please send to May Sligh, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

Water Quality Improvement Plan - Cripple Creek (Smyth and Wythe Counties) and Elk Creek (Grayson County)

The Virginia Department of Environmental Quality will hold a public meeting to present the draft water quality improvement plan for reducing agricultural and residential sources of bacteria in Cripple Creek (Smyth and Wythe Counties) and Elk Creek (Grayson County) on January, 28, 2014. The meeting will be held from 6:30 p.m. to 8:30 p.m. at the Summerfield UMC Community Clubhouse located at 4680 Carsonville Road, Fries, VA 24330, near the community of Elk Creek. Directions are provided at the end of this notice.

Cripple Creek originates near Rural Retreat in Smyth County and flows east into the New River near Ivanhoe. Elk Creek is located in the northern half of Grayson County and flows into the New River a few miles west of Galax.

Elk Creek and segments of Cripple Creek do not meet state water quality standards for E. coli (i.e., fecal bacteria). Elevated levels of E. coli indicate an increased risk of illness for people who come in contact with water in the affected streams. Bacteria sources identified in the area include failing septic systems, discharges of untreated human waste (i.e., straight pipes), and livestock waste.

The Virginia Department of Environmental Quality will present an overview of the types and amount of corrective actions that are needed to meet water quality goals and the framework through which stakeholders can implement the corrective actions.

The public meeting provides an opportunity for citizens and interested parties to ask questions and provide comments on the plan, and it will begin a 30-day period during which written public comments will be accepted.

Questions, information requests, and comments should be addressed to Patrick Lizon, TMDL/Watershed Field Coordinator, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, email patrick.lizon@deq.virginia.gov, or telephone (276) 676-4803. Comments must be submitted by February 28, 2014.

Directions to the Summerfield UMC Community Clubhouse: From Wytheville in the north: from the junction of U.S. HWY 11 and U.S. HWY 21 in Wytheville, follow U.S. 21 south approximately 20.2 miles to the community of Elk Creek at the junction of U.S. 21 and Comers Rock Road (Rd 658). Continue on U.S. 21, for approximately 0.4 miles (just past the Elk Creek Rescue Squad station on the right) and turn left on Carsonville Road (Rd 660). Continue on Carsonville Road for 5 miles. The building is located at the intersection of Carsonville Road and Churchview Lane (Rd

717), on the left side of the road (Carsonville Road makes a sharp left turn at the intersection while Churchview Lane goes straight). From Independence in the south: Head north on U.S. HWY 21 for approximately 9.1 miles to the intersection of U.S. 21 and Carsonville Road (on the right side of U.S. 21). The Carsonville Road intersection is on the right (just before the Elk Creek Rescue Squad building on the left side of U.S. 21). Follow the directions listed above to get from the Carsonville Road turnoff to the Summerfield UMC Community Clubhouse.

Total Maximum Daily Load for Little Otter River Watershed and the Buffalo Creek Watershed

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces the release of an updated draft total maximum daily load (TMDL) report. Final public meeting was held on February 20, 2013, and since that meeting, changes were made to the draft TMDL report. The TMDL report was developed to document a study to restore water quality in the Little Otter River watershed and the Buffalo Creek watershed. The draft TMDL report is posted on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Description of study: Virginia agencies are working to identify sources of biological impairment (general standard) in the Little Otter River watershed and the Buffalo Creek watershed. The general standard indicates the water quality does not support a natural aquatic invertebrate community.

The following is the "impaired" stream, the length of the impaired segment, location and the reason for the impairment: Johns Creek, 2.13 miles, Bedford City and Bedford County, general standard (aquatic invertebrate community); Little Otter River, 21.62 miles, Bedford City and Bedford County, general standard (aquatic invertebrate community); Wells Creek, 3.78 miles, Bedford County, general standard (aquatic invertebrate community); Buffalo Creek, 8.09 miles, Bedford and Campbell Counties, general standard (aquatic invertebrate community).

