



VIRGINIA

REGISTER OF REGULATIONS

VOL. 32 ISS. 7

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

NOVEMBER 30, 2015

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Virginia Code Commission

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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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair, **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2015 through December 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
32:7	November 10, 2015 (Tuesday)	November 30, 2015
32:8	November 24, 2015 (Tuesday)	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 (Monday)	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE 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 Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action (NOIRA) for **12VAC30-130, Amount, Duration and Scope of Selected Services**, which was published in [30:10 VA.R.1286 January 13, 2014](#). The NOIRA is unnecessary as the agency is proceeding with this regulatory action through the fast-track rulemaking process under § 2.2-4012.1 of the Code of Virginia. The fast-track rulemaking action was published in [32:4 VA.R. 468-479 October 19, 2015](#).

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

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R14-2290; Filed November 6, 2015, 8:14 a.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating **16VAC25-200, Virginia Voluntary Protection Program**. The purpose of the proposed action is to adopt definitions, rules, and standards required by § 40.1-49.13 of the Code of Virginia that are needed to operate the Virginia Voluntary Protection Program (VPP). The VPP is designed to recognize and promote exceptional safety and health management programs. In VPP, the Department of Labor and Industry's Occupational Safety and Health Program, management, and labor establish a cooperative relationship at a general industry or public sector workplace that has implemented a strong safety and health program.

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

Statutory Authority: § 40.1-49.13 of the Code of Virginia.

Public Comment Deadline: December 31, 2015.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Main

Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email cobb.regina@dol.gov.

VA.R. Doc. No. R16-4468; Filed November 2, 2015, 9:12 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-70, Common Interest Community Ombudsman Regulations**. The purpose of the proposed action is to consider amending the regulation pertaining to the timeframe for establishing the complaint process as well as to consider other revisions necessary to ensure that the regulations complement the current law, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation.

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

Statutory Authority: §§ 54.1-2349 and 55-530 of the Code of Virginia.

Public Comment Deadline: December 30, 2015.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R16-4523; Filed November 2, 2015, 3:11 p.m.

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to amend the current requirements for the approval of vocational training and continuing education providers, courses, and instructors. During the past two years the Board for Contractors has reviewed its education requirements for vocational training and continuing education providers. As part of a workgroup organized by the board for the purpose of reviewing the education standards, several recommendations were made that included the regular review of course content, audit requirements, security enhancements to ensure the

Notices of Intended Regulatory Action

identity of individuals taking the courses, standardized application procedures, and other changes that would enhance the effectiveness of the requirements.

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

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Comment Deadline: December 30, 2015.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R16-4354; Filed November 9, 2015, 8:37 a.m.

BOARD OF DENTISTRY

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 Dentistry intends to consider amending **18VAC60-20, Regulations Governing Dental Practice**. The purpose of the proposed action is to require that a dentist who administers conscious/moderate sedation or deep sedation/general anesthesia maintain a capnograph/end tidal CO₂ monitor in working order and immediately available to areas where patients will be sedated and recover from sedation.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2709.5 of the Code of Virginia.

Public Comment Deadline: December 30, 2015.

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.

VA.R. Doc. No. R16-4438; Filed October 30, 2015, 2:39 p.m.

BOARD OF MEDICINE

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 Medicine intends to consider amending **18VAC85-150, Regulations Governing the Practice of Behavior Analysis**. The purpose of the proposed action is to amend renewal requirements to match the continuing education required by the Behavior Analysis Certification Board. The amendments would change continuing education requirements from 24 hours for the biennial renewal to 32 hours for behavior analysts and from 16 to 20 hours for assistant behavior analysts. Four of those hours must be in ethics relating to professional practice.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.16 of the Code of Virginia.

Public Comment Deadline: December 30, 2015.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R16-4296; Filed November 9, 2015, 8:53 a.m.

BOARD OF OPTOMETRY

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 Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to require continuing education that improves the knowledge and skills of optometrists in managing patient care and their practices. The proposed action is intended to (i) allow optometrists to carry over up to 50% of the hours earned in excess of the 16 hours required for annual renewal to the next renewal year; (ii) require that at least 50% of the hours be taken in live or real-time interactive courses; (iii) allow one hour per year of practice management; (iv) require therapeutic pharmaceutical agent-certified optometrists to have 50% of their hours in coursework relating to ocular and general pharmacology, diagnostics and therapeutics, or advanced clinical procedures; and (v) allow passage of the Continued Professional Development Examination in Optometry count for a portion of the annual continuing education requirement.

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: December 30, 2015.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R16-4466; Filed November 9, 2015, 8:54 a.m.

BOARD OF PHYSICAL THERAPY

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 Physical Therapy intends to consider amending **18VAC112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to incorporate into regulation the guidance on dry needling currently found in the board's Guidance Document 112-9, including the additional hours of training, the requirement for a medical referral, and the disclosure to patients on the difference between acupuncture and dry needling.

Notices of Intended Regulatory Action

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: December 30, 2015.

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.

VA.R. Doc. No. R16-4433; Filed November 9, 2015, 8:55 a.m.

BOARD OF COUNSELING

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 Counseling intends to consider amending the following regulations:

18VAC115-20, Regulations Governing the Practice of Professional Counseling

18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling

18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers

18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy

18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals.

The purpose of the proposed action is to address the need of the Board of Counseling to increase fees to cover expenses for essential functions of review of applications, licensing, investigation of complaints against licensees, and adjudication and monitoring of disciplinary cases required for public health and safety in the Commonwealth. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the board by fiscal year 2018, it is necessary to begin the process of promulgating amendments to regulations.

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: December 30, 2015.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R16-4525; Filed November 9, 2015, 8:46 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider amending **22VAC30-80, Auxiliary Grants Program**. The purpose of the proposed action is to allow for the implementation of third-party payments to auxiliary grant participants residing in assisted living facilities or adult foster care homes.

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

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Public Comment Deadline: December 30, 2015.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

VA.R. Doc. No. R16-4472; Filed November 5, 2015, 2:21 p.m.



REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-290. Marking of Leased Oyster Planting Ground (amending 4VAC20-290-20, 4VAC20-290-30, 4VAC20-290-40, 4VAC20-290-50; adding 4VAC20-290-15, 4VAC20-290-45).**

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

Effective Date: January 1, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) add applicable definitions for marking oyster grounds; (ii) stipulate that proper marking shall be done to actively plant or harvest on grounds; (iii) update requirements for the markers and the manner in which markers shall be set, addressing active work areas as well as corner markers and boundary lines; and (iv) include maintenance and removal requirements and a provision for exceptions.

4VAC20-290-15. Definitions.

"Active work areas" means those areas inside a lease where active planting or active harvesting is being conducted, or in areas where aquaculture structures are placed within a lease.

"Aquaculture structures" means devices, such as cages, trays, and nets, used to contain or protect shellfish.

"Lease boundary lines" means the projected lines between lease corners.

"Lease corners" means boundary lease corners as depicted on the plat of record for the lease.

4VAC20-290-20. General.

Leased oyster planting ground ~~shall~~ can be marked by the lessee if the oyster planting ground is being worked at any time and shall be marked if the oyster planting ground is being actively planted or harvested or when aquaculture

structures are present on the lease. ~~No harvesting or planting of leased oyster planting ground shall occur unless the lessee first has properly designated and marked the lease in accordance with the provisions of this chapter. No active planting upon or harvesting from the lease shall be authorized unless the lease has first been properly marked and the lease corners identified in accordance with the marking provisions of this chapter. If aquaculture structures are deployed on leased oyster planting ground, the lessee must properly mark and identify the lease boundary or the active work areas where aquaculture structures are placed in accordance with the marking provisions of this chapter.~~

4VAC20-290-30. Method and manner of marking.

A. Marking requirements. When leased oyster planting ground is marked, ~~it shall be marked with stakes or buoys so as to delineate accurately the boundary lines of the lease and prevent the corners and boundary lines or the active work areas within the lease shall be marked with markers or buoys and shall be marked in a manner that does not create any unnecessary restriction to navigation.~~

1. Corner markers. ~~The corner of leased oyster planting ground shall be marked and multiple markers may be used in these corners~~ Corners that are marked shall have a maximum of three markers per corner.

2. Boundary line markers. ~~Under normal circumstances~~ Individual line markers shall be set at intervals no more than 600 feet apart and may be placed at intervals no smaller less than 150 feet apart.

3. Active work area markers. Areas where aquaculture structures are being used shall be marked in conformance with subsection B of this section and as required in 4VAC20-335.

4. Marking of the corners, boundary lines, or active work areas within the lease shall constitute valid marking for enforcement purposes.

B. Description of markers.

1. ~~Stakes shall be no longer than two inches in diameter at the mean low water line and shall extend at least four feet above the mean high water line. The stake shall be of such materials not so rigid as to harm a boat if accidentally struck. Bamboo, white oak, cedar, or gum saplings are commonly used, but not required. If polyvinyl chloride (PVC) pipe is used, and driven into the bottom, the diameter of the PVC pipe shall be two inches or less. When stakes are used for lease corner markers, lease boundary line markers, or active work area markers within a lease they shall have a diameter of no greater than two inches if~~

solid and an inside diameter no greater than two inches if hollow, at and above the mean low water line, and shall extend at least four feet above the mean high water line, but no more than six feet above mean high water. The marker shall be made of such materials not so rigid as to harm a boat if accidentally struck, such as PVC pipe, bamboo, white oak, cedar, or gum saplings. Metal pipe markers are prohibited.

2. ~~Buoys shall be constructed of wood, PVC, or other suitable material, shall be no larger than six inches in diameter, and shall be anchored with sufficient weight to prevent their moving during adverse weather conditions. Buoys shall be constructed and anchored so as to extend at least four feet above the water line at all times. When can buoys are used they shall be constructed of suitable material, shall be no larger than six inches in diameter, and shall be anchored to the bottom with sufficient weight to prevent their moving during adverse weather conditions. Can buoys shall be constructed and anchored so as to extend at least four feet above, but not more than six feet above the water line at all times. When ball buoys are used they shall be constructed of suitable material, shall be no smaller than 45 inches in circumference, and shall be anchored to the bottom with sufficient weight to prevent their moving in adverse weather conditions.~~

3. Leased oyster grounds on which active shellfish propagation is occurring shall have a minimum of two placards constructed of durable material along at least two sides of the lease or active work area, and each placard shall be at least four feet above the mean high water line, depicting the initials of the leaseholder and shall conform to the dimensions established by the commissioner. No person shall dredge or scrape his oyster planting ground unless he is in conformance with § 28.2-517 of the Code of Virginia to include the marking requirements contained in that section. Oyster ground lease corner markers, boundary line markers, and active work area markers may be marked with two-inch white reflective tape, white reflective paint, or white fluorescent paint. If the lease is bisected or borders along a Virginia Department of Health, Division of Shellfish Sanitation shellfish area condemnation line, such line markers shall be marked with two-inch yellow reflective tape, yellow reflective paint, or yellow fluorescent paint.

4VAC20-290-40. Maintenance.

When oyster planting ground is marked, suitable stakes or markers shall be kept by the lessee in their proper places at all times so as to conform accurately to the original boundary survey any condemnation line within the lease, or to accurately mark the active work areas within the lease. Should such stakes or makers be removed, knocked down, or be carried away, the lessee shall ~~replace them~~ promptly have them replaced in their proper location and in conformance

with the method and manner of marking contained within this chapter.

4VAC20-290-45. Removal of markers.

It shall be unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post, or buoy, or any part thereof, erected to designate, locate, survey, or map shellfish grounds other than the leaseholder, his agent, his employee, or commission staff.

4VAC20-290-50. Exception.

~~The Marine Resources Commission may require its chief engineer to describe a plan for the proper marking~~ The chief engineer may approve an alternative plan for the proper marking of any designated oyster planting ground boundary or active work area upon request by the lessee when # he finds exceptional circumstances exist. In such a case the chief engineer shall direct the leaseholder where to place the appropriate markers.

VA.R. Doc. No. R16-4515; Filed October 30, 2015, 9:41 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-335. Pertaining to On-Bottom Shellfish Aquaculture Activities (amending 4VAC20-335-20, 4VAC20-335-30; adding 4VAC20-335-40).

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

Effective Date: January 1, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) add the definition of "aquaculture structure," (i) provide marking requirements for the leaseholder of leased aquaculture grounds, and (iii) include the penalty for any violation of the chapter.

4VAC20-335-20. Definitions.

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

"Aquaculture structure" means devices, such as cages, trays, and nets, used to contain or protect shellfish.

"Commission" means the Marine Resources Commission.

"Shellfish" means native molluscan species or molluscan species imported in accordance with § 28.2-825 of the Code of Virginia.

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4VAC20-335-30. Requirements and conditions.

A. The activity must be conducted on planting ground leased in accordance with Chapter 6 (§ 28.2-600 et seq.) of Title 28.2 of the Code of Virginia.

B. Leased planting ground must be properly marked in accordance with § 28.2-607 of the Code of Virginia and subsequent regulations (4VAC20-290-10 et seq.) 4VAC20-290.

C. ~~In addition to the required marking of the boundary of the lease, the boundary of the area containing the structures~~ Aquaculture structures shall be identified delineated with markers meeting the description for markers identified in 4VAC20-290-30 while structures are located on the bottom. The leaseholder shall also place a minimum of two placards, attached to boundary or corner markers, stating "aquaculture structures." Such placards shall be a minimum of 12 inches by 12 inches, constructed of a durable material, facing outward from the aquaculture structures, and shall be at least four feet above the mean high water line. The chief engineer may approve an alternate plan for marking aquaculture structures. In such a case the chief engineer shall direct or approve the appropriate markers.

D. Any structures placed on the bottom must be nontoxic and shall not be known to leach any materials ~~which that~~ would violate any water quality standards set by the Department of Environmental Quality.

E. Structures shall not extend higher than 12 inches above the bottom substrate.

F. No new structures shall be placed on existing stands of submerged aquatic vegetation.

G. No structures may cause more than a minimal adverse effect on navigation.

H. Shellfish must be harvested in accordance with all applicable laws and regulations.

I. The commission may direct removal of any structures ~~which that~~ fail to meet the requirements and conditions of this chapter.

4VAC20-335-40. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person 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 within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R16-4516; Filed October 30, 2015, 9:17 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Title of Regulation: **4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-120).**

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

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

Basis: Section 45.1-161.292:19 of the Code of Virginia allows the Department of Mines, Minerals and Energy (DMME) to require certification of persons who work in mineral mines and to promulgate regulations necessary to the certification process.

Purpose: The purpose of this regulation is to allow coal miners to easily transition to other areas of the mining industry. Promoting economic development is one of the core functions of DMME, and increasing the number of certified mineral miners could help grow the mineral mine industry.

Rationale for Using Fast-Track Process: This rulemaking is noncontroversial because it removes unnecessary and duplicative barriers to certification. The training needed to safely work on a surface coal mine is virtually identical to the training needed to safely work on a mineral mine site. This regulatory action would give coal miners the opportunity to seamlessly obtain general mineral miner certification.

Substance: The only substantive change in this regulation allows for miners with a valid general coal miner surface certification to obtain general mineral miner certification without going through training they have already received.

Issues: The primary advantages to the Commonwealth are removing unnecessary and duplicative barriers to certification and allowing for employees in a depressed industry to more smoothly transition to another industry. There are no known disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to amend this regulation to allow individuals who already possess a valid General Coal Miner Surface certification to obtain General Mineral Miner certification without having to receive additional training.

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

Estimated Economic Impact. The current Certification Requirements for Mineral Miners require that applicants for General Mineral Miner certification "complete certification training in first aid and mineral mining regulations and law, which is conducted by a training instructor approved by the division, a certified MSHA¹ instructor, or a certified mine foreman." According to DMME, the training needed to safely work on a surface coal mine is virtually identical to the training needed to safely work on a mineral mine site. Individuals who already possess a valid General Coal Miner Surface certification would have had such training. Consequently DMME's proposal to specify that individuals who already have valid General Coal Miner Surface certification be deemed to have met the safety training requirements for General Mineral Miner certification will create a net benefit in that it will reduce the cost for surface coal miners to become certified general mineral miners without increasing safety risk. Specifically, the proposed amendment eliminates the need to spend approximately one work day on duplicative training.

Businesses and Entities Affected. The proposed amendment potentially affects the 441 mineral mine operators in the Commonwealth as it reduces the cost for surface coal miners to become certified mineral miners. There are currently 22,537 people with General Coal Miner Surface certification. Approximately 150 of the 441 existing mineral mine permits are held by small businesses.²

Localities Particularly Affected. The proposed amendment will potentially affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by state regulation.

Projected Impact on Employment. The proposed amendment will reduce the cost for certified surface coal miners to become certified mineral miners. This may moderately increase the number of experienced coal miners who gain employment at mineral mines.

Effects on the Use and Value of Private Property. The proposed amendment will moderately reduce training costs for mineral mine operators if they hire former surface coal miners. This may increase the likelihood that they hire former surface coal miners; and by having moderately lower costs for working mineral mines, the value of the property may moderately increase.

Real Estate Development Costs. The proposed amendment may moderately reduce mineral mine development costs in that it will reduce training costs for some potential mineral miners.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and

(ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed amendment reduces the cost for small mineral mine operators to hire certified surface coal miners.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses: The proposed amendment does not adversely affect businesses.

Localities: The proposed amendment does not adversely affect localities.

Other Entities: The proposed amendment does not adversely affect other entities.

¹MSHA refers to the federal Mine Safety and Health Administration.

²Data Source: Department of Mines, Minerals and Energy

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

Summary:

The amendment allows an individual who possesses a valid general coal miner surface certification to obtain general mineral miner certification without having to receive additional training.

4VAC25-35-120. General mineral miner.

A. As set forth in § 45.1-161.292:28 of the Code of Virginia, miners commencing work after January 1, 1997, shall have a general mineral miner certification. Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by 30 CFR Part 46 or 30 CFR Part 48 shall be provided to these persons.