DEQ, in cooperation with the Virginia Department of Conservation and Recreation and other state and local agencies, developed a total maximum daily load (TMDL) study for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by February 13, 2014. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact: For additional information or to submit comments, contact Mary Dail, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, or email mary.dail@deq.virginia.gov.

Additional information is also available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment.aspx.

STATE BOARD OF HEALTH

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is conducting a periodic review and small business impact review of **12VAC5-421, Food Regulations**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010), which can be found at http://tinyurl.com/ExecutiveOrder142010.

The purpose of this review is to determine whether this regulation should be repealed, 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 January 13, 2014, and ends February 12, 2014.

Comments may be submitted online to the Virginia Regulatory Townhall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Allen Knapp, Director, Office of Environmental Health Services, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7456, or email allen.knapp@vdh.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 both reviews will be posted on the Townhall and a report of the small business impact review will be published in the Virginia Register of Regulations.

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 December 20, 2013. 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, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Nine (14)

Virginia's Instant Game Lottery 1465 "High Stakes™" Final Rules for Game Operation (effective March 18, 2014)

Director's Order Number Eleven (14)

Virginia Lottery's "2 Ways 2 Win" Second Chance Sweepstakes Final Rules for Game Operation (effective January 7, 2014)

Director's Order Number One Hundred Seventeen (13)

Virginia's Online Game Lottery; "Fast Play Blackjack Bonanza" Final Rules for Game Operation (effective on December 9, 2013. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Blackjack Bonanza" game rules)

Director's Order Number One Hundred Eighteen (13)

Virginia's Online Game Lottery; "Fast Play Cold Hard Cash" Final Rules for Game Operation (effective on December 9, 2013. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Cold Hard Cash" game rules)

Director's Order Number One Hundred Nineteen (13)

Virginia's Online Game Lottery; "Fast Play Fast $50's Hot Slots Doubler" Final Rules for Game Operation (effective on December 9, 2013. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Fast $50's Hot Slots Doubler" game rules)

Director's Order Number One Hundred Twenty (13)

Virginia's Online Game Lottery; "Fast Play Money Bag Crossword" Final Rules for Game Operation (effective on December 9, 2013. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Money Bag Crossword" game rules)

Director's Order Number One Hundred Twenty-Five (13)

Virginia's Instant Game Lottery 1466 "$52 Million Cash Spectacular" Final Rules for Game Operation (effective November 26, 2013)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Submit a State Plan Amendment Regarding the Alternative Benefit Plan

(This modification does not change any benefits currently offered—it is only a procedural change required by the Affordable Care Act.)

Pursuant to 42 CFR 440.305(d), the Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to solicit public comment on the department's proposal to seek approval from the Centers for Medicare and Medicaid Services (CMS) of a state plan amendment to modify the Alternative Benefit Plan (ABP) authorized under § 1937 of the Social Security Act for individuals who are eligible for the MEDICAID WORKS program.

MEDICAID WORKS is Virginia's Medicaid Buy-In Program, a work incentive opportunity for individuals with disabilities. Established in January 2007, this voluntary plan option enables workers with disabilities to earn higher income and retain more in savings than is typically allowed by Medicaid while ensuring continued health care coverage. MEDICAID WORKS helps enrollees gain greater independence from public assistance programs and enables their contribution to the tax base of the community and to its economic growth.

In 2008, DMAS received authorization to establish an optional alternative benefit plan for program enrollees to include personal assistance services, in addition to the standard health care services available through Medicaid. Personal assistance services, sometimes called attendant care, provide individuals with disabilities nonmedical support in the home or the workplace in order that they may continue to live at home, maintain employment and participate in community activities.

The Affordable Care Act (ACA) requires that, as of January 1, 2014, all ABPs provide services in 10 essential health benefit (EHB) categories (ambulatory services, emergency services hospitalization, maternity and newborn care, mental health and substance use disorder services, rehabilitation and habilitative services, prescription drugs, laboratory, preventive services, and pediatric services). This modification to the existing ABP for the MEDICAID WORKS program will ensure that this ABP includes all of the required services under each of the EHB categories, as well as all other services authorized under Virginia's Medicaid State Plan, and the personal assistance services.

Any service limits or cost sharing currently authorized under the approved Medicaid State Plan will apply to the ABP. The ABP will include the full range of early periodic screening, diagnoses, and treatment (EPSDT) program benefits for individuals under the age of 21.

Note: A separate communication will be issued to individuals enrolled in the program regarding the increase in the income limit that will be allowed under a forthcoming regulation.

Comments or inquiries on DMAS' proposed state plan amendment to modify the ABP for the MEDICAID WORKS program may be sent, in writing, within 14 days of this notice publication to Jack Quigley, Policy and Research Division,

Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219. Such comments are available for review at the same address.

Contact Information: Jack Quigley, Policy Analyst, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680, or email jack.quigley@dmas.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy has conducted a small business impact review of **4VAC25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities,** and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated December 16, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation is required by statute. It is necessary to protect the health and safety of miners working at underground and surface mines in the Commonwealth. DMME has reviewed the regulation and determined that it does not adversely impact small businesses.

Contact Information: Michael Skiffington, Program Support Manager, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email michael.skiffington@dmme.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for USDA - Forest Service, Flatwoods Job Corps Civilian Conservation Center

An enforcement action has been proposed for the USDA - Forest Service, Flatwoods Job Corps Civilian Conservation Center for violations in Wise County. The proposed consent order addresses violations of the State Water Control Law and VPDES Permit No. VA0023027 at the Flatwoods Job Corps Civilian Conservation Center sewage treatment plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from January 14, 2014, to February 12, 2014.

Proposed Enforcement Action for Home Associates of Virginia, Inc.

An enforcement action has been proposed for Home Associates of Virginia, Inc. for alleged violations of the State Water Control Law at the Sherwood Lakes Subdivision in Virginia Beach, VA. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Mr. Robin Schuhmann will accept comments by email at robin.schuhmann@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from January 13, 2014, to February 12, 2014.

Amendment to Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt four total maximum daily load (TMDL) waste load allocations.

Public comment period: January 13, 2014, through February 13, 2014.

Description of proposed action: DEQ staff will propose amendments to the state's Water Quality Management Planning Regulation for the James River Basin (9VAC25-720-60 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend that the board (i) approve the TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (ii) authorize inclusion of the TMDL reports in the appropriate Water Quality Management Plan, and (iii) adopt four TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with §§ 2.2-4006 A 4 c and 2.2-4006 B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL. The U.S. Environmental Protection Agency (EPA) approved the

TMDLs presented under this public notice. The approved reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx.

Affected waterbodies and localities:

In the James River Basin (9VAC25-720-60):

1. "Phelps Branch Sediment TMDL Development Report for a Benthic Impairment in Appomattox County, Virginia"

    • The Phelps Branch TMDL proposes sediment reductions for the watershed and provides a sediment wasteload allocation of 115.7 tons/year.

2. "Sediment TMDL Development Report for Benthic Impairments in Long Branch and Buffalo River in Amherst County, Virginia"

    • The Long Branch and Buffalo River TMDLs propose sediment reductions for portions of the watershed and provide a sediment wasteload allocation of 16.2 tons/year for Long Branch and 306.4 tons/year for Buffalo River.

3. "Benthic Total Maximum Daily Load Development for Chickahominy River, Virginia"

    • The Chickahominy River TMDL, located in Hanover and Henrico Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 294.03 tons/year.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL report is available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email elizabeth.mckercher@deq.virginia.gov.

Proposed Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of five total maximum daily load (TMDL) reports, and granting authorization to include the TMDL reports in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve five TMDL reports as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: January 13, 2014, through February 13, 2014.

Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend that the DEQ Director (i) approve the TMDL reports listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments and (ii) authorize inclusion of the TMDL reports in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At the December 2, 2004, meeting, the board voted unanimously to delegate to the DEQ Director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with Federal Regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. the U.S. Environmental Protection Agency approved all TMDL reports presented under this public notice. The approved reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx.

Affected waterbodies and localities:

In the Potomac – Shenandoah River Basin:

1. "Bacteria Total Maximum Daily Load (TMDL) Development for Tributaries to the Potomac River: Prince William and Stafford Counties"

• Nine bacteria TMDLs, located in Prince William and Stafford Counties, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments.