B. Applicants shall complete certification training in first aid and mineral mining regulations and law, which is conducted by a training instructor approved by the division, a certified MSHA instructor, or a certified mine foreman. Training shall include the following topics, subtopics and practical applications:

1. First aid training shall convey knowledge of first aid practices including identification of trauma symptoms, recognition and treatment of external and internal bleeding, shock, fractures, and exposure to extreme heat or cold. Training shall include a demonstration of skills or passing an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

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2. Law and regulation training shall convey highlights of the mineral mine safety laws of Virginia and the safety and health regulations of Virginia. Specifically, information shall be provided on miner responsibilities and accountability, certification requirements, violations, penalties, appeals and reporting violations to the division. Training shall include a demonstration of skills or passing an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

C. The trainer will certify to the department that the training and demonstrations required by § 45.1-161.292:28 B of the Code of Virginia and this section have occurred.

D. Applicants who hold a valid first aid certificate as noted in 4VAC25-35-10 shall be considered to have met the first aid requirements.

E. Applicants who have completed training may commence work and shall be considered provisionally certified for up to 60 days from the date the instructor completes the training.

F. The instructor shall submit verification of certification in a form acceptable to the division and the \$10 fee for each applicant who completes the training, together with a class roster of all persons who complete the training, within 30 days of the training date.

G. The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, 1997:

1. The employee name, address, and phone number.
2. The job title, employment date and general mineral miner number if applicable.
3. The date training was completed and the instructor providing it for nonexempt employees.
4. If the employee is exempt from the requirements, the date they began working in the mineral mining industry in Virginia.

H. Applicants who already possess a valid general coal miner surface certification pursuant to 4VAC25-20 shall be deemed to have met the requirements of this section.

VA.R. Doc. No. R16-4448; Filed October 30, 2015, 2:13 p.m.

Public Hearing Information:

January 28, 2016 - 11 a.m. - James Monroe Building, 101 North 14th Street, 22nd Floor Conference Room, Richmond, Virginia 23219. The public hearing will begin immediately following adjournment of the Board of Education business meeting.

Public Comment Deadline: January 31, 2016.

Agency Contact: Patty Pitts, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Basis: Section 4 of Article VIII of the Constitution of Virginia grants the Board of Education authority for the general supervision of the public school system, and § 22.1-16 of the Code of Virginia authorizes the board 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.

Additional applicable sections of the Code of Virginia are §§ 2.2-507, 22.1-79, 22.1-253.13:5, 22.1-293, 22.1-294, 22.1-295, 22.1-298.1, 22.1-299, 22.1-302, 22.1-303, 22.1-304, 22.1-305, 22.1-305.1, 22.1-306, 22.1-307, 22.1-308, 22.1-309, 22.1-311, 22.1-313, and 22.1-314. These sections were amended by Chapters 588 and 650 of the 2013 Acts of Assembly.

Chapters 13 and 103 of the 2014 Acts of Assembly extended from five business days to 10 business days the deadline for a teacher to request a hearing after receiving written notice of dismissal. This new change became effective July 1, 2014, and notations of the revisions to the proposed 8VAC20-90-70 A 1 and 8VAC20-90-70 A 2 have been made.

Purpose: The Procedure for Adjusting Grievances is essential to protect the health, safety, or welfare of citizens as the regulations provide (i) an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of local school board policies, rules, and regulations as they affect the work of teachers, other than dismissals or probation and (ii) an orderly procedure for the expeditious resolution of disputes involving the dismissal of any teacher.

Substance: The Procedure for Adjusting Grievances was last amended effective May 2, 2005. The 2013 General Assembly approved legislation resulting in the need to make revisions to the regulations. Other than changing the Procedure for Adjusting Grievances to comport with the 2013 and 2014 legislation, no additional substantive revisions were made. The major revisions to the regulations are (i) changing the grievance procedure for teachers by giving local school boards the option to assign a grievance hearing to be heard by an impartial hearing officer designated by the local school board, (ii) removing the option for a grievance to be heard before a fact-finding panel, (iii) removing "placing on probation" from the definition of "grievance," (iv) revising the Board of Education forms prescribed by the Code of

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: 8VAC20-90. Procedure for Adjusting Grievances (amending 8VAC20-90-10 through 8VAC20-90-40, 8VAC20-90-60, 8VAC20-90-70).

Statutory Authority: §§ 22.1-16 and 22.1-308 of the Code of Virginia.

Virginia, and (v) extending the time in which a teacher who received a Notice of Dismissal to request a hearing from five days to 10 days after receipt of the notice.

Issues: The regulations do not pose any major disadvantages to the public or the Commonwealth. The primary advantages of the proposed action are to align the regulations with the Code of Virginia, reducing confusion for teachers and the public about the procedure for adjusting grievances, and to provide flexibility in hearing the grievance at the local school division level. Proposed revisions to the regulations may reduce the cost of the procedure and allow for more efficient resolution.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 588 of the 2013 Acts of Assembly and Chapter 103 of the 2014 Acts of Assembly, the Board of Education (Board) proposes to amend this regulation to reflect statutory changes. In particular, the proposed regulation will reflect: 1) the removal of teachers' option to have their grievance heard before a fact-finding panel,¹ 2) local school boards' new option to designate an impartial hearing officer from outside the school division to hear a teacher's grievance, 3) the elimination of probation as a form of discipline, and 4) the reduction of time in which a teacher who received a Notice of Dismissal has to request a hearing from 15 days to 10 days.

Result of Analysis. The benefits likely exceed the costs for all proposed changes to the regulation.²

Estimated Economic Impact. The proposed amendments to this regulation will make the regulation consistent with statutes and will not change effective law. Amending the regulation to reflect the law in effect will be beneficial in that it will reduce the likelihood that readers of the regulation (who do not also read the relevant statutes) will be misled as toward the actual law in effect.

Businesses and Entities Affected. The proposed amendments potentially affect the 132 public school divisions and boards in the Commonwealth, as well as the 152,301 individuals who hold an active Virginia teaching license.³

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

Projected Impact on Employment. Amending this regulation to reflect statutory change does not significantly affect employment.

Effects on the Use and Value of Private Property. Amending this regulation to reflect statutory change does not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. Amending this regulation to reflect statutory change does not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Amending this regulation to reflect statutory change does not adversely affect small businesses.

Real Estate Development Costs. Amending this regulation to reflect statutory change does not affect real estate development costs.

¹The local school board formerly could also request a fact-finding panel.

²The analysis does not address the legislation.

³Data source: Department of Education

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the regulatory process.

Summary:

The proposed amendments conform the regulation to changes in the Code of Virginia enacted by Chapters 588 and 650 of the 2013 Acts of Assembly and Chapters 13 and 103 of the 2014 Acts of Assembly and make other technical and clarifying changes. The proposed amendments (i) remove a teacher's option to have a grievance heard before a fact-finding panel, (ii) permit a local school board to designate an impartial hearing officer from outside the school division to hear a teacher's grievance, (iii) eliminate probation as a form of discipline, and (iv) reduce the time in which a teacher who received a notice of dismissal has to request a hearing to 10 days.

Part I
Definitions

8VAC20-90-10. Definitions.

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

"Business day" means, ~~in accordance with § 22.1-312 of the Code of Virginia,~~ any day that the relevant school board office is open.

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. ~~Whenever any period of time fixed by this procedure shall expire the last day for performing an act required by this procedure falls on a Saturday, Sunday, or legal holiday, the period of time for taking action under this procedure shall be extended to the act may be performed on the next day if it that is not a Saturday, Sunday, or legal holiday.~~

"Dismissal" means the dismissal of any teacher within the term of such teacher's contract ~~and the nonrenewal of a contract of a teacher on a continuing contract.~~

"Grievance" means, for the purpose of Part II (8VAC20-90-20 et seq.), a complaint or a dispute by a teacher relating to his employment, including but not necessarily limited to the

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application or interpretation of personnel policies, rules and regulations, ordinances, and statutes; acts of reprisal ~~as a result against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting, or hearing related to a grievance; or complaints~~ of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. "Grievance" means, for the purposes of Part III (8VAC20-90-60 et seq.), a complaint or a dispute involving a teacher relating to his employment involving dismissal ~~or placing on probation~~. The term "grievance" shall not include a complaint or dispute by a teacher relating to the establishment and revision of wages or salaries, position classifications or general benefits; suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations; failure to promote; ~~or~~ discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in ~~a particular subject, enrollment in or~~ abolition of a particular subject, ~~or~~ insufficient funding; hiring, transfer, assignment and retention of teachers within the school division; suspension from duties ~~in emergencies; or~~ the methods, means and personnel by which the school division's operations are to be carried on; ~~or coaching or extracurricular activity sponsorship~~. While these management rights are reserved to the school board, failure to apply, where applicable, these rules, regulations, policies, or procedures as written or established by the school board is grievable.

"Hearing officer" means an impartial hearing officer from outside the school division who possesses some knowledge and expertise in public education and education law and who is capable of presiding over an administrative hearing.

"Personnel file" means, for the purposes of Part III (8VAC20-90-60 et seq.), any and all memoranda, entries or other documents included in the teacher's file as maintained in the central school administration office or in any file regarding the teacher maintained within a school in which the teacher serves.

~~"Probation" means a period not to exceed one year during which time it shall be the duty of the teacher to remedy those deficiencies which give rise to the probationary status.~~

"Teacher" or "teachers" means, for the purposes of Part II (8VAC20-90-20 et seq.), all employees of the school division involved in classroom instruction and all other full-time employees of the school division except those employees classified as supervising employees. "Teacher" means, for the purposes of Part III (8VAC20-90-60 et seq.), all regularly ~~certified~~ licensed professional public school personnel employed by any school division under a written contract as provided by § 22.1-302 of the Code of Virginia, ~~by any school division as a teacher or as an assistant principal, principal, or supervisor of classroom teachers but excluding all superintendents as provided by § 22.1-294 of the Code of Virginia.~~

"Shall file," "shall respond in writing," or "shall serve written notice" means the document is either delivered personally to the grievant or office of the proper school board representative or is mailed by registered or certified mail, return receipt requested, and postmarked within the time limits prescribed by this procedure to the grievant or office of the proper school board representative.

"Supervisory employee" means any person having authority in the interest of the board (i) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; and (ii) to direct other employees; or (iii) to adjust the grievance of other employees; or (iv) to recommend any action set forth in clause (i), (ii), or (iii) above; provided that the authority to act as set forth in clause (i), (ii), (iii), or (iv) requires the exercise of independent judgment and is not merely routine and clerical in nature.

"Written grievance appeal" means a written or typed statement describing the event or action complained of, ~~or~~ the date of the event or action complained of, and a concise description of those policies, ~~procedures~~ rules, regulations, ~~ordinances~~ or statutes upon which the teacher bases his claim. The grievant shall specify what he expects to obtain through use of the grievance procedure. A statement written grievance appeal shall be ~~written upon~~ on forms prescribed by the Board of Education and supplied by the local school board.

Part II

Grievance Procedure

8VAC20-90-20. Purpose of Part II of this grievance procedure.

The purpose of Part II of the Procedure for Adjusting Grievances is to provide an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of local school board policies, rules and regulations as they affect the work of teachers, other than dismissals ~~or probation~~. An equitable solution of grievances should be secured at the most immediate administrative level. The procedure should not be construed as limiting the right of any teacher to discuss any matter of concern with any member of the school administration, nor should the procedure be construed to restrict any teacher's right to seek, or the school division administration's right to provide, review of complaints that are not included within the definition of a grievance. Nothing in this procedure shall be interpreted to limit a school board's exclusive final authority over the management and operation of the school division.

8VAC20-90-30. Grievance procedure.

Recognizing that grievances should ~~be begun~~ begin and should be settled promptly, a grievance must be initiated within 15 business days following either the event giving rise to the grievance, or within 15 business days following the time when the employee knew or reasonably should have known of its occurrence. Grievances shall be processed as follows:

1. Step 1 -- Informal. The first step shall be an informal conference between the teacher and his immediate supervisor (which may be the principal). The teacher shall state the nature of the grievance, and the immediate supervisor shall attempt to adjust the grievance. It is mandatory that the teacher present the grievance informally prior to proceeding to Step 2.

2. Step 2 -- Principal. If for any reason the grievance is not resolved informally in Step 1 to the satisfaction of the teacher, the teacher must perfect his grievance by filing ~~said grievance in writing~~ a written grievance appeal on the required form within 15 business days following the event giving rise to the grievance, or within 15 business days following the time when the employee knew or reasonably should have known of its occurrence, specifying on the form the specific relief expected. Regardless of the outcome of Step 1, if a written grievance appeal is not, without just cause, filed within the specified time, the grievance will be barred.

A meeting shall be held between the principal (or his designee or both) and the teacher (or his designee or both) within five business days of the receipt by the principal of the written grievance. At such meeting the teacher or other party involved, or both, shall be entitled to present appropriate witnesses and to be accompanied by a representative other than an attorney. The principal (or his designee or both) shall respond in writing within five business days following such meeting.

The principal may forward to the teacher within five days from the receipt of the written grievance a written request for more specific information regarding the grievance. The teacher shall file an answer thereto within 10 business days, and the meeting must then be held within five business days thereafter.

3. Step 3 -- Superintendent. If the grievance is not settled to the teacher's satisfaction in Step 2, the teacher can proceed to Step 3 by filing a written notice of appeal with the superintendent, accompanied by the original written grievance appeal form within five business days after receipt of the Step 2 answer (or the due date of such answer). A meeting shall then be held between the superintendent (or his designee or both) and the teacher (or his designee or both) at a mutually agreeable time within five business days. The superintendent or designee may make a written request for more specific information from the teacher, but only if such information was not requested in Step 2. The teacher shall file an answer to such request within 10 business days, and the meeting shall be held within five business days of the date on which the answer was received. At such meeting both the superintendent and the teacher shall be entitled to present witnesses and to be accompanied by a representative who may be an attorney. A representative may examine, cross-examine, question, and present evidence on behalf of a grievant or the

superintendent without violating the provisions of § 54.1-3904 of the Code of Virginia. If no settlement can be reached in said meeting, the superintendent (or his designee) shall respond in writing within five business days following such meeting. ~~The superintendent or designee may make a written request for more specific information from the teacher, but only if such was not requested in Step 2. Such request shall be answered within 10 business days, and the meeting shall be held within five business days of the date on which the answer was received.~~ If the grievance is not resolved to the satisfaction of the teacher in Step 3, the teacher may ~~elect to have a hearing by a fact finding panel, as provided in Step 4, or after giving proper notice may request a decision by the school board pursuant to Step 5~~ elect to have a hearing by a fact finding panel, as provided in Step 4, or after giving proper notice may request a decision by the school board pursuant to Step 4.

4. Step 4 -- Fact finding panel. ~~In the event the grievance is not settled upon completion of Step 3, either the teacher or the school board may elect to have a hearing by a fact-finding panel prior to a decision by the school board, as provided in Step 4. If the teacher elects to proceed to Step 4, he must notify the superintendent in writing of the intention to request a fact finding panel and enclose a copy of the original grievance form within five business days after receipt of a Step 3 answer (or the due date of such answer). If the school board elects to proceed to a fact-finding panel, the superintendent must serve written notice of the board's intention upon the grievant within 15 business days after the answer provided by Step 3.~~

a. Panel. ~~Within five business days after the receipt by the division superintendent of the request for a fact-finding panel, the teacher and the division superintendent shall each select one panel member from among the employees of the school division other than an individual involved in any previous phase of the grievance procedure as a supervisor, witness, or representative. The two panel members so selected shall within five business days of their selection select a third impartial panel member.~~

b. Selection of impartial third member. ~~In the event that both panel members are unable to agree upon a third panel member within five business days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five qualified and impartial individuals from which one individual shall be selected by the two members of the panel to serve as the third member. The individuals named by the chief judge may reside either within or outside the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia, and in all cases shall possess some knowledge and expertise in public education and education law and shall be deemed by the judge capable of presiding over an administrative hearing. Within five business days after receipt by the two panel members of the list of fact finders nominated by the chief judge, the panel members shall meet to~~

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~~select the third panel member. Selection shall be made by alternately deleting names from the list until only one remains. The panel member selected by the teacher shall make the first deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer.~~

~~The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.~~

~~c. Holding of hearing. The hearing shall be held by the panel within 30 business days from the date of the selection of the final panel member. The panel shall set the date, place, and time for the hearing and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by a representative or legal counsel.~~

~~d. Procedure for fact finding panel.~~

~~(1) The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, provided that, at the request of the teacher, the hearing shall be private.~~

~~(2) The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher clarifying the issues involved.~~

~~(3) The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. The panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties to present any material or relevant evidence and shall afford the parties the right of cross examination.~~

~~(4) The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge of the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.~~

~~(5) Exhibits offered by the teacher of the division superintendent may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.~~

~~(6) The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.~~

~~(7) The hearing may be reopened by the panel, on its own motion or upon application of the teacher or the division superintendent, for good cause shown, to hear after discovered evidence at any time before the panel's report is made.~~

~~(8) The panel shall make a written report which shall include its findings of fact and recommendations, and shall file it with the members of the school board, the division superintendent, and the teacher, not later than 30 business days after the completion of the hearing.~~

~~(9) A stenographic record or tape recording of the proceedings shall be taken. However, in proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with the two parties shall share equally the cost of the recording. If either party requests a transcript, that party shall bear the expense of its preparation.~~

~~In cases of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.~~

~~(10) The recommendations and findings of fact of the panel submitted to the school board shall be based exclusively upon the evidence presented to the panel at the hearing. No panel member shall conduct an independent investigation involving the matter grieved.~~

~~e. Expenses.~~

~~(1) The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent. The expenses of the panel shall be borne one half by the school board and one half by the teacher.~~

~~(2) The parties shall set the per diem rate of the panel. If the parties are unable to agree on the per diem, it shall be fixed by the chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his normal business hours if he receives his normal salary for the period of such service.~~

~~(3) Witnesses who are employees of the school board shall be granted release time if the hearing is held during~~

the school day. The hearing shall be held at the school in which most witnesses work, if feasible.

~~f. Right to further hearings. Following a hearing by a fact finding panel, the teacher shall not have the right to a further hearing by the school board as provided in subdivision 5 c of this section. The school board shall have the right to require a further hearing in any grievance proceeding as provided in subdivision 5 c of this section.~~

~~5. 4. Step 5 4 -- Decision by the school board.~~

~~a. If a teacher elects to proceed directly to a determination before request a decision by the school board as provided for in Step 5 3, he must notify the superintendent in writing of the intention to appeal directly to make the request of the board, of the grievance alleged, and the relief sought within five business days after receipt of the answer as required in Step 3 or the due date thereof. Upon receipt of such notice, the school board may elect to have a hearing before a fact finding panel, as indicated in Step 4, by filing a written notice of such intention with the teacher within 10 business days of the deadline for the teacher's request for a determination by the school board the board may hold a hearing on the grievance, may elect to have the hearing conducted by a hearing officer appointed by the school board consistent with the procedures in § 22.1-311 of the Code of Virginia, or may make its determination on the basis of the written evidence presented by the teacher and the recommendation of the superintendent.~~

~~b. In the case of a hearing before a fact finding panel, the school board shall give the grievant its written decision within 30 days after the school board receives both the transcript of such hearing, if any, and the panel's finding of fact and recommendations unless the school board proceeds to a hearing under subdivision 5 c of this section. The decision of the school board shall be reached after considering the transcript, if any; the findings of fact and recommendations of the panel; and such further evidence as the school board may receive at any further hearing which the school board elects to conduct.~~

~~c. In any case in which a hearing before a fact finding panel is held in accordance with Step 4, the local school board may conduct a further hearing before such school board.~~

~~(1) The local school board shall initiate such hearing by sending written notice of its intention to the teacher and the division superintendent within 10 days after receipt by the board of the findings of fact and recommendations of the fact finding panel and any transcript of the panel hearing. Such notice shall be provided upon forms to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.~~

~~(2) In any case where such further hearing is held by a school board after a hearing before the fact finding panel, the school board shall consider at such further hearing the transcript, if any; the findings and recommendations of the fact finding panel; and such further evidence including, but not limited to, the testimony of those witnesses who have previously testified before the fact finding panel as the school board deems may be appropriate or as may be offered on behalf of the grievant or the administration.~~

~~(3) The further hearing before the school board shall be set within 30 days of the initiation of such hearing, and the teacher must be given at least 15 days written notice of the date, place, and time of the hearing.~~

~~b. In any case in which the school board elects to hold a hearing or elects to have a hearing officer conduct the hearing, the hearing shall be set within 30 days of the school board's receipt of the notice required by subdivision 4 a of this section (Step 4a), and the teacher must be given at least 15 days' written notice of the date, time, and place of the hearing.~~

The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing before the school board shall be private, unless the teacher requests a public hearing. The school board or the hearing officer, as the case may be, shall establish the rules for the conduct of any the hearing before it. Such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses and the right of all parties or their representatives to cross-examine the witnesses. Witnesses may be questioned by the school board or the hearing officer.

~~The~~ In the case of a hearing conducted by the school board, the school board's attorney, assistants, or representative, if he; or they; represented a participant in the prior proceedings, the grievant, the grievant's attorney; or representative and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board which that has as its purpose reaching a decision on the grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the school board's attorney or representative, and the superintendent, may join the school board in executive session to assist in the writing of the decision.

A stenographic record or tape recording of the proceedings hearing shall be taken. However, in proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if If the recording is not dispensed with, the

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two parties shall share the cost of the recording equally, and if either party requests a transcript, that party shall bear the expense of its preparation.

~~In the case of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to the expiration of the six month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.~~

c. In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. Upon the hearing officer's own motion or upon application by either party to the grievance, the hearing officer may reopen the hearing for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing.

d. In the event of a hearing by a hearing officer, the school board may make its decision upon the record or recording of such hearing or the school board may elect to conduct a further hearing to receive additional evidence. The school board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the school board. The school board shall determine the procedure to be followed at such further hearing.

e. In the event of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. The decision of the school board shall be reached after considering the evidence and information presented at the school board hearing.

f. In the event of a hearing before a hearing officer followed by a further hearing by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after such further hearing. The decision of the school board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer, and the evidence and information presented at the further hearing before the school board.

g. In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the

school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the school board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.

~~(4) The decision of the school board shall be based solely on the transcript, if any; the findings of fact and recommendations of the fact finding panel; and any evidence relevant to the issues of the original grievance procedure at the school board hearing in the presence of each party. The school board shall give the grievant its written decision within 30 days after the completion of the hearing before the school board. In the event the school board's decision is at variance with the recommendations of the fact-finding panel, the school board's written decision shall include the rationale for the decision.~~

~~d. In any case where a hearing before a fact finding panel is not held, the board may hold a separate hearing or may make its determination on the basis of the written evidence presented by the teacher and the recommendation of the superintendent.~~

~~e. h. The school board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.~~

8VAC20-90-40. Grievability.

A. Initial determination of grievability. Decisions regarding whether a matter is grievable shall be made by the school board at the request of the division ~~superintendent administration~~ or grievant and such decision shall be made within 10 business days of such request. The school board shall reach its decision only after allowing the division ~~superintendent administration~~ and the grievant opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be at the discretion of the school board. ~~Decisions shall be made within 10 business days of such request.~~ Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any ~~panel or board hearing by the board or a hearing officer~~, or the right to such determination shall be deemed to have been waived. Failure of the school board to make such a determination within such a prescribed 10-business-day period shall entitle the grievant to advance to the next step as if the matter were grievable.

B. Appeal of determination on grievability.

1. Decisions of the school board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.

a. Proceedings for a review of the decision of the school board shall be instituted by filing a notice of appeal with

the school board within 10 business days after the date of the decision and giving a copy thereof to all other parties.

b. Within 10 business days thereafter, the school board shall transmit to the clerk of the court to which the appeal is taken, a copy of its decision, a copy of the notice of appeal, and the exhibits. The failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court may, on motion of the grievant, issue a writ of certiorari requiring the school board to transmit the records on or before a certain date.

c. Within 10 business days of receipt by the clerk of such record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the school board and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court may, in its discretion, receive such other evidence as the ends of justice require.

d. The court may affirm the decision of the school board or may reverse or modify the decision. The decision of the court shall be rendered not later than 15 days from the date of the conclusion of the court's hearing.

Part III

Procedure for Dismissals ~~or Placing on Probation~~

8VAC20-90-60. Dispute resolution.

This Part III of the Procedure for Adjusting Grievances adopted by the Board of Education in accordance with the statutory mandate of Article 3 (§ 22.1-306 et seq.) of Chapter 15 of Title 22.1 of the Code of Virginia and the Standards of Quality for school divisions, Chapter 13.1 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia, is to provide an orderly procedure for the expeditious resolution of disputes involving the dismissal ~~or placing on probation~~ of any teacher.

8VAC20-90-70. Procedure for dismissals ~~or placing on probation.~~

A. Notice to teacher of recommendation for dismissal ~~or placing on probation.~~

1. In the event a division superintendent determines to recommend dismissal of any teacher, ~~or the placing on probation of a teacher on continuing contract,~~ written notice shall be sent to the teacher on forms ~~to be prescribed~~ by the Board of Education notifying him of the proposed dismissal, ~~or placing on probation,~~ and informing the teacher that within ~~45~~ 10 business days after receiving the notice, the teacher may request a hearing before the school board, ~~or before a fact finding panel as hereinafter set forth~~ or, at the option of the school board, a hearing officer appointed by the school board, as provided in § 22.1-311 of the Code of Virginia.

2. During such ~~45 day~~ 10-business-day period and thereafter until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the

merits of the recommendation of the division superintendent shall not be considered, discussed, or acted upon by the school board except as provided for herein.

3. At the request of the teacher, the superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to § 22.1-311 or § 22.1-312 of the Code of Virginia, the division superintendent shall provide, within 10 days of the request, the teacher, or his representative, with the opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal ~~or probation.~~ Within 10 days of the request of the division superintendent, the teacher, or his representative, shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal ~~or probation.~~ The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later that may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.

4. Upon a timely request for a hearing, the school board or, at the school board's option, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place of the hearing.

~~B. Fact finding panel. Within 15 days after the teacher receives the notice referred to in subdivision A 1 of this section, either the teacher, or the school board, by written notice to the other party upon a form to be prescribed by the Board of Education, may elect to have a hearing before a fact finding panel prior to any decision by the school board.~~

~~1. Panel. Within five business days after the receipt by the division superintendent of the request for a fact finding panel, the teacher and the division superintendent shall each select one panel member from among the employees of the school division other than an individual involved in the recommendation of dismissal or placing on probation as a supervisor, witness, or representative. The two panel members so selected shall within five business days of their selection select a third impartial panel member.~~

~~2. Selection of impartial third member. In the event that both panel members are unable to agree upon a third panel member within five business days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five qualified and impartial individuals from which list one individual shall be selected by the two members of the panel as the third member. The individuals named by the chief judge may reside either within or without the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia, and in all cases shall possess~~

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some knowledge and expertise in public education and education law, and shall be deemed by the judge capable of presiding over an administrative hearing. Within five business days after receipt by the two panel members of the list of fact finders nominated by the chief judge, the panel members shall meet to select the third panel member. Selection shall be made by the panel members alternately deleting names from the list until only one remains with the panel member selected by the teacher to make the first deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer.

The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.

3. ~~Holding of hearing.~~ The hearing shall be held by the panel within 30 calendar days from the date of the selection of the final panel member. The panel shall set the date, place, and time for the hearing and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by legal counsel or another representative.

4. ~~Procedure for fact finding panel.~~

a. ~~The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, provided that, at the request of the teacher, the hearing shall be private.~~

b. ~~The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher (or their representative) clarifying the issues involved.~~

c. ~~The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. However, the panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.~~

B. Procedure for hearing.

1. The hearing shall be conducted by the school board or, at the school board's option, a hearing officer appointed by the school board. The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing shall be private, unless the teacher requests a public hearing. The school board or hearing officer, as the case may be, shall establish the rules for the conduct of the hearing, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses, and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board or hearing officer.

d. 2. The parties shall produce such additional evidence as the ~~panel~~ school board or hearing officer may deem necessary to an understanding and determination of the dispute. The ~~panel~~ school board or hearing officer shall ~~be~~ determine the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the ~~panel~~ school board or hearing officer and of the parties.

e. 3. Exhibits offered by the teacher or the division superintendent may be received in evidence by the ~~panel~~ school board or hearing officer and, when so received, shall be marked and made a part of the record.

f. ~~The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.~~

g. ~~The recommendations and findings of fact of the panel shall be based exclusively upon the evidence presented to the panel at the hearing. No panel member shall conduct an independent investigation involving the matter grieved.~~

h. ~~The hearing may be reopened by the panel at any time before the panel's report is made upon its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after discovered evidence.~~

i. ~~The panel shall make a written report which shall include its findings of fact and recommendations and shall file it with the members of the school board, the division superintendent and the teacher, not later than 30 days after the completion of the hearing.~~

j. ~~A stenographic record or tape recording of the proceedings shall be taken. However, in proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party~~

requests a transcript, that party shall bear the expense of its preparation.

~~In cases of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.~~

5. Expenses.

a. ~~The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent. The expenses of the panel shall be borne one half by the school board and one half by the teacher.~~

b. ~~The parties shall set the per diem rate of the panel. If the parties are unable to agree on the per diem, it shall be fixed by the chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his normal business hours if he receives his normal salary for the period of such service.~~

6. ~~Right to further hearing. If the school board elects to have a hearing by a fact finding panel on the dismissal or placing on probation of a teacher, the teacher shall have the right to a further hearing by the school board as provided in subsection C of this section. The school board shall have the right to require a further hearing as provided in subsection C also.~~

7. ~~Witnesses. Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day. The hearing shall be held at the school in which most witnesses work, if feasible.~~

C. Hearing by school board.

1. ~~After receipt of the notice of pending dismissal or placing on probation described in subdivision A 1 of this section, the teacher may request a hearing before the school board by delivering written notice to the division superintendent within 15 days from the receipt of notice from the superintendent. Subsequent to the hearing by a fact finding panel under subsection B of this section, the teacher, as permitted by subdivision B 6 of this section, or the school board may request a school board hearing by written notice to the opposing party and the division superintendent within 10 business days after the receipt by the party initiating such hearing of the findings of fact and recommendations made by the fact finding panel and the transcript of the panel hearing. Such notice shall be provided upon a form to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.~~

2. ~~In any case in which a further hearing is held by a school board after a hearing before the fact finding panel, the school board shall consider at such further hearing the~~

~~record, or transcript, if any, the findings of fact and recommendations made by the fact finding panel and such further evidence, including, but not limited to, the testimony of those witnesses who have previously testified before the fact finding panel as the school board deems may be appropriate or as may be offered on behalf of the teacher or the superintendent.~~

3. ~~The school board hearing shall be set and conducted within 30 days of the receipt of the teacher's notice or the giving by the school board of its notice. The teacher shall be given at least 15 days written notice of the date, place, and time of the hearing and such notice shall also be provided to the division superintendent.~~

4. ~~The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing before the school board shall be private, unless the teacher requests a public hearing. The school board shall establish the rules for the conduct of any hearing before it, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence including the testimony of witnesses and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board. The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.~~

5. ~~A record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six month period, it shall be made and copies shall be furnished to both parties. The board shall bear the expense of the recording and the transcription.~~

6. ~~The school board shall give the teacher its written decision within 30 days after the completion of the hearing before the school board.~~

7. ~~The decision by the school board shall be based on the transcript, the findings of the fact and recommendations made by the fact finding panel, and any evidence relevant to the issues of the original grievance produced at the school board hearing in the presence of each party.~~

~~The school board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board which has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the school board's attorney or representative and the superintendent may join the school~~

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~~board in executive session to assist in the writing of the decision.~~

4. A stenographic record or tape recording of the proceedings shall be taken. The two parties shall share the cost of the recording equally. The record or recording of the proceedings shall be preserved for a period of six months. If the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the transcription.

5. The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent and the hearing officer.

6. Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day. The hearing shall be held at the school in which most witnesses work, if feasible.

7. In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. Upon the hearing officer's own motion or upon application by the teacher or the division superintendent, the hearing officer may reopen the hearing for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing.

8. In the event of a hearing by a hearing officer, the school board may make its decision upon the record or recording of such hearing or the school board may elect to conduct a further hearing to receive additional evidence. The school board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the school board. The school board shall determine the procedure to be followed at such further hearing.

~~D. C.~~ School board determination.

~~1. In any case in which a hearing is held before a fact-finding panel but no further hearing before the school board is requested by either party, the school board shall give the teacher its written decision within 30 days after the school board receives both the transcript of such hearing and the panel's findings of the fact and recommendation. The decision of the school board shall be reached after considering the transcript, the findings of fact, and the recommendations made by the panel. In the event of a hearing before the school board, the school board shall give the teacher its written decision as soon as~~

practicable and no more than 30 days after the hearing. The decision of the school board shall be reached after considering the evidence and information presented at the school board hearing.

2. In the event of a hearing before a hearing officer followed by a further hearing by the school board pursuant to subdivision B 8 of this section, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after such further hearing. The decision of the school board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer, and the evidence and information presented at the further hearing before the school board.

3. In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the school board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.

~~2. 4. The school board may dismiss, or suspend, or place on probation a teacher upon a majority vote of a quorum of the school board. In the event the school board's decision is at variance with the recommendation of the fact finding panel, the school board shall be required to conduct an additional hearing, which shall be public unless the teacher requests a private one. However, if the fact finding hearing was held in private, the additional hearing shall be held in private. The hearing shall be conducted by the school board pursuant to subdivisions C 1 and 2 of this section, except that the grievant and the division superintendent shall be allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not include examination and cross examination of any other witnesses. The school board's written decision shall include the rationale for the decision. The school board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings; the grievant; the grievant's attorney or representative; and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board that has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the school board's attorney or representative and the superintendent may join the school board in executive session to assist in the writing of the decision.~~

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 (8VAC20-90)

~~Statement of Grievance, eff. 2/05~~

~~Principal's Decision, eff. 2/05~~

~~Superintendent's Level, eff. 2/05~~

~~Request for Hearing (Decision to be Presented to Grievant), eff. 2/05~~

~~Notice of Proposed Dismissal or Proposed Placing on Probation, eff. 2/05~~

~~Request for Hearing (to be submitted to Superintendent), eff. 2/05.~~

[Statement of Grievance \(undated, filed 11/2015\)](#)

[Principal's Decision \(undated, filed 11/2015\)](#)

[Superintendent's Decision \(undated, filed 11/2015\)](#)

[Request for Hearing \(undated, filed 11/2015\)](#)

[Notice of Proposed Dismissal \(undated, filed 11/2015\)](#)

VA.R. Doc. No. R13-3790; Filed November 9, 2015, 10:47 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC5-20. General Provisions (Rev. E09) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. E09) (amending 9VAC5-40-4760; adding 9VAC5-40-8810 through 9VAC5-40-8950).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions of air pollution from miscellaneous metal and plastic parts coating operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions

for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

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.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (2014) in effect July 1, 2014. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
 - (1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.
 - (a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur

Regulations

Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

- (10) 40 CFR Part 72 -- Permits Regulation.
- (11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.
- (12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.
- (13) 40 CFR Part 75 -- Continuous Emission Monitoring.
- (14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.
- (15) 40 CFR Part 77 -- Excess Emissions.
- (16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.
- (17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.
- (18) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.
- (19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.
- b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.
2. U.S. Environmental Protection Agency.
- a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:
- (1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.
- (2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.
- (3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.
- b. Copies of the document identified in subdivision E 2 a (1) of this [~~subdivision section~~], and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this [~~subdivision section~~], may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this [~~subdivision section~~] may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this [~~subdivision section~~] are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.
3. U.S. government.
- a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).
- b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.
4. American Society for Testing and Materials (ASTM).
- a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.
- (1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."
- (2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."
- (3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."
- (4) D388-99, "Standard Classification of Coals by Rank."
- (5) D396-98, "Standard Specification for Fuel Oils."
- (6) D975-98b, "Standard Specification for Diesel Fuel Oils."
- (7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."
- (8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."
- (9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."
- (10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."
- (11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."
- (12) D523-89, "Standard Test Method for Specular Gloss" (1999).
- (13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).
- (14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).
- (15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).
- (16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

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(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).
- (4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.
- b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.
12. California Air Resources Board (CARB).
- a. The following documents from the California Air Resources Board are incorporated herein by reference:
- (1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).
- (4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).
- (5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).
- (6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).
- (7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).
- (8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).
- (9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).
- (10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).
- (11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).
- b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.
13. American Architectural Manufacturers Association.
- a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:
- (1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).
- (2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).
- b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.
14. American Furniture Manufacturers Association.
- a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).
- b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.
15. American Architectural Manufacturers Association [(AAMA)].
- a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:
- (1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic

Regulations

Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; phone 847-303-5774.

Article 34

Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems (Rule 4-34)

9VAC5-40-4760. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each miscellaneous metal parts and products coating application system.

B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206. [~~After (insert date one year from effective date of this article) they do~~ On and after February 1, 2017, this article does not apply to sources in the Northern Virginia Volatile Organic Compound Emissions Control Area designated in 9VAC5-20-206. These sources are subject to Article 59 (9VAC5-40-8810 et seq.) of this part.

C. Exempted from the provisions of this article are coating plants whose emissions of volatile organic compounds are not more than 2.7 tons per year, 15 pounds per day and three pounds per hour, based on the actual emission rate. All volatile organic compound emissions from purging or washing solvents shall be considered in applying the exemption levels specified in this subsection.

D. The provisions of this article do not apply to the following:

1. Coating application systems used exclusively for determination of product quality and commercial acceptance provided:
 - a. The operation is not an integral part of the production process;
 - b. The emissions from all product quality coating application systems do not exceed 400 pounds in any 30 day period; and
 - c. The exemption is approved by the board.
2. Vehicle refinishing operations.
3. Vehicle customized coating operations, if production is less than 20 vehicles per day.
4. Fully assembled aircraft and marine vessel exterior coating operations.

Article 59

Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-59)

9VAC5-40-8810. Applicability and designation of affected facility.

A. Except as provided in subsections C [~~and D~~ through H] of this section, the affected facility to which the provisions of this article apply is each miscellaneous metal product and plastic parts surface coating operation at a facility where the total actual emissions of volatile organic compounds (VOCs) from all miscellaneous metal product and plastic parts surface coating operations, including related cleaning activities, at that facility are equal to or exceed 6.8 kilograms per day (15 pounds per day), or an equivalent level of 2.7 tons per 12-month rolling period, before consideration of controls.

B. The provisions of this article apply only to affected facilities located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

C. Facilities that coat bodies or body parts for new heavier vehicles (including all vehicles that meet the definition of the term "other motor vehicles" as defined in 40 CFR 63.3176 of the National Emission Standards for Surface Coating of Automobile and Light-Duty Trucks) may, in lieu of complying with the provisions of this article, opt to comply with Article 28 (Emission Standards for Automobile [~~And~~ and] Light Duty Truck Coating Application Systems, 9VAC5-40-3860 et seq.) of 9VAC5-40 (Existing Stationary Sources).

D. The provisions of this article do not apply to the following:

1. Miscellaneous metal product and plastic parts surface coating operations subject to Article 26 ([Emissions Standards for] Large Appliance [Coatings Coating Application Systems], 9VAC5-40-3560 et seq.), Article 27 (Emission Standards for Magnet Wire Coating Application Systems, 9VAC5-40-3710 et seq.), Article 29 (Emission Standards for Can Coating Application Systems, 9VAC5-40-4010 et seq.), Article 30 (Emission Standards for Metal Coil Coating Application Systems, 9VAC5-40-4160), Article 31 (Emission Standards for Paper and Fabric Coating Application Systems, 9VAC5-40-4310), Article 33 ([Emissions Standards for] Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), and Article 48 (Emission Standards for Mobile Equipment Repair and Refinishing Operations, 9VAC5-40-6970 et seq.) of 9VAC5-40 (Existing Stationary Sources); and Article 5 (Emission Standards for Architectural and Industrial Maintenance Coatings, 9VAC5-45-520 et seq.) of 9VAC5-45 (Consumer and Commercial Products).
2. Coating application systems used exclusively for determination of product quality and coatings that are

applied to test panels and coupons as part of research and development, quality control, or performance testing activities at paint research or manufacturing facilities.

3. Coatings applied using a handheld, pressurized, nonrefillable container that expels coatings from the container in a finely divided spray when a valve on the container is depressed.

4. Miscellaneous metal product and plastic parts surface coating operations associated with the following product categories or processes: aerospace coatings; wood furniture coatings; fiberglass boat manufacturing materials; and paper, film, and foil coatings not otherwise regulated under Article 31 (Emission Standards [~~Fo~~ for] Paper and Fabric Coating Application Systems, 9VAC5-40-4310) of 9VAC5-40 (Existing Stationary Sources).

[5. Recommended VOC limits and application methods do not apply to aerosol coating products or powder coatings.

E. For metal coatings:

1. Recommended work practices still apply; however, the VOC limits and application methods for provisions of this article do not apply to the following:

- a. Stencil coatings;
- b. Safety-indicating coatings;
- c. Solid-film lubricants;
- d. Electric-insulating and thermal conducting coatings;
- e. Magnetic data storage disk coatings; and
- f. Plastic extruded onto metal parts to form a coating.

2. Recommended VOC limits and work practices still apply to these coatings and coating operations; however, the application methods for provisions of this article do not apply to the following:

- a. Touch-up coatings;
- b. Repair coatings; and
- c. Textured finishes.

F. For plastic coatings:

1. Recommended application and work practices still apply to these coatings and coating operations; however, the VOC limits for provisions of this article do not apply to the following:

- a. Touch-up and repair coatings;
- b. Stencil coatings applied on clear or transparent substrates;
- c. Clear or translucent coatings;
- d. Coatings applied at a paint manufacturing facility while conducting performance tests on the coatings;
- e. Any individual coating category used in volumes less than 50 gallons in any one year, if substitute complaint coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per facility;

f. Reflective coating applied to highway cones;

g. Mask coatings that are less than 0.5 millimeter thick (dried) and the area coated is less than 25 square inches;

h. EMI/RF shielding coatings; and

i. Heparin-benzalkonium chloride (HBAC)-contained coatings applied to medical devices, provided that the total usage of all such coatings does not exceed 100 gallons per year, per facility.

2. The application methods for provisions of this article do not apply to airbrush methods using five gallons or less per year of coating; however, VOC limits and work practices do apply.

G. For automotive/transportation and business machine plastic part coatings:

1. The VOC limits for provisions of this article do not apply to the following:

- a. Texture coatings;
- b. Vacuum metalizing coatings;
- c. Gloss reducers;
- d. Texture topcoats;
- e. Adhesion primers;
- f. Electrostatic preparation coatings;
- g. Resist coatings; and
- h. Stencil coatings.

2. Recommended application and work practices still apply to these coatings and coating operations.

H. For pleasure craft surface coating operations, VOC limits and work practices do apply to extreme high gloss coatings; however, recommended application methods do not apply.]

9VAC5-40-8820. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Air-dried coating" means:

- 1. For general use, a coating that is cured at a temperature below 90°C (194°F).

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2. For automotive/transportation and business machine use, a coating that is dried by the use of air or forced warm air at temperatures up to 90°C (194°F).

"Antifoulant coating" means any coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the U.S. Environmental Protection Agency (EPA) as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136).

["Antifouling sealer/tie coat" means any coating applied over biocidal antifouling coating for the purpose of preventing release of biocides into the environment or to promote adhesion between an antifouling and a primer or other antifouling.]

"Baked coating" means a coating that is cured at a temperature at or above 90°C (194°F).

["Biocide" means a chemical substance or microorganism that can deter, render harmless, or exert a controlling effect on any harmful organism by chemical or biological means.]

"Black automotive coating" means a coating that meets both of the following criteria: (i) maximum lightness of 23 units and (ii) saturation of less than 2.8, where saturation equals the square root of $A^2 + B^2$. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

"Business machine" means a device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission, including devices listed in [~~Standard Industrial Classification numbers 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification number 3861~~ National American Industry Classification System (NAICS) codes 333318, 334111, 339940, 334112, 334118, 334210, 334418, 334519, 334613, and photocopying equipment in 333316].

"Camouflage coating" means a coating used, principally by the military, to conceal equipment from detection.

"Clear coating" means:

1. For general use, a colorless coating that contains binders, but no pigment, and is formulated to form a transparent film.
2. For automotive/transportation and business machine use, a coating that lacks color and opacity or is transparent and that uses the undercoat as a reflectant base or undertone color.

"Coating unit" means a series of one or more coating applicators and any associated drying area or oven wherein a coating is applied, dried, or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not

necessary for a coating unit to have an oven or flash-off area.

"Drum" means any cylindrical metal shipping container larger than 12 gallons capacity but no larger than 110 gallons capacity.

"Electric dissipating coating" means a coating that rapidly dissipates a high-voltage electric charge.

"Electric-insulating varnish" means a nonconvertible-type coating applied to electric motors, components of electric motors, or power transformers to provide electrical, mechanical, and environmental protection or resistance.

["EMF/RFI shielding" means a coating used on electrical or electronic equipment to provide shielding against electromagnetic interference, radio frequency interference, or static discharge.]

"Etching filler" means a coating that contains less than 23% solids by weight and at least 0.5% acid by weight and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means:

1. For general use, a coating that when tested by the American Society for Testing and Materials (ASTM) Standard Test Method for Specular Gloss (see 9VAC5-20-21) shows a reflectance of 75 or more on a 60° meter.
2. For pleasure craft surface coating, any coating that achieves at least 95% reflectance on a 60° meter when tested by ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"Extreme performance coating" means a coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to the following:

1. Chronic exposure to corrosive, caustic, or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;
2. Repeated exposure to temperatures in excess of 250°F; or
3. Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, and heavy duty trucks.

"Fiberglass boat manufacturing materials" means materials utilized at facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. Fiberglass boat manufacturing materials are not materials used at facilities that manufacture solely parts of boats (i.e., hatches, seats, or lockers) or boat trailers, but do not (i) manufacture hulls or decks of boats from fiberglass or (ii) build molds to make fiberglass boat hulls or decks.

"Finish primer/surfacer" means a coating applied with a wet film thickness of less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.

"Flexible coating" means any coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.

"Fog coat" means a coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture. A fog coat shall not be applied at a thickness of more than 0.5 mils of coating solids.

"Heat-resistant coating" means a coating that must withstand a temperature of at least 400°F during normal use.

"High bake coating" means a coating that is designed to cure only at temperatures of more than 90°C (194°F).

"High build primer/surfacer" means a coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

"High gloss" means any coating that achieves at least 85% reflectance on a 60° meter when tested by ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"High performance architectural coating" means a coating used to protect architectural subsections and that meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

"High temperature coating" means a coating that is certified to withstand a temperature of 1000°F for 24 hours.

"Metallic coating" means a coating that contains more than [5 five] grams of metal particles per liter of coating as applied. "Metal particles" are pieces of a pure elemental metal or a combination of elemental metals.

"Military specification coating" means a coating that has a formulation approved by a United States military agency for use on military equipment.

"Miscellaneous metal parts and products" means a varied range of metal and plastic parts and products that are constructed either entirely or partially from metal or plastic. These miscellaneous metal products and plastic parts include, but are not limited to, metal and plastic

components of the following types of products as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles (as defined in 40 CFR 63.3176), lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and numerous other industrial and household products.

"Miscellaneous metal product and plastic parts coating" means coatings that include paints, sealants, caulks, inks, and maskants (decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered miscellaneous metal or plastic part coatings). The paints include several categories of primers, topcoats, and specialty coatings, typically defined by the coating's function. The types of coating technologies used by miscellaneous metal product and plastic part surface coating facilities include higher solids, waterborne, and powder coatings, as well as conventional solvent-borne coatings. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered miscellaneous metal or plastic part coatings.

"Miscellaneous metal product and plastic parts surface coating operation" means the application of surface coatings by the manufacturer of miscellaneous metal and plastic parts to the parts it produces, and by facilities that perform surface coating of miscellaneous metal and plastic parts on a contract basis.

"Mold seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface that, when coated with a mold release coating, prevents products from sticking to the mold.

"Motor vehicle bedliner" means a multi-component coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

"Motor vehicle cavity wax" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

"Motor vehicle deadener" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

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"Motor vehicle gasket/sealing material" means a fluid, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization (RTV) seal material.

"Motor vehicle lubricating wax/compound" means a protective lubricating material, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to vehicle hubs and hinges.

"Motor vehicle sealer" means a high viscosity material, used at a facility that is not an automobile or light-duty truck assembly coating facility, generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

"Motor vehicle trunk interior coating" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the trunk interior to provide chip protection.

"Motor vehicle underbody coating" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the undercarriage or firewall to prevent corrosion [and/or or] provide chip protection.

"Multi-colored coating" means a coating that exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Pan-backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates;

abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Pleasure craft" means vessels that are manufactured or operated primarily for recreational purposes, or leased, rented, or chartered to a person or business for recreational purposes. The owner of such vessels shall be responsible for certifying that the intended use is for recreational purposes.

"Pleasure craft coating" means any marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure.

"Pretreatment coating" means a coating that contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Pretreatment wash primer" means a coating that contains no more than 12% solids, by weight, and at least 0.5% acids, by weight; is used to provide surface etching; and is applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

"Red automotive coating" means a coating that meets all of the following criteria:

1. Yellow limit: the hue of hostaperm scarlet.
2. Blue limit: the hue of monastral red-violet.
3. Lightness limit for metallics: 35% aluminum flake.
4. Lightness limit for solids: 50% titanium dioxide white.
5. Solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units.
6. Metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units.

These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

"Repair coating" means a coating used to re-coat portions of a previously coated product that has sustained

mechanical damage to the coating following normal coating operations.

"Shock-free coating" means a coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being of low capacitance and high resistance, and having resistance to breaking down under high voltage.

"Silicone release coating" means any coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

"Solar-absorbent coating" means a coating that has as its prime purpose the absorption of solar radiation.

"Texture coating" means a coating that is applied to a plastic part that, in its finished form, consists of discrete raised spots of the coating.

"Topcoat" means any final coating applied to the interior or exterior of a pleasure craft.

"Touchup coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means:

1. For general use, the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film. Vacuum metalizing/physical

vapor deposition (PVD) is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.

2. For automotive/transportation and business machine use, topcoats and basecoats that are used in the vacuum-metalizing process.

"VOC" means volatile organic compound.

"Wood furniture coatings" means protective, decorative, or functional films applied in thin layers to a surface used in the manufacture of wood furniture or wood furniture components. Such coatings include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

9VAC5-40-8830. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit the discharge into the atmosphere from a coating application system any volatile organic compound in excess of the limits contained in Tables 4-59A through 4-59E. The VOC content limits are mass VOC per gallon of coating less water and exempt solvents and are based on low-VOC coatings. If more than one emission limitation in this subsection applies to a specific coating, then the least-stringent emission limitation shall be applied.

**TABLE 4-59A.
METAL PARTS AND PRODUCTS VOC CONTENT LIMITS**

<u>Coating Category</u>	<u>Air-dried Coating</u>		<u>Baked Coating</u>	
	<u>kg VOC/l coating</u>	<u>lb VOC/gal coating</u>	<u>kg VOC/l coating</u>	<u>lb VOC/gal coating</u>
<u>General one component</u>	<u>0.34</u>	<u>2.8</u>	<u>0.28</u>	<u>2.3</u>
<u>General multi-component</u>	<u>0.34</u>	<u>2.8</u>	<u>0.28</u>	<u>2.3</u>
<u>Camouflage</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Electric-insulating [harnish varnish]</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Etching filler</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Extreme high-gloss</u>	<u>0.42</u>	<u>3.5</u>	<u>0.36</u>	<u>3.0</u>
<u>Extreme performance</u>	<u>0.42</u>	<u>3.5</u>	<u>0.36</u>	<u>3.0</u>
<u>Heat-resistant</u>	<u>0.42</u>	<u>3.5</u>	<u>0.36</u>	<u>3.0</u>
<u>High performance architectural</u>	<u>[0.42 0.74]</u>	<u>[3.5 6.2]</u>	<u>[0.42 0.74]</u>	<u>[3.5 6.2]</u>
<u>High temperature</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Metallic</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Military specification</u>	<u>0.34</u>	<u>2.8</u>	<u>0.28</u>	<u>2.3</u>

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<u>Mold seal</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Pan-backing</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Prefabricated architectural multi-component</u>	<u>0.42</u>	<u>3.5</u>	<u>0.28</u>	<u>2.3</u>
<u>Prefabricated architectural one-component</u>	<u>0.42</u>	<u>3.5</u>	<u>0.28</u>	<u>2.3</u>
<u>Pretreatment coatings</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Repair and touch-up</u>	<u>0.42</u>	<u>3.5</u>	<u>0.36</u>	<u>3.0</u>
<u>Silicone release</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Solar-absorbent</u>	<u>0.42</u>	<u>3.5</u>	<u>0.36</u>	<u>3.0</u>
<u>Vacuum-metalizing</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Drum coating, new, exterior</u>	<u>0.34</u>	<u>2.8</u>	<u>0.34</u>	<u>2.8</u>
<u>Drum coating, new, interior</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Drum coating, reconditioned, exterior</u>	<u>0.42</u>	<u>3.5</u>	<u>0.42</u>	<u>3.5</u>
<u>Drum coating, reconditioned, interior</u>	<u>0.50</u>	<u>4.2</u>	<u>0.50</u>	<u>4.2</u>

TABLE 4-59B. PLASTIC PARTS AND PRODUCTS VOC CONTENT LIMITS

<u>Coating Category</u>	<u>kg VOC/liter coating</u>	<u>lbs VOC/gal coating</u>
<u>General one component</u>	<u>0.28</u>	<u>2.3</u>
<u>General multi-component</u>	<u>0.42</u>	<u>3.5</u>
<u>Electric dissipating and shock-free</u>	<u>0.80</u>	<u>6.7</u>
<u>Extreme performance</u>	<u>0.42 (2-pack coatings/multi-component)</u>	<u>3.5 (2-pack coatings/multi-component)</u>
<u>Metallic</u>	<u>0.42</u>	<u>3.5</u>
<u>Military specification</u>	<u>0.34 (1 pack/1 component)</u> <u>0.42 (2 pack/multi-component)</u>	<u>2.8 (1 pack/1 component)</u> <u>3.5 (2 pack/multi-component)</u>
<u>Mold seal</u>	<u>0.76</u>	<u>6.3</u>
<u>Multi-colored</u>	<u>0.68</u>	<u>5.7</u>
<u>Optical</u>	<u>0.80</u>	<u>6.7</u>
<u>Vacuum-metalizing</u>	<u>0.80</u>	<u>6.7</u>

TABLE 4-59C. AUTOMOTIVE/TRANSPORTATION AND BUSINESS MACHINE PLASTIC PARTS VOC CONTENT LIMITS

<u>Coating Category</u>	<u>kg VOC/liter coating</u>	<u>lbs VOC/gal coating</u>
<u>Automotive/Transportation Coatings (For red, yellow, and black automotive coatings, except touch up and repair coatings, the recommended limit is determined by multiplying the appropriate limit in this table by 1.15.)</u>		
<u>I. High Bake Coatings - Interior and Exterior Parts</u>		
<u>Flexible</u>	<u>0.54</u>	<u>4.5</u>
<u>Nonflexible</u>	<u>0.42</u>	<u>3.5</u>
<u>Base coating</u>	<u>0.52</u>	<u>4.3</u>
<u>Clear coating</u>	<u>0.48</u>	<u>4.0</u>
<u>Non-basecoat/clear coat</u>	<u>0.52</u>	<u>4.3</u>
<u>II. Low Bake/Air-dried Coatings - Exterior Parts</u>		
<u>Primers</u>	<u>0.58</u>	<u>4.8</u>
<u>Base coating</u>	<u>0.60</u>	<u>5.0</u>
<u>Clear [coatings: coating]</u>	<u>0.54</u>	<u>4.5</u>
<u>Non-basecoat/clear coat</u>	<u>0.60</u>	<u>5.0</u>
<u>III. Low Bake/Air-dried Coatings - Interior Parts</u>	<u>0.60</u>	<u>5.0</u>
<u>IV. Touchup and Repair Coatings</u>	<u>0.62</u>	<u>5.2</u>
<u>Business Machine Coatings</u>		
<u>I. Primers</u>	<u>0.35</u>	<u>2.9</u>
<u>II. Topcoat</u>	<u>0.35</u>	<u>2.9</u>
<u>III. Texture Coat</u>	<u>0.35</u>	<u>2.9</u>
<u>IV. Fog Coat</u>	<u>0.26</u>	<u>2.2</u>
<u>V. Touchup and Repair</u>	<u>0.35</u>	<u>2.9</u>

TABLE 4-59D. PLEASURE CRAFT SURFACE COATING VOC CONTENT LIMITS

<u>Coating Category</u>	<u>kg VOC/liter coating</u>	<u>lbs VOC/gal coating</u>
<u>Extreme high-gloss topcoat</u>	<u>[0.49 0.60]</u>	<u>[4.1 5.0]</u>
<u>High gloss topcoat</u>	<u>0.42</u>	<u>3.5</u>
<u>Pretreatment wash primers</u>	<u>0.78</u>	<u>6.5</u>
<u>Finish primer/surfacer</u>	<u>0.42</u>	<u>3.5</u>
<u>High build primer/surfacer</u>	<u>0.34</u>	<u>2.8</u>
<u>Aluminum substrate antifoulant coating</u>	<u>0.56</u>	<u>4.7</u>
<u>[Antifouling sealer/tie coat]</u>	<u>[0.42]</u>	<u>[3.5]</u>

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<u>Other substrate antifoulant coating</u>	<u>0.33</u>	<u>2.8</u>
<u>All other pleasure craft surface coatings for metal or plastic</u>	<u>0.42</u>	<u>3.5</u>

TABLE 4-59E. MOTOR VEHICLE MATERIALS VOC CONTENT LIMITS

<u>Coating Category</u>	<u>kg VOC/liter coating</u>	<u>lbs VOC/gal coating</u>
<u>Motor vehicle cavity wax</u>	<u>0.65</u>	<u>5.4</u>
<u>Motor vehicle sealer</u>	<u>0.65</u>	<u>5.4</u>
<u>Motor vehicle deadener</u>	<u>0.65</u>	<u>5.4</u>
<u>Motor vehicle gasket/gasket sealing material</u>	<u>0.20</u>	<u>1.7</u>
<u>Motor vehicle underbody coating</u>	<u>0.65</u>	<u>5.4</u>
<u>Motor vehicle trunk interior coating</u>	<u>0.65</u>	<u>5.4</u>
<u>Motor vehicle bedliner</u>	<u>0.20</u>	<u>1.7</u>
<u>Motor vehicle lubricating wax/compound</u>	<u>0.70</u>	<u>5.8</u>

B. No owner or other person shall cause or permit the discharge into the atmosphere from a coating application system any volatile organic compound in excess of the limits contained in Tables 4-59F through 4-59I. The emission rate limits are based on low-VOC coatings and add-on controls on a VOC per volume solids basis. If more than one emission limitation in this subsection applies to a specific coating, then the least stringent emission limitation shall be applied.

TABLE 4-59F.
METAL PARTS AND PRODUCTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

<u>Coating Category</u>	<u>Air-dried</u>		<u>Baked</u>	
	<u>kg VOC/l solids</u>	<u>lb VOC/gal solids</u>	<u>Kg VOC/l solids</u>	<u>lb VOC/gal solids</u>
<u>General one component</u>	<u>0.54</u>	<u>4.52</u>	<u>0.40</u>	<u>3.35</u>
<u>General multi-component</u>	<u>0.54</u>	<u>4.52</u>	<u>0.40</u>	<u>3.35</u>
<u>Camouflage</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Electric-insulating varnish</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Etching filler</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Extreme high-gloss</u>	<u>0.80</u>	<u>6.67</u>	<u>0.61</u>	<u>5.06</u>
<u>Extreme performance</u>	<u>0.80</u>	<u>6.67</u>	<u>0.61</u>	<u>5.06</u>
<u>Heat-resistant</u>	<u>0.80</u>	<u>6.67</u>	<u>0.61</u>	<u>5.06</u>
<u>High performance architectural</u>	[0.80 4.56]	[6.67 38.0]	[0.80 4.56]	[6.67 38.0]
<u>High temperature</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Metallic</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Military specification</u>	<u>0.54</u>	<u>4.52</u>	<u>0.40</u>	<u>3.35</u>

<u>Mold-seal</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Pan-backing</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Prefabricated architectural multi-component</u>	<u>0.80</u>	<u>6.67</u>	<u>0.40</u>	<u>3.35</u>
<u>Prefabricated architectural one-component</u>	<u>0.80</u>	<u>6.67</u>	<u>0.40</u>	<u>3.35</u>
<u>Pretreatment coatings</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Silicone release 0.80</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Solar-absorbent</u>	<u>0.80</u>	<u>6.67</u>	<u>0.61</u>	<u>5.06</u>
<u>Vacuum-metalizing</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Drum coating, new, exterior</u>	<u>0.54</u>	<u>4.52</u>	<u>0.54</u>	<u>4.52</u>
<u>Drum coating, new, interior</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Drum coating, reconditioned, exterior</u>	<u>0.80</u>	<u>6.67</u>	<u>0.80</u>	<u>6.67</u>
<u>Drum coating, reconditioned, interior</u>	<u>1.17</u>	<u>9.78</u>	<u>1.17</u>	<u>9.78</u>

TABLE 4-59G.
PLASTIC PARTS AND PRODUCTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

<u>Coating Category</u>	<u>kg VOC/liter solids</u>	<u>lbs VOC/gal solids</u>
<u>General one component</u>	<u>0.40</u>	<u>3.35</u>
<u>General multi-component</u>	<u>0.80</u>	<u>6.67</u>
<u>Electric dissipating coatings and shock-free</u>	<u>8.96</u>	<u>74.7</u>
<u>Extreme performance</u>	<u>0.80</u> (2-pack coatings/multi-component)	<u>6.67</u> (2-pack coatings/multi-component)
<u>Metallic</u>	<u>0.80</u>	<u>6.67</u>
<u>Military specification</u>	<u>0.54 (1 pack/1 component)</u> <u>0.80 (2 pack/multi-component)</u>	<u>4.52 (1 pack/1 component)</u> <u>6.67 (2 pack/multi-component)</u>
<u>Mold seal</u>	<u>5.24</u>	<u>43.7</u>
<u>Multi-colored</u>	<u>3.04</u>	<u>25.3</u>
<u>Optical</u>	<u>8.96</u>	<u>74.7</u>
<u>Vacuum-metalizing</u>	<u>8.96</u>	<u>74.7</u>

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TABLE 4-59H.
AUTOMOTIVE/TRANSPORTATION AND BUSINESS MACHINE PLASTIC PARTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

<u>Coating Category</u>	<u>kg VOC/liter solids</u>	<u>lbs VOC/gal solids</u>
<u>Automotive/Transportation Coatings (For red, yellow, and black automotive coatings, except touch up and repair coatings, the recommended limit is determined by multiplying the appropriate limit in this table by 1.15.)</u>		
<u>I. High Bake Coatings - Interior and Exterior Parts</u>		
<u>Flexible primer</u>	<u>1.39</u>	<u>11.58</u>
<u>Nonflexible primer</u>	<u>0.80</u>	<u>6.67</u>
<u>Base coats</u>	<u>1.24</u>	<u>10.34</u>
<u>Clear coat</u>	<u>1.05</u>	<u>8.76</u>
<u>Non-basecoat/clear coat</u>	<u>1.24</u>	<u>10.34</u>
<u>II. Low Bake/Air-dried Coatings - Exterior Parts</u>		
<u>Primers</u>	<u>1.66</u>	<u>13.80</u>
<u>Basecoat</u>	<u>1.87</u>	<u>15.59</u>
<u>[Clearcoat Clear coat]</u>	<u>1.39</u>	<u>11.58</u>
<u>[Non-basecoat/clearcoat Non-basecoat/clear coat]</u>	<u>1.87</u>	<u>15.59</u>
<u>III. Low Bake/Air-dried Coatings - Interior Parts</u>	<u>1.87</u>	<u>15.59</u>
<u>IV. Touchup and Repair Coatings</u>	<u>2.13</u>	<u>17.72</u>
<u>Business Machine Coatings</u>		
<u>I. Primers</u>	<u>0.57</u>	<u>4.80</u>
<u>II. Topcoat</u>	<u>0.57</u>	<u>4.80</u>
<u>III. Texture Coat</u>	<u>0.57</u>	<u>4.80</u>
<u>IV. Fog Coat</u>	<u>0.38</u>	<u>3.14</u>
<u>V. Touchup and Repair</u>	<u>0.57</u>	<u>4.80</u>

TABLE 4-59L.
PLEASURE CRAFT SURFACE COATING VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

<u>Coating Category</u>	<u>kg VOC/liter solids</u>	<u>lbs VOC/gal solids</u>
<u>Extreme high-gloss topcoat</u>	<u>[1.10 1.88]</u>	<u>[9.2 15.6]</u>
<u>High gloss topcoat</u>	<u>0.80</u>	<u>6.7</u>
<u>Pretreatment wash primer</u>	<u>6.67</u>	<u>55.6</u>
<u>Finish primer/surfacer</u>	<u>0.80</u>	<u>6.7</u>
<u>High build primer surfacer</u>	<u>0.55</u>	<u>4.6</u>

<u>Aluminum substrate antifoulant coating</u>	<u>1.53</u>	<u>12.8</u>
[<u>Antifouling sealer/tie coat</u>	<u>0.8</u>	<u>6.7</u>]
<u>Other substrate antifoulant coating</u>	<u>0.53</u>	<u>4.4</u>
<u>All other pleasure craft surface coatings for metal or plastic</u>	<u>0.80</u>	<u>6.7</u>

C. Should product performance requirements or other needs dictate the use of higher-VOC materials than those that would meet the emission limits of subsections A and B of this section, an affected facility may opt to use add-on control equipment with an overall control efficiency of 90% in lieu of using low-VOC coatings and required application methods in subsection E of this section. Add-on devices include but are not limited to oxidizers, adsorbers, absorbers, and concentrators. Add-on devices coupled with capture systems to collect the VOC being released at the affected facilities shall achieve an overall control efficiency of no less than 90%.

D. In addition to the emissions limitations described in subsections A [through, B, and] C of this section, the following work practices for storage, mixing operations, and handling operations for coatings, thinners, and coating-related waste materials shall be utilized:

1. All VOC-containing coatings, thinners, and coating-related waste materials shall be stored in closed containers.
2. Mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste materials shall be kept closed at all times except when depositing or removing these materials.
3. Spills of VOC-containing coatings, thinners, and coating-related waste materials shall be minimized.
4. VOC-containing coatings, thinners, and coating-related waste materials shall be conveyed from one location to another in closed containers or pipes.

E. In addition to the work practices described in subsection D of this section, the following work practices for cleaning materials, used to clean surfaces before coating (surface preparation) and to clean application equipment between coating jobs, shall be utilized:

1. All VOC-containing cleaning materials and used shop towels shall be stored in closed containers.
2. Storage containers used for VOC-containing cleaning materials shall be kept closed at all times except when depositing or removing these materials.
3. Spills of VOC-containing cleaning materials shall be minimized.
4. VOC-containing cleaning materials shall be conveyed from one location to another in closed containers or pipes
5. VOC emissions from cleaning of application, storage, mixing, and conveying equipment shall be minimized by ensuring that equipment cleaning is performed without

atomizing the cleaning solvent and all spent solvent is captured in closed containers.

F. One or more of the following application techniques shall be used to apply any finish material listed in Tables 4-59A through 4-59I:

1. Flow/curtain coating;
2. Dip coating;
3. Roller coating;
4. Brush coating;
5. Electrodeposition coating;
6. High volume low pressure (HVLP) spraying;
7. Electrostatic spray;
8. Airless spray;
9. Air-assisted airless spray; or
10. Other coating application methods that achieve emission reductions equivalent to or greater than those achieved by HVLP or electrostatic spray application methods.

9VAC5-40-8840. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-8850. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-8860. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of this chapter (Emission Standards for Odor, Rule 4-2) apply.

9VAC5-40-8870. Standard for toxic pollutants.

The provisions of Article 4 [(9VAC5-60-200 et seq.)] of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8880. Compliance.

- A. The provisions of 9VAC5-40-20 (Compliance) apply.
- B. Compliance may be demonstrated (i) on a mass VOC per gallon of coating less water and exempt solvents basis under 9VAC5-40-8830 A, (ii) on a mass VOC per volume of solids basis under 9VAC5-40-8830 B, or (iii) the overall control basis [of] under 9VAC5-40-8830 C.
- C. The emission standards in 9VAC5-40-8830 A and 9VAC5-40-8830 B apply coating by coating or to the volume weighted average of coatings where the coatings are used on

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a single coating application system and the coatings are the same type or perform the same function. Such averaging shall not exceed 24 hours.

D. Compliance determinations for control technologies not based on compliant coatings (i.e., coating formulation alone) shall be based on the applicable emission standards in 9VAC5-40-8830 B and the procedures of 9VAC5-20-121.

9VAC5-40-8890. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~one year after the effective date of this article~~] February 1, 2017 [.

9VAC5-40-8900. Test methods and procedures.

The provisions of 9VAC5-40-30 (Emission Testing) apply.

9VAC5-40-8910. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8920. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, Records and Reporting) apply.

9VAC5-40-8930. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8940. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and Control Equipment Maintenance or Malfunction) apply.

9VAC5-40-8950. Permits.

A permit may be required prior to beginning any of the activities specified [~~below in this section~~] and the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.

VA.R. Doc. No. R10-2125; Filed October 29, 2015, 11:49 a.m.

Final Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. C09) (amending 9VAC5-40-7800; adding 9VAC5-40-8380 through 9VAC5-40-8480).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

Agency Contact: Gary Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105,

Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions from offset lithographic printing operations and letterpress printing operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

Changes since publication of the proposed regulation include revising the conditions under which performance testing would be conducted, adding default retention factors and capture efficiencies, adding a provision to allow an exemption of a certain amount of cleaning materials, and correcting definitions and standards to conform to the new control techniques guidelines.

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.

Article 53

Emission Standards for Lithographic Printing Processes (Rule 4-53)

9VAC5-40-7800. Applicability and designation of affected facility.

A. Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each lithographic printing process ~~which~~ that uses a substrate other than a textile.

B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206.

C. Exempted from the provisions of this article are ~~facilities~~ offset lithographic printing operations in the Northern Virginia Volatile Organic Compound Emissions Control Area whose potential to emit is less than 10 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. ~~All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection. Provisions applicable to offset lithographic printing operations in the Northern Virginia Volatile Organic Compound Emissions Control Area are provided in Article 56.1 [of this part] (9VAC5-40-8420 et seq.) [of this part].~~

D. Exempted from the provisions of this article are facilities in all volatile organic compound emissions control areas, other than the Northern Virginia Volatile Organic Compound Emissions Control Area, whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.

E. The provisions of this article do not apply to the following:

1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:
 - a. The operation is not an integral part of the production process;
 - b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30-day period; and
 - c. The exemption is approved by the board.
2. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.
3. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.
4. Equipment used to make blueprints.
5. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

Article 56

Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56)

9VAC5-40-8380. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is any letterpress printing operation at a stationary source where the actual emissions of volatile organic compounds (VOCs) from all aspects of letterpress printing operations, including related cleaning activities, before the consideration of controls, are equal to or exceed 3.0 tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

9VAC5-40-8382. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Cleaning materials" means any washes, cleaners, solvents, or rejuvenators that are used to remove excess printing inks, oils, and residual paper from a press, press equipment, or press parts, or used to remove dried ink from areas around a press. Cleaning materials include solvents and cleaners used for manual cleaning, and cleaning solutions used by automatic cleaning systems such as roller wash and type wash. Cleaning materials do not include cleaners used for cleaning electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies such as detergents used to clean the floor (other than to remove dried ink from areas around a press), and cleaning performed in parts washers and cold cleaners subject to Article 47 (9VAC5-40-6820 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources).

"Composite partial vapor pressure" means the sum of the partial pressures of the compounds defined as volatile organic compounds. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^n \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

where:

- W_i ≡ Weight of the "i"th VOC compound, in grams.
- W_w ≡ Weight of water, in grams.
- W_e ≡ Weight of exempt compound, in grams.
- MW_i ≡ Molecular weight of the "i"th VOC compound, in grams/gram-mole.
- MW_w ≡ Molecular weight of water, in grams/gram-mole.
- MW_e ≡ Molecular weight of exempt compound, in grams/gram-mole.
- PP_c ≡ VOC composite partial pressure at 20°C, in millimeters of mercury (mm Hg).
- VP_i ≡ Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg.

"First installation date" means the date that a control device is first installed for the purpose of controlling

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emissions. The first installation date does not change if the control device is later moved to a new location or installed on a different press.

"Heatset" means a printing process in which heat from a dryer is used to evaporate ink oils from the substrate.

"Letterpress printing" means a printing process in which the image area is raised relative to the nonimage area and paste ink is transferred to the substrate directly from the image surface.

"Letterpress printing operation" means one or more [~~letterpress~~] printing processes employing letterpress printing on [~~letterpress~~] printing presses and the related processes necessary to directly support the operation of those presses including, but not limited to, cleaning, pre-press, and post-press operations.

"Non-heatset" means a printing process in which the printing inks are set and dried by absorption or oxidation rather than heat. For the purposes of this article, UV-cured and electron beam-cured inks are considered non-heatset.

"Press" means a printing production assembly composed of one or more units to produce a printed substrate (sheet or web).

"Printing" means a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried, or cured and that is subject to the same emission standard. A printing process may include any equipment that applies, conveys, dries, or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, [~~air~~ presses, digital output devices, heaters,] dryers, drying areas, and ovens.

"Sheet-fed" means a printing process in which individual sheets of substrate are fed into the press sequentially.

"Theoretical potential to emit" means for the purposes of this article the maximum capacity of a letterpress printing process to emit VOC and shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the [~~heatset web offset lithographic~~ letterpress] printing process is subject to state and federally enforceable permit conditions that limit production rates or hours of operation.

"12-month rolling period" means a period that is determined monthly and consists of the previous 12 consecutive calendar months.

"Unit" means [, for the purposes of this article,] the smallest complete printing component, composed of an inking [~~and dampening~~] system, of a [letterpress] printing press.

"VOC" means volatile organic compound.

"Web" means a continuous roll of printing substrate.

9VAC5-40-8384. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any letterpress printing press, letterpress printing process, or other letterpress printing operation that is subject to this article unless that press, process, or operation meets the requirements of this section.

B. The following provisions apply to each dryer on each heatset web letterpress printing process, except that these provisions do not apply to (i) any heatset web letterpress printing process with a theoretical potential to emit less than 25 tons per year of VOC [(petroleum ink oil)] from the dryer, prior to controls; (ii) any heatset web letterpress printing process used exclusively for book printing; or (iii) any heatset web letterpress printing process with a maximum web width of 22 inches or less. These provisions also do not apply to non-heatset web letterpress printing processes or to sheet-fed letterpress printing processes.

1. VOC emissions from the heatset web letterpress printing process dryer shall be controlled as follows:

a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating;

b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.

c. For a control device whose first installation date is prior to [(insert effective date of this article) February 1, 2016], the control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

d. For a control device whose first installation date is on or after [(insert effective date of this article) February 1, 2016], the control device shall reduce VOC emissions in the dryer air exhaust by at least 95%.

2. Where the heatset web letterpress printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in subdivisions 1 c and 1 d of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web letterpress printing process dryer exhaust air to 20 parts per million volume (ppmv) or less, as hexane on a dry basis.

3. Federally enforceable limitations on (i) the VOC [(petroleum ink oil)] content of inks and coatings applied [prior to the dryer], (ii) the total amounts of inks and coatings applied, (iii) the press application rates of inks and coatings, or (iv) the hours of press operation may be used to meet the 25 ton per year exception to this subsection.

C. Cleaning materials used at each letterpress printing operation shall meet one of the following limits, as applied [: except that 110 gallons of cleaning materials that meet neither limit may be used per 12 month rolling period]:

1. A VOC content of 70% by weight; or
2. A composite vapor pressure of 10 mm Hg at 20°C.

[The use of cleaning materials not meeting the limits in subdivision 1 or 2 of this subsection is permitted provided that the quantity of cleaning material used does not exceed 110 gallons over any 12-month rolling period.]

D. The following work practices shall be implemented:

1. Cleaning materials, inks, and coatings containing VOCs shall be kept in closed containers at all times unless filling, draining, or performing cleaning operations.
2. Shop towels, sponges, and other manual cleaning aids (i) that have been used for picking up excess ink and other coatings containing VOCs or (ii) that have been used with cleaning materials containing VOCs shall be kept in closed containers.
3. Spills of cleaning materials, fountain solution, inks, varnishes, and other coatings containing VOCs shall be minimized and shall be cleaned up promptly.

9VAC5-40-8386. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8388. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8390. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8394. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8396. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. [~~An~~ If requested by the board, an] emission test of the control device installed on a heatset web letterpress printing process dryer shall be performed to demonstrate compliance with the provisions of 9VAC5-40-8384 B [~~and 9VAC5-40-8398~~]. The negative dryer pressure shall be established during the initial test using an airflow direction indicator, such as a smoke stick or aluminum ribbons, or a differential pressure gauge. [The board may accept the results of an emission test conducted prior to February 1, 2016, if the owner or operator provides information and data that demonstrate that the test demonstrated compliance with the provisions of 9VAC5-40-8384 B.]

C. [~~Once initial compliance has been demonstrated with the heatset web letterpress printing process dryer control requirements of 9VAC5-40-8384 B through performance testing of an catalytic or thermal oxidation control device, continuing~~ Continuing] compliance with the heatset web letterpress printing process dryer control requirements in 9VAC5-40-8384 B shall be demonstrated for the catalytic or

thermal oxidation control device by monitoring the control device in accordance with 9VAC5-40-8410 B. The owner shall maintain the [~~3-hour~~ three-hour] average of the monitored temperature at a temperature no less than 50°F below the [~~3-hour~~ three-hour] average temperature that was recorded during the most recent performance test during which compliance was demonstrated. [In the absence of performance test results acceptable to the board that provide dryer control device temperatures that demonstrate continuing compliance with the requirements in 9VAC5-40-8384 B, control device temperatures that demonstrate compliance with manufacturer recommendations may be considered by the board to demonstrate compliance with heatset web offset letterpress printing process dryer control requirements in 9VAC5-40-8384 B.

D. A portion of the volatile organic compounds contained in inks and cleaning solution is retained in the printed web and in the shop towels used for cleaning. When applicable, the following retention factors may be used in determining volatile organic compounds emissions from letterpress printing operations:

1. A 20% volatile organic compound retention factor may be used for petroleum ink oils contained in heatset inks that are printed on absorptive substrates, meaning that 80% of the VOC (petroleum ink oil) in the ink is emitted during the printing process and is available for capture and control by an add-on pollution control device.
2. A 100% volatile organic compound retention factor may be used for vegetable ink oils contained in heatset inks that are printed on absorptive substrates, meaning that none of the VOC (vegetable ink oil) in the ink is emitted during the printing process and available for capture and control by an add-on pollution control device.
3. A 95% volatile organic compound retention factor may be used for petroleum ink oils contained in sheet-fed and non-heatset web inks printed on absorptive substrates, meaning that 5.0% of the VOC (petroleum ink oil) in the ink is emitted during the printing process.
4. A 100% volatile organic compound retention factor may be used for vegetable ink oils contained in sheet-fed and non-heatset web inks printed on absorptive substrates, meaning that none of the VOC (vegetable ink oil) in the ink is emitted during the printing process.
5. A 50% volatile organic compound retention factor may be used for cleaning solution VOC in shop towels for those cleaning solutions with a volatile organic compounds composite vapor pressure of no more than 10 millimeters of mercury (Hg) at 20°C (68°F) provided that the cleaning materials and used shop towels are kept in closed containers.

E. A portion of the volatile organic compounds contained in inks is captured for control by add-on air pollution control equipment. When applicable, the following capture

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efficiencies may be used in determining volatile organic compounds emissions from letterpress printing operations:

1. A 100% volatile organic compound capture efficiency may be used for VOC (petroleum ink oils) from oil-based paste inks and oil-based paste varnishes (coatings) when the dryer is demonstrated to be operating at negative pressure relative to the surrounding pressroom.

2. Conventional letterpress inks and varnishes are paste-type materials. If other types of inks or coating materials are used on a letterpress press (e.g., fluid inks or coatings), capture efficiency testing shall be conducted for the VOC from these other materials if the printer wants to take into account the effect that the dryer controls have on VOC emissions from these other types of inks or coatings.]

9VAC5-40-8398. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~(insert a date corresponding to the first day of the 12th month after the effective date of this article)~~ February 1, 2017].

9VAC5-40-8400. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The following EPA test methods shall be used to demonstrate compliance with the heatset web letterpress printing process dryer control device control requirements in 9VAC5-40-8384 B.

1. Reference Method 1 or 1A, as appropriate, shall be used to select the sampling sites.

2. Reference Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the velocity and volumetric flow rate of the exhaust stream.

3. Reference Method 3 or 3A, as appropriate, shall be used to determine the concentration of O₂ and CO₂.

4. Reference Method 4 shall be used to determine moisture content.

5. Reference Methods 18, 25, or 25A shall be used to determine the VOC concentration of the dryer exhaust stream entering and exiting the control device, unless the alternate limit in 9VAC5-40-8384 B 2 is being met, in which case only the VOC concentration of the dryer exhaust control device outlet shall be determined.

6. Reference Method 25A shall be used to determine the dryer exhaust control device inlet and outlet VOC concentrations when the control device outlet concentration is less than 50 [~~ppmv~~ parts per million volume (ppmv)] VOC as carbon.

7. If the control device is an oxidizer, the combustion chamber temperature or catalyst bed inlet temperature corresponding to destruction efficiencies that meet the requirements of 9VAC5-40-8384 B shall be recorded.

C. The VOC content of as-applied inks, coatings, and cleaning materials shall be determined using Reference Method 24.

1. The analysis of as-supplied materials may be performed by the manufacturer or the supplier. Formulation information from the manufacturer may be used in lieu of Reference Method 24 analysis unless the board or the owner has reason to believe that the formulation information provided by the manufacturer is inaccurate.

2. The owner may use VOC content information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the [~~MSDS sheet~~ Safety Data Sheet (SDS)] to document the VOC content of the as-supplied material.

3. If cleaning materials are diluted by the owner prior to use, a calculation that combines the as-supplied VOC content information provided by the manufacturer or supplier, the VOC content of the diluent, and the proportions in which they are mixed may be used to make a determination of VOC content of the as-applied cleaning material in lieu of Reference Method 24.

4. The owner shall conduct Reference Method 24 testing of any as-applied cleaning material used for letterpress printing operations at any time at the board's request. The owner shall be prepared to sample as-applied fountain solution or cleaning materials at all times.

D. The VOC composite partial vapor pressure of cleaning solutions shall be determined using the formula provided in 9VAC5-40-8382 C or by an appropriate test method approved by the board.

1. The determination VOC composite partial vapor pressure for as-supplied cleaning solutions may be performed by the manufacturer or the supplier. The determination of as-applied composite vapor pressure based upon the manufacturer's instructions for dilution may be performed by the manufacturer or supplier.

2. The owner may use VOC composite partial vapor pressure information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the [~~Material Safety Data Sheet (MSDS)~~ Safety Data Sheet (SDS)] to document the VOC composite partial vapor pressure of the as-supplied or as-applied cleaning materials.

3. The following provisions apply to the determination of VOC composite partial vapor pressure for cleaning materials that are diluted by the owner prior to use:

a. If the dilution is made according to the manufacturer's instructions, the VOC composite partial vapor pressure for the as-applied cleaning material provided by the manufacturer or supplier may be used.

b. If a dilution is made and an as-applied VOC composite partial vapor pressure has not been provided by the manufacturer or supplier, or if the dilution is not made

according to the manufacturer's instructions, then the owner shall determine the VOC composite partial vapor pressure using the calculation method provided in 9VAC5-40-8382 C or by an appropriate test method approved by the board.

4. The owner shall conduct testing of any as-applied cleaning materials used for letterpress printing operations at any time at the board's request. The owner shall be prepared to sample as-applied cleaning materials at all times.

9VAC5-40-8410. Monitoring.

A. The provisions of 9VAC5-40-40 (Monitoring) apply.

B. Periodic monitoring of letterpress printing operations shall be conducted as follows:

1. The temperature of a catalytic or thermal oxidation control device shall be monitored at least once every 15 minutes while the printing process is operating, and that temperature shall be recorded by an analog or digital recording device.

a. For a catalytic oxidizer, the dryer exhaust temperature upstream of the catalyst bed shall be monitored and recorded.

b. For a thermal oxidizer, the combustion chamber temperature of the oxidizer shall be monitored and recorded.

2. Catalyst bed material in a catalytic oxidation control device shall be inspected annually for general catalyst condition and any signs of potential catalyst depletion. Sampling and evaluation of the catalyst bed material shall be conducted whenever the results of the inspection indicate signs of potential catalyst depletion or poor catalyst condition based on manufacturer's recommendations, but not less than once per year.

3. If a heatset web letterpress printing process is interlocked to ensure that the control device is operating and airflow is present when the printing process is operating, then periodic monitoring of dryer air flow is not required. If no interlock is present, then the printing process dryer air flow shall be verified and recorded once per operating day.

9VAC5-40-8412. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8414. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8416. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8418. Permits.

A permit may be required prior to beginning any of the activities specified [below in this section] if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

Article 56.1

Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56.1)

9VAC5-40-8420. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is any offset lithographic printing operation at a stationary source where the actual emissions of volatile organic compounds (VOCs) from all aspects of offset lithographic printing operations, including related cleaning activities, before the consideration of controls are equal to or exceed 3.0 tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

9VAC5-40-8422. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Alcohol" means any of the following compounds when used as a fountain solution additive: ethanol, n-propanol, and isopropanol.

"Alcohol substitute" means any nonalcohol additive that contains volatile organic compounds and is used in the fountain solution.

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"Batch" means a supply of fountain solution [or cleaning solution] that is prepared and used without alteration until completely used or removed from the printing process.

"Cleaning materials" means any washes, cleaners, solvents, or rejuvenators that are used to remove (i) excess printing inks, oils, and residual paper from a press, press equipment, or press parts or (ii) dried ink from areas around a press. Cleaning materials include solvents and cleaners used for manual cleaning and cleaning solutions used by automatic cleaning systems such as blanket wash, plate cleaner, metering roller cleaner, impression cylinder washes, rubber rejuvenators, and roller wash. Cleaning materials do not include cleaners used for cleaning electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies such as detergents used to clean the floor (other than to remove dried ink from areas around a press), and cleaning performed in parts washers and cold cleaners subject to Article 47 (9VAC5-40-6820 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources).

"Composite partial vapor pressure" means the sum of the partial pressures of the compounds defined as volatile organic compounds. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^n \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

where:

- W_i ≡ Weight of the "i"th VOC compound, in grams.
- W_w ≡ Weight of water, in grams.
- W_e ≡ Weight of exempt compound, in grams.
- MW_i ≡ Molecular weight of the "i"th VOC compound, in grams/gram-mole.
- MW_w ≡ Molecular weight of water, in grams/gram-mole.
- MW_e ≡ Molecular weight of exempt compound, in grams/gram-mole.
- PP_c ≡ VOC composite partial pressure at 20°C, in millimeters of mercury (mm Hg).
- VP_i ≡ Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg.

"First installation date" means the date that a control device is first installed for the purpose of controlling emissions. The first installation date does not change if the

control device is later moved to a new location or installed on a different press.

"Fountain solution" means any mixture of water, volatile and nonvolatile chemicals, and additives applied to a lithographic plate to repel ink from the nonimage area on the plate.

"Heatset" means a printing process in which heat from a dryer is used to evaporate ink oils from the substrate.

"Heatset web offset lithographic printing dryer" means the dryer or dryers installed as part of a heatset web offset lithographic printing process that dries [~~or cures~~] inks or surface coatings.

"Lithographic printing" means a planographic printing process in which the image and nonimage areas are chemically differentiated with the image area being oil receptive and the nonimage area being water receptive. This process differs from other printing processes, where the image is a raised or recessed surface.

"Non-heatset" means a printing process in which the printing inks are set and dried by absorption or oxidation rather than heat. For the purposes of this article, UV-cured and electron beam-cured inks are considered non-heatset.

"Offset lithographic printing" means a printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.

"Offset lithographic printing operation" means one or more printing processes employing offset lithographic printing on [~~offset lithographic~~] printing presses and includes the related processes necessary to directly support the operation of those offset lithographic printing processes including, but not limited to, pre-press and post-press operations. Varnishes, glues, and other coatings that are applied by an offset lithographic printing process are part of offset lithographic printing operations and are not considered as a separate process (e.g., paper coating).

"Press" means a printing production assembly composed of one or more units to produce a printed substrate (sheet or web).

"Printing" means a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried, or cured and that is subject to the same emission standard. A printing process may include any equipment that applies, conveys, dries, or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, [~~air~~ presses, digital output devices, fountain solutions, heaters,] dryers, drying areas, and ovens.

"Sheet-fed" means a printing process in which individual sheets of substrate are fed into the press sequentially.

"Theoretical potential to emit" means for the purposes of this article the maximum capacity of a heatset web offset lithographic printing process to emit VOC and shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the heatset web offset lithographic printing process is subject to state and federally enforceable permit conditions that limit production rates or hours of operation.

"12-month rolling period" means a period that is determined monthly and consists of the previous 12 consecutive calendar months.

"Unit" means the smallest complete printing component, composed of an inking [~~and dampening~~] system, of a printing press.

"VOC" means volatile organic compound.

"Web" means a continuous roll of printing substrate.

9VAC5-40-8424. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any offset lithographic printing press, offset lithographic printing process, or other offset lithographic printing operation that is subject to this article unless that press, process, or operation meets the requirements of this section.

B. Except as provided in subdivision 3 of this subsection, the following provisions apply to each heatset offset lithographic printing process at a facility whose potential to emit is greater than or equal to 10 tons per year of VOC, provided that the emission rates are determined in a manner acceptable to the board. All VOC emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in determining the potential to emit for this subsection.

1. VOC emissions from the heatset web offset lithographic printing process dryer shall be controlled as follows:

- a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating.
- b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.
- c. The control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

2. Where the heatset web offset lithographic printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in [~~subdivisions~~ subdivision] 1 c of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web offset lithographic printing process dryer exhaust air to 50 parts per million volume (ppmv) or less, as carbon (minus methane and ethane).

3. The provisions in subdivisions 1 and 2 of this subsection do not apply to the following:

a. Any heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC [(petroleum ink oil)] or more from the heatset web offset lithographic printing dryer. VOC standards for heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC [(petroleum ink oil)] or more are provided in subsection C of this section.

b. Printing processes used exclusively for determination of product quality and commercial acceptance provided:

(1) The operation is not an integral part of the production process;

(2) The emissions from all product quality printing processes do not exceed 400 pounds in any 30-day period; and

(3) The exemption is approved by the board.

c. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.

d. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.

e. Equipment used to make blueprints.

f. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

C. Except as provided in subdivisions [3,] 4 [,] and 5 of this subsection, the following provisions apply to each heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC [(petroleum ink oil)] or more from the dryer. These provisions do not apply to non-heatset web offset lithographic printing processes or to sheet-fed offset lithographic printing processes.

1. VOC emissions from the heatset web offset lithographic printing process dryer shall be controlled as follows:

a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating.

b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.

c. For a control device whose first installation date is prior to [(insert effective date of this article) February 1, 2016], the control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

d. For a control device whose first installation date is on or after [(insert effective date of this article) February 1, 2016], the control device shall reduce VOC emissions in the dryer air exhaust by at least 95%.

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2. Where the heatset web offset lithographic printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in subdivisions 1 c and 1 d of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web offset lithographic printing process dryer exhaust air to 20 parts per million volume (ppmv) or less, as hexane on a dry basis.

3. Federally enforceable limitations on (i) the VOC [(petroleum ink oil)] content of inks, varnishes, and other coatings applied [prior to the dryer]; (ii) the total amounts of inks, varnishes, and other coatings applied; (iii) the press application rates of inks, varnishes, and other coatings; or (iv) the hours of press operation may be used to meet the 25 ton per year exception to this subsection.

4. The provisions of subdivisions 1 and 2 of this subsection do not apply to (i) any heatset web offset lithographic printing process constructed on or after [~~(insert effective date of this article)~~ February 1, 2016,] and used exclusively for book printing or (ii) any heatset web offset lithographic printing process constructed on or after [~~(insert effective date of this article)~~ February 1, 2016,] with a maximum web width of 22 inches or less.

5. The heatset web offset lithographic printing process dryer control device provisions of subdivision 1 d of this subsection do not apply to (i) any heatset web offset lithographic printing process used exclusively for book printing; or (ii) any heatset web offset lithographic printing process with a maximum web width of 22 inches or less.

D. The following provisions shall apply to fountain solution applied to each offset lithographic printing press, except that these provisions shall not apply to (i) sheet-fed offset lithographic printing processes with a sheet size of 11 inches by 17 inches or smaller or (ii) sheet-fed offset lithographic printing processes with a total fountain solution reservoir of less than one gallon.

1. For each heatset web press:

a. When the fountain solution contains alcohol:

(1) The fountain solution, as applied, shall contain no more than 1.6% volatile organic compounds by weight; or

(2) The temperature of the fountain solution shall be maintained at or below 60°F and the fountain solution, as applied, shall contain no more than 3.0% VOCs by weight; or

b. When the fountain solution contains no alcohol, the fountain solution, as applied, shall contain no more than 5.0% VOCs by weight.

2. For each non-heatset web press, the fountain solution, as applied, shall contain no alcohol and shall contain no more than 5.0% VOCs by weight.

3. For each sheet-fed press:

a. The fountain solution, as applied, shall contain no more than 5.0% VOCs by weight; or

b. The temperature of the fountain solution shall be maintained at or below 60°F and the fountain solution, as applied, shall contain no more than 8.5% VOCs by weight.

E. Cleaning materials used at each offset lithographic printing operation shall meet one of the following limits, as applied:

1. A VOC content of 30% by weight; or

2. A composite vapor pressure of 10 mm Hg at 20°C (68°F).

[The use of cleaning materials not meeting the limits in subdivision 1 or 2 of this subsection is permitted provided that the quantity of cleaning material used does not exceed 110 gallons over any 12-month rolling period.]

F. The following work practices shall be implemented.

1. Cleaning materials, fountain solution, inks, varnishes, and coatings containing VOCs shall be kept in closed containers at all times unless filling, draining, or performing cleaning operations.

2. Shop towels, sponges, and other manual cleaning aids that (i) have been used for picking up excess ink, fountain solution, varnishes, and other coatings containing VOCs or (ii) have been used with cleaning materials containing VOCs shall be kept in closed containers.

3. Spills of cleaning materials, fountain solution, inks, varnishes, and other coatings containing VOCs shall be minimized and shall be cleaned up promptly.

9VAC5-40-8426. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8428. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8430. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8432. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8434. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. [~~An~~ If requested by the board, an] emission test of the control device installed on a heatset web offset lithographic printing process dryer shall be performed to demonstrate compliance with the provisions of 9VAC5-40-8424 B and C [~~and 9VAC5-40-8436~~]. The negative dryer pressure shall be established during the initial test using an airflow direction indicator, such as a smoke stick or aluminum ribbons, or a

differential pressure gauge. [The board may accept the results of an emission test conducted prior to the compliance date specified in 9VAC5-40-8436 if the owner or operator provides information and data that demonstrate that the test demonstrated compliance with the provisions of 9VAC5-40-8424 B and C.]

C. [~~Once initial compliance has been demonstrated with the heatset web offset lithographic printing process dryer control requirements of 9VAC5-40-8424 B and C through performance testing of an catalytic or thermal oxidation control device, continuing~~ Continuing] compliance with the heatset web offset lithographic printing process dryer control requirements in 9VAC5-40-8424 B and C shall be demonstrated for the catalytic or thermal oxidation control device by monitoring the control device in accordance with 9VAC5-40-8440 B 3, B 4, and B 5. The owner shall maintain the [~~3-hour~~ three-hour] average of the monitored temperature at a temperature no less than 50°F below the [~~3-hour~~ three-hour] average temperature that was recorded during the most recent performance test during which compliance was demonstrated. [In the absence of performance test results acceptable to the board that provide dryer control device temperatures that demonstrate continuing compliance with the requirements in 9VAC5-40-8424 B and C, control device temperatures that demonstrate compliance with manufacturer recommendations may be considered by the board to demonstrate compliance with heatset web offset lithographic printing process dryer control requirements in 9VAC5-40-8424 B and C.

D. A portion of the volatile organic compounds contained in inks and cleaning solution is retained in the printed web and in the shop towels used for cleaning. When applicable, the following retention factors may be used in determining volatile organic compounds emissions from offset lithographic printing operations:

1. A 20% volatile organic compound retention factor may be used for petroleum ink oils contained in heatset inks that are printed on absorptive substrates, meaning that 80% of the VOC (petroleum ink oil) in the ink is emitted during the printing process and is available for capture and control by an add-on pollution control device.
2. A 100% volatile organic compound retention factor may be used for vegetable ink oils contained in heatset inks that are printed on absorptive substrates, meaning that none of the VOC (vegetable ink oil) in the ink is emitted during the printing process and available for capture and control by an add-on pollution control device.
3. A 95% volatile organic compound retention factor may be used for petroleum ink oils contained in sheet-fed and non-heatset web inks printed on absorptive substrates, meaning that 5.0% of the VOC (petroleum ink oil) in the ink is emitted during the printing process.
4. A 100% volatile organic compound retention factor may be used for vegetable ink oils contained in sheet-fed and

non-heatset web inks printed on absorptive substrates, meaning that none of the VOC (vegetable ink oil) in the ink is emitted during the printing process.

5. A 50% volatile organic compound retention factor may be used for cleaning solution VOC in shop towels for those cleaning solutions with a volatile organic compounds composite vapor pressure of no more than 10 millimeters of mercury (Hg) at 20°C (68°F) provided that the cleaning materials and used shop towels are kept in closed containers.

E. A portion of the volatile organic compounds contained in inks, fountain solutions, and automatic blanket washes is captured for control by add-on air pollution control equipment. When applicable, the following capture efficiencies may be used in determining volatile organic compounds emissions from offset lithographic printing operations:

1. A 40% volatile organic compound capture efficiency may be used for automatic blanket washing when the VOC composite vapor pressure of the cleaning material is less than 10 millimeters of mercury (Hg).
2. A 70% volatile organic compound capture efficiency may be used for alcohol substitutes in fountain solutions.
3. A 100% volatile organic compound capture efficiency may be used for VOC (petroleum ink oils) from oil-based paste inks and oil-based paste varnishes (coatings) when the dryer is demonstrated to be operating at negative pressure relative to the surrounding pressroom.
4. Conventional heatset lithographic inks and varnishes are paste-type materials. If other types of inks or coating materials are used on a heatset lithographic press (e.g., fluid inks or coatings), capture efficiency testing shall be conducted for the VOC from these other materials if the printer wants to take into account the effect that the dryer controls have on VOC emissions from these other types of inks or coatings.]

9VAC5-40-8436. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~(insert a date corresponding to the first day of the 12th month after the effective date of this article)~~ February 1, 2017].

9VAC5-40-8438. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The following EPA test methods shall be used to demonstrate compliance with the heatset web offset lithographic printing process dryer control device control requirements in 9VAC5-40-8424 B and C.

1. Reference Method 1 or 1A, as appropriate, shall be used to select the sampling sites.

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2. Reference Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the velocity and volumetric flow rate of the exhaust stream.

3. Reference Method 3 or 3A, as appropriate, shall be used to determine the concentration of O₂ and CO₂.

4. Reference Method 4 shall be used to determine moisture content.

5. Reference Methods 18, 25, or 25A shall be used to determine the VOC concentration of the dryer exhaust stream entering and exiting the control device, unless the alternate limit in 9VAC5-40-8424 B 2 or C 2 is being met, in which case only the VOC concentration of the dryer exhaust control device outlet shall be determined.

6. Reference Method 25A shall be used to determine the dryer exhaust control device inlet and outlet VOC concentrations when the control device outlet concentration is less than 50 [~~ppmv~~ parts per million volume (ppmv)] VOC as carbon.

7. If the control device is an oxidizer, the combustion chamber temperature or catalyst bed inlet temperature corresponding to destruction efficiencies that meet the requirements of 9VAC5-40-8424 B or C, as appropriate, shall be recorded.

C. The VOC content of as-applied inks, varnishes and other coatings, fountain solutions, and cleaning materials shall be determined using Reference Method 24.

1. The analysis of as-supplied materials may be performed by the manufacturer or the supplier. Formulation information from the manufacturer may be used in lieu of Reference Method 24 analysis unless the board or the owner has reason to believe that the formulation information provided by the manufacturer is inaccurate.

2. The owner may use VOC content information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the [~~MSDS sheet~~ Safety Data Sheet (SDS)] to document the VOC content of the as-supplied material.

3. If fountain solution or cleaning materials are diluted by the owner prior to use, a calculation that combines the as-supplied VOC content information provided by the manufacturer or supplier, the VOC content of the diluent, and the proportions in which they are mixed may be used to make a determination of VOC content of the as-applied fountain solution or cleaning material in lieu of Reference Method 24.

4. The owner shall conduct Reference Method 24 testing of any as-applied fountain solution or cleaning material used for offset lithographic printing operations at any time at the board's request. The owner shall be prepared to sample as-applied fountain solution or cleaning materials at all times.

D. A thermometer or other temperature detection device capable of reading the temperature of the fountain solution to within 0.5°F shall be used to determine compliance with

fountain solution temperature requirements in 9VAC5-40-8424 D.

E. The VOC composite partial vapor pressure of cleaning solutions shall be determined using the formula provided in 9VAC5-40-8422 C or by an appropriate test method approved by the board.

1. The determination VOC composite partial vapor pressure for as-supplied cleaning solutions may be performed by the manufacturer or the supplier. The determination of as-applied composite vapor pressure based upon the manufacturer's instructions for dilution may be performed by the manufacturer or supplier.

2. The owner may use VOC composite partial vapor pressure information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the [~~Material Safety Data Sheet (MSDS)~~ Safety Data Sheet (SDS)], to document the VOC composite partial vapor pressure of the as-supplied or as-applied cleaning materials.

3. The following provisions apply to the determination of VOC composite partial vapor pressure for cleaning materials that are diluted by the owner prior to use:

a. If the dilution is made according to the manufacturer's instructions, the VOC composite partial vapor pressure for the as-applied cleaning material provided by the manufacturer or supplier may be used.

b. If a dilution is made and an as-applied VOC composite partial vapor pressure has not been provided by the manufacturer or supplier, or if the dilution is not made according to the manufacturer's instructions, then the owner shall determine the VOC composite partial vapor pressure using the calculation method provided in 9VAC5-40-8422 C.

4. The owner shall conduct testing of any as-applied cleaning materials used for offset lithographic printing operations at any time at the board's request. The owner shall be prepared to sample as-applied cleaning materials at all times.

9VAC5-40-8440. Monitoring.

A. The provisions of 9VAC5-40-40 (Monitoring) apply.

B. Periodic monitoring of offset lithographic printing operations shall be conducted as follows:

1. The alcohol concentration of offset lithographic printing process fountain solution shall be monitored with a hydrometer, equipped with temperature correction or with readings adjusted for temperature, and recorded at least once per shift or once per batch, whichever is longer. A standard solution shall be used to calibrate the hydrometer for the type of alcohol used in the fountain.

2. The temperature of refrigerated fountain solution shall be measured at the recirculating tank at least once per operating day.

3. The temperature of a catalytic or thermal oxidation control device shall be monitored at least once every 15 minutes while the printing process is operating, and that temperature shall be recorded by an analog or digital recording device.

a. For a catalytic oxidizer, the dryer exhaust temperature upstream of the catalyst bed shall be monitored and recorded.

b. For a thermal oxidizer, the combustion chamber temperature of the oxidizer shall be monitored and recorded.

4. Catalyst bed material in a catalytic oxidation control device shall be inspected annually for general catalyst condition and any signs of potential catalyst depletion. Sampling and evaluation of the catalyst bed material shall be conducted whenever the results of the inspection indicate signs of potential catalyst depletion or poor catalyst condition based on manufacturer's recommendations, but not less than once per year.

5. If a heatset web offset lithographic printing process is interlocked to ensure that the control device is operating and airflow is present when the printing process is operating, then periodic monitoring of dryer air flow is not required. If no interlock is present, then the printing process dryer air flow shall be verified and recorded once per operating day.

9VAC5-40-8450. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records, and reporting) apply.

9VAC5-40-8460. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8470. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8480. Permits.

A permit may be required prior to beginning any of the activities specified [below in this section] if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.
6. Operation of a facility.

V.A.R. Doc. No. R10-2126; Filed October 29, 2015, 11:50 a.m.

Final Regulation

Title of Regulation: 9VAC5-40. Existing Stationary Sources (Rev. D09) (adding 9VAC5-40-8510 through 9VAC5-40-8800).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

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, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions of air pollution from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The regulation includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits. The final amendments add an alternative work practices procedure and an alternative standard for coatings, inks, adhesives, and resin manufacturing operations.

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.

Article 57

Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-57)

9VAC5-40-8510. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each facility that uses organic solvent for cleaning unit operations such as mixing vessels (tanks), spray booths, and parts cleaners and that emits, before consideration of controls, at least 6.8 kilograms per day (15 pounds per day) of volatile organic compounds (VOCs). Such operations include, but are not limited to, spray gun cleaning, spray booth cleaning, large manufactured components cleaning, parts cleaning, equipment cleaning, line cleaning, floor cleaning, tank cleaning, and small manufactured components cleaning.

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B. The provisions of this article apply only to affected facilities located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

C. Exempted from the provisions of this article are solvent cleaning operations (i) for cleaning of electrical and electronic components; (ii) for cleaning of high precision optics and cleaning of cotton swabs to remove cottonseed oil before cleaning of high precision optics; (iii) for cleaning of numismatic dies; (iv) for cleaning of resin, coating, ink, and adhesive mixing, molding, and application equipment; (v) in research and development laboratories; (vi) in manufacturing medical devices or pharmaceutical products; (vii) related to performance or quality assurance testing of coatings, inks, or adhesives.

D. The provisions of this article do not apply to the following:

1. Surface preparation and solvent cleaning operations associated with the surface coating, application of adhesive, sealants and their primers or printing operations subject to Article 26 (Large Appliance Coatings, 9VAC5-40-3560 et seq.), Article 28 (Automobile and Light Duty Truck Coating Applications, 9VAC5-40-3860 et seq.), Article 33 (Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), Article 34 (Miscellaneous Metal Parts/Products Coating Application, 9VAC5-40-4760), Article 35 (Flatwood Paneling Coating Application Systems, 9VAC5-40-4910 et seq.), Article 53 (Lithographic Printing Processes, 9VAC5-40-7800 et seq.), Article 56 (Letterpress Printing Operations, 9VAC5-40-8380 et seq.), Article 56.1 (Lithographic Printing Operations, 9VAC5-40-8420 et seq.), Article 58 (Miscellaneous Industrial Adhesive Application Processes, 9VAC5-40-8660 et seq.), and Article 59 (Miscellaneous Metal Parts and Products Coating Application Systems, 9VAC5-40-8810 et seq.) of 9VAC5-40 (Existing Stationary Sources).

2. The use of janitorial supplies used for cleaning offices, bathrooms, or other similar areas.

3. Stripping of cured inks, coatings, and adhesives.

4. Surface preparation and solvent cleaning operations associated with the surface coating, application of adhesive, sealants and their primers, or printing operations of the following product categories or processes: aerospace coatings, wood furniture coatings, shipbuilding and repair coatings, flexible packaging printing materials, paper film and foil coating, plastic parts coating, and fiberglass boat manufacturing materials.

5. Solvent metal cleaning operations subject to Article 47 (Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 9VAC5-40-6820 et seq.) of 9VAC5-40 (Existing Stationary Sources).

[6. The use of cleaning solvent in a digital printing operation in which an electronic output device transfers variable data, in the form of an image, from a computer to a substrate.]

9VAC5-40-8520. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Electrical and electronic components" means components and assemblies of components that generate, convert, transmit, or modify electrical energy. Electrical and electronic components include, but are not limited to, wires, windings, stators, rotors, magnets, contacts, relays, printed circuit boards, printed wire assemblies, wiring boards, integrated circuits, resistors, capacitors, and transistors but does not include the cabinets in which electrical and electronic components are housed.

"Fiberglass boat manufacturing materials" means materials utilized at facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. Fiberglass boat manufacturing materials are not materials used at facilities that manufacture solely parts of boats (such as hatches, seats, or lockers) or boat trailers, but do not (i) manufacture hulls or decks of boats from fiberglass or (ii) build molds to make fiberglass boat hulls or decks.

"Flexible packaging printing materials" means materials used in the manufacture of any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"High precision optics" means an optical element used in an electro-optical device and is designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes in light energy levels.

"Industrial cleaning solvents" means products used to remove contaminants such as adhesives, inks, paint, dirt, soil, oil, and grease from parts, products, tools, machinery,

equipment, vessels, floors, walls, and other work production related work areas for reasons such as safety, operability, and to avoid product contamination. The cleaning solvents used in these operations may be generally available bulk solvents that are used for a multitude of applications in addition to cleaning, such as for paint thinner, or as an ingredient used in the manufacture of a coating, such as paint.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar article, including any component or accessory that is (i) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of diseases; or (ii) intended to affect the structure or any function of the body.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Pharmaceutical product" means a preparation or compound, which includes any drug, analgesic, decongestant, antihistamine, cough suppressant, vitamin, mineral or herb supplement intended for human or animal consumption and used to cure, mitigate or treat disease or improve or enhance health.

"Plastic parts coating" means a coating that is applied to the surfaces of a varied range of plastic parts and products. Such parts or products are constructed either entirely or partially from metal or plastic. These parts include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums,

metal pipes, and numerous other industrial and household products.

"Shipbuilding and repair coating" means material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film, and is used in the building, repair, repainting, converting, or alteration of ships.

"Solvent cleaning operation" means the employment of industrial cleaning solvents to remove loosely held uncured adhesives, uncured inks, uncured coatings, and contaminants [2] which include, but are not limited to, dirt, soil, and grease [2] from parts, products, tools, machinery, equipment, and general work areas and includes but is not limited to activities such as wipe cleaning, solvent flushing, or spraying [and each. Each] distinct method of cleaning in a cleaning process, which consists of a series of cleaning methods, [shall] constitute a separate solvent cleaning operation.

"Solvent flushing" means the use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, or contaminants from the internal surfaces and passages of the equipment by flushing solvent through the equipment.

"Surface preparation" means the cleaning of surfaces prior to coating, further treatment, sale, or intended use.

"VOC" means volatile organic compound.

"Wipe cleaning" means the method of cleaning a surface by physically rubbing it with a material such as a rag, paper, sponge, or a cotton swab moistened with a solvent.

"Wood furniture coatings" means protective, decorative, or functional films applied in thin layers to a surface used in the manufacture of wood furniture or wood furniture components. Such coatings include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

9VAC5-40-8530. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit to be discharged into the atmosphere any VOC emissions from any solvent cleaning operation employing industrial cleaning solvents in excess of both of the following limits:

1. A VOC content limit of 50 grams per liter (0.42 pounds per gallon) of industrial cleaning solvent shall apply unless emissions are controlled by an emission control system with an overall control efficiency of at least 85%; and

2. A composite vapor pressure limit of [8 eight] millimeters of mercury at 20°C.

B. VOC emissions from the use, handling, storage, and disposal of industrial cleaning solvents and shop towels shall be controlled by the following work practices:

1. Open containers and used applicators shall be covered.

2. Air circulation around cleaning operations shall be minimized.

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3. Used solvent and shop towels shall be disposed of properly.

4. Equipment practices that minimize emissions (including but not limited to keeping arts cleaners covered and maintaining cleaning equipment to repair solvent leaks) shall be implemented.

[C. In lieu of complying with the requirements of subsections A and B of this section, a manufacturer of coatings, inks, resin, or adhesives may comply with the following requirements:

1. Clean portable or stationary mixing vats, high dispersion mills, grinding mills, tote tanks, and roller mills by one or more of the following methods:

a. Use a cleaning solvent that either contains less than 1.67 pounds per gallon of VOC or has a composite vapor pressure no more than eight mmHg at 20°C;

b. Comply with the following work practices:

(1) Equipment being cleaned shall be maintained leak free;

(2) VOC-containing cleaning materials shall be drained from the cleaned equipment upon completion of cleaning;

(3) VOC-containing cleaning materials, including waste solvent, shall not be stored or disposed of in such a manner that will cause or allow evaporation into the atmosphere; and

(4) All VOC-containing cleaning materials shall be stored in closed containers.

c. Collect and vent the emissions from equipment cleaning to a VOC emission control system that has an overall capture and control efficiency of at least 80%, by weight, for the VOC emissions. Where such reduction is achieved by incineration, at least 90% of the organic carbon shall be oxidized to carbon dioxide.

d. Use organic solvents other than those allowed in subdivision 1 a of this subsection provided no more than 60 gallons of fresh solvent shall be used per month. Organic solvent that is reused or recycled (either on site or off site) for further use in equipment cleaning or the manufacture of coating, ink, or adhesive shall not be included in this limit. All VOC-containing cleaning materials shall be stored in closed containers.

2. When using solvent for wipe cleaning, the owner shall not (i) use open containers for the storage or disposal of cloth or paper impregnated with organic compounds that is used for cleanup, or coating, ink, or adhesive removal and (ii) store spent or fresh organic compounds to be used for cleanup or coating, ink, resin, or adhesive removal in open containers.

3. Any manufacturer of coatings, inks, resin, or adhesives that complies with subdivision 1 d of this subsection shall record the following information each month for each

cleaning material and shall maintain the information at the facility for a period of five years: (i) the total volume of fresh cleaning solvent material used for equipment cleaning and (ii) the total volume of cleaning solvent material recovered for either on-site or off-site recycling.

D. The control requirements for screen printing shall be either use of solvent technology at 4.2 pounds of VOC per gallon, or the use of a product with a vapor pressure of eight mm Hg.]

9VAC5-40-8540. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8550. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8560. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8570. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8580. Compliance.

The provisions of 9VAC5-40-20 (Compliance) apply.

9VAC5-40-8590. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~insert date one year after the effective date of this article~~] February 1, 2017].

9VAC5-40-8600. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The composite vapor pressure of organic compounds in cleaning materials shall be determined by quantifying the amount of each compound in the blend using ASTM "Standard Practice for Packed Column Gas Chromatography" for organics and ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" for water content (see 9VAC5-20-21), as applicable, and the following equation:

$$P_{pc} = \frac{\sum_{i=1}^n (W_i)(VP_i) / M_{wi}}{W_w / M_{ww} + \sum_{i=1}^n W_e / M_{we} + \sum_{i=1}^n W_i / M_{wi}}$$

where:

P_{pc} = VOC composite partial pressure at 20°C, in mm Hg.

W_i = Weight of the "i"th VOC compound, in grams, as determined by

ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

Ww = Weight of water, in grams as determined by ASTM "Standard Test

Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph"

(see 9VAC5-20-21).

We = Weight of the "i"th exempt compound, in grams, as determined by

ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

Mwi = Molecular weight of the "i"th VOC compound, in grams per g-mole,

as given in chemical reference literature.

Mww = Molecular weight of water, 18 grams per g-mole.

Mwe = Molecular weight of the "i"th exempt compound, in grams per g-mole,

as given in chemical reference literature.

VPi = Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg, as determined by subsection C of this section.

C. The vapor pressure of each single component compound may be determined from ASTM "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (see 9VAC5-20-21), from chemical reference literature, or from additional sources acceptable to the board.

9VAC5-40-8610. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8620. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8630. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8640. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8650. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

Article 58

Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)

9VAC5-40-8660. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each miscellaneous industrial adhesive application process at a facility where the total actual volatile organic compound (VOC) emissions from all miscellaneous industrial adhesive application processes, including related cleaning activities and related application of adhesive primers, are, before consideration of controls, either (i) equal to or exceed 6.8 kilograms per day (15 pounds per day) or (ii) [3 three] tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in 9VAC5-20-206 1 a.

C. The provisions of this article do not apply to the following.

1. Miscellaneous industrial adhesive application process operations subject to Article 6 (Rubber Tire Manufacturing Operations, 9VAC5-40-5810 et seq.), Article 26 (Large Appliance Coatings, 9VAC5-40-3560 et seq.), Article 28 (Automobile and Light Duty Truck Coating Applications, 9VAC5-40-3860 et seq.), Article 30 (Metal Coil Coating Application Systems, 9VAC5-40-4160 et seq.), Article 31 (Paper and Fabric Coating Application Systems, 9VAC5-40-4310 et seq.) Article 33 (Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), Article 35 (Flatwood Paneling Coating Application Systems, 9VAC5-40-4910 et seq.), Article 53 (Lithographic Printing Processes, 9VAC5-40-7800 et seq.), Article 56 (Letterpress Printing Operations, 9VAC5-40-8380 et seq.), Article 56.1 (Lithographic Printing Operations, 9VAC5-40-8420 et seq.), and Article 57 (Industrial Solvent Cleaning Operations, 9VAC5-40-8510 et seq.) of 9VAC5-40 (Existing Stationary Sources).

2. Miscellaneous industrial adhesive application process operations associated with the following product categories or processes: aerospace coatings, flexible packaging printing materials, paper film and foil coating, and fiberglass boat manufacturing materials.

D. The provisions of Article 6 (Emission Standards for Adhesives and Sealants, 9VAC5-45-620 et seq.) of 9VAC5-45 (Consumer and Commercial Products) may apply. In the

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case of a conflict between these articles, the more restrictive provisions shall apply.

9VAC5-40-8670. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"ABS welding" means any process to weld acrylonitrile-butadiene-styrene pipe.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerosol adhesive or adhesive primer" means an adhesive or adhesive primer packaged as an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for handheld application without the need for ancillary hoses or spray equipment.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Application process" means a series of one or more adhesive applicators and any associated drying area or oven in which an adhesive is applied, dried, or cured. An application process ends at the point where the adhesive is dried or cured, or prior to any subsequent application of a different adhesive. It is not necessary for an application process to have an oven or flash-off area.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic" or "CPVC plastic welding" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a CPVC marking.

"Chlorinated polyvinyl chloride welding" or "CPVC welding" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleaning activities" means activities other than surface preparation and priming that use cleaning materials to remove adhesive residue or other unwanted materials from

equipment related to application operations, as well as the cleaning of spray guns, transfer lines (such as tubing or piping), tanks, and the interior of spray booths.

"Contact adhesive" means an adhesive that (i) is designed for application to both surfaces to be bonded together, (ii) is allowed to dry before the two surfaces are placed in contact with each other, (iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and (iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates or vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Fiberglass boat manufacturing facility" means a facility that manufactures hulls or decks of boats from fiberglass or builds molds to make fiberglass boat hulls or decks and does not include a facility that solely manufactures parts of boats (such as hatches, seats, or lockers) or boat trailers, that is, which does not also manufacture hulls or decks of boats from fiberglass or builds molds to make fiberglass boat hulls or decks.

"Fiberglass boat manufacturing materials" means materials utilized at fiberglass boat manufacturing facilities to manufacture hulls or decks of boats from fiberglass, and parts of boats (such as hatches, seats, or lockers), or to build molds to make fiberglass boat hulls or decks.

"Flexible packaging printing materials" means materials used in the manufacture of any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"Flexible vinyl" means nonrigid polyvinyl chloride plastic with a 5.0% by weight plasticizer content.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl

tile, vinyl backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a nonporous substrate, such as flexible vinyl, are excluded from this category.

"Industrial adhesives" means adhesives used for joining surfaces in assembly and construction of a large variety of products. Adhesives may be generally classified as solution/waterborne, solvent-borne, solventless or solid (such as hot melt adhesives), pressure sensitive, hot-melt, or reactive (such as epoxy adhesives and ultraviolet-curable adhesives). Adhesives may also be generally classified according to whether they are structural or nonstructural. Structural adhesives are commonly used in industrial assembly processes and are designed to maintain product structural integrity.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Motor vehicle adhesive" means an adhesive, including glass bonding adhesive, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

"Motor vehicle glass bonding primer" means a primer, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass bonding adhesives or the installation of adhesive bonded glass. Motor vehicle glass bonding primer includes glass bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive bonded glass.

"Motor vehicle weatherstrip adhesive" means an adhesive, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic" means a synthetic material chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, and/or reinforcers and are capable of being molded, extruded, cast into various shapes and films or drawn into filaments.

"Plastic solvent welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic solvent welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Polyvinyl chloride plastic" or "PVC" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. For the purposes of this article, porous material does not include wood.

"Reactive adhesive" means adhesive systems composed, in part, of volatile monomers that react during the adhesive curing reaction, and, as a result, do not evolve from the film during use. These volatile components instead become

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integral parts of the adhesive through chemical reaction. At least 70% of the liquid components of the system, excluding water, react during the process.

"Reinforced plastic composite" means a composite material consisting of plastic reinforced with fibers.

"Rubber" means any natural or manufactured rubber substrate, including but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene, and ethylene propylene diene terpolymer.

"Sheet rubber lining installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene-propylenediene terpolymer, that is field-applied to a building roof using one layer of membrane material. For the purposes of this article, single-ply roof membrane does not include membranes prefabricated from ethylene-propylenediene monomer (EPDM).

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes, or ducts installed through the membrane.

"Structural glazing" means a process that includes the application of adhesive to bond glass, ceramic, metal, stone, or composite panels to exterior building frames.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line or lines is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure, or blemish in a tire casing by grinding, gouging, or applying adhesive and filling the hole or crevice with rubber.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"VOC" means volatile organic compound.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

9VAC5-40-8680. Standard for volatile organic compounds.

A. No owner or other person shall perform miscellaneous industrial adhesive application processes in excess of the following limits.

1. Facilities opting to meet specific emissions limits in lieu of the control efficiency in subdivision 2 of this subsection shall meet the applicable emissions limits in Table 4-58A.

<u>TABLE 4-58A. VOC EMISSION LIMITS FOR GENERAL AND SPECIALTY ADHESIVE APPLICATION PROCESSES</u>		
<u>General Adhesive Application Processes</u>	<u>VOC Emission Limit</u>	
	<u>grams per liter (g/l)</u>	<u>pounds per gallon (lb/gal)</u>
<u>Reinforced plastic composite</u>	<u>200</u>	<u>1.7</u>
<u>Flexible vinyl</u>	<u>250</u>	<u>2.1</u>
<u>Metal</u>	<u>30</u>	<u>0.3</u>
<u>Porous material (except wood)</u>	<u>120</u>	<u>1.0</u>
<u>Rubber</u>	<u>250</u>	<u>2.1</u>
<u>Wood</u>	<u>30</u>	<u>0.3</u>
<u>Other substrates</u>	<u>250</u>	<u>2.1</u>
<u>Specialty Adhesive Application Processes</u>	<u>VOC Emission Limit</u>	
	<u>(g/l)</u>	<u>(lb/gal)</u>
<u>Ceramic tile installation adhesive</u>	<u>130</u>	<u>1.1</u>
<u>Contact adhesive</u>	<u>250</u>	<u>2.1</u>
<u>Cove base installation adhesive</u>	<u>150</u>	<u>1.3</u>
<u>Indoor floor covering installation adhesive</u>	<u>150</u>	<u>1.3</u>
<u>Outdoor floor covering installation adhesive</u>	<u>250</u>	<u>2.1</u>

<u>Perimeter bonded sheet floor covering installation</u>	<u>660</u>	<u>5.5</u>
<u>Metal to urethane/rubber molding or casting adhesive</u>	<u>850</u>	<u>7.1</u>
<u>Motor vehicle adhesive</u>	<u>250</u>	<u>2.1</u>
<u>Motor vehicle weatherstrip adhesive</u>	<u>750</u>	<u>6.3</u>
<u>Multipurpose construction</u>	<u>200</u>	<u>1.7</u>
<u>ABS welding adhesive</u>	<u>400</u>	<u>3.3</u>
<u>Plastic solvent welding (except ABS) adhesive</u>	<u>500</u>	<u>4.2</u>
<u>Sheet rubber lining installation</u>	<u>850</u>	<u>7.1</u>
<u>Single-ply roof membrane installation and repair adhesive (except EPDM)</u>	<u>250</u>	<u>2.1</u>
<u>Structural glazing</u>	<u>100</u>	<u>0.8</u>
<u>Thin metal laminating adhesive</u>	<u>780</u>	<u>6.5</u>
<u>Tire repair</u>	<u>100</u>	<u>0.8</u>
<u>Waterproof resorcinol glue</u>	<u>170</u>	<u>1.4</u>
<u>VOC Emission Limit</u>		
<u>Adhesive