2. "Bacteria TMDL Development for Tributaries to the Potomac River: Sugarland Run, Mine Run, and Pimmit Run"

• Three bacteria TMDLs, located in Arlington, Fairfax, and Loudoun Counties, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments.

In the James River Basin:

3. "Bacteria Total Maximum Daily Load Development for Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River, and Tye River in Nelson County and Amherst County, Virginia"

• Eight bacteria TMDLs, located in Nelson and Amherst Counties, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments.

4. "Bacteria Total Maximum Daily Load Development for Bent Creek, North Creek, Stonewall Creek, Walkers Ford Creek, and Wreck Island Creek"

• Five bacteria TMDLs, located Amherst, Appomattox, Buckingham, and Campbell Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the Roanoke River Basin:

5. "Bacterial TMDL Development for the Banister River (BAN06A08) and Winn Creek (WNN01A06) Watersheds"

• Two bacteria TMDLs, located in Halifax and Pittsylvania Counties, propose bacteria reductions for portions of the watersheds to address the primary contact (swimming use).

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher; Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email elizabeth.mckercher@deq.virginia.gov.

Proposed Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of seven total maximum daily load (TMDL) implementation plans (IPs) and granting authorization to include the TMDL IPs in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve seven TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: January 13, 2014, through February 13, 2014.

Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend that the DEQ Director (i) approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments and (ii) authorize inclusion of the TMDL IPs in the appropriate WQMPs. No regulatory amendments are required for these TMDL IPs.

At the June 28, 2005, meeting, the board voted unanimously to delegate to the DEQ Director the authority to approve TMDL implementation plans, provided that a summary report of the action the director plans to take is presented to the board prior to the director's approval. The TMDL implementation plans included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA) (§§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans, and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityIn

formationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx.

Affected waterbodies and localities:

In the Potomac – Shenandoah River Basin:

1. "Linville Creek Watershed Implementation Plan"

• The IP proposes management actions needed to reduce bacteria and sediment and restore the primary contact and aquatic life uses in Linville Creek located in Rockingham County.

2. "Spout Run Water Quality Improvement Plan"

• The IP proposes management actions needed to reduce bacteria and sediment and restore the primary contact and aquatic life uses in Spout Run located in Clarke County.

In the James River Basin:

3. "Rockfish River Watershed TMDL Implementation Plan"

• The IP proposes management actions needed to reduce bacteria and sediment and restore the primary contact and aquatic life uses in the Rockfish River watershed located in Nelson County.

In the Roanoke River Basin:

4. "Lower Banister River Watershed Implementation Plan"

• The IP proposes management actions needed to reduce bacteria and restore the primary contact use in the Banister River watershed located in Halifax and Pittsylvania Counties.

5. "South Mayo River, North Fork Mayo River, South Fork Mayo River, Blackberry Creek, Marrowbone Creek, Leatherwood Creek, and Smith River Watershed Implementation Plan"

• The IP proposes management actions needed to reduce bacteria and restore the primary contact use in the Smith River and Mayo River watersheds located in Patrick, Henry, Floyd, and Franklin Counties.

In the Tennessee - Big Sandy River Basin:

6. "A Plan to Reduce Fecal Bacteria and Sediment in the Middle Fork Holston River and Wolf Creek Watersheds"

• The IP proposes management actions needed to reduce bacteria and sediment and restore the primary contact and aquatic life uses in the Middle Fork Holston River and Wolf Creek watersheds located in Washington, Wythe, and Smyth Counties.

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

7. "Water Quality Implementation Plan for Gwynns Island, Milford Haven and Piankatank River Watersheds (Upper and Lower)"

• The IP proposes management actions needed to reduce bacteria and restore the shellfishing and primary contact uses contact use in the Piankatank River watershed located in Mathews, Middlesex, and Gloucester Counties.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email elizabeth.mckercher@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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/connect/commonwealth-calendar.

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/documents/cumultab.pdf.

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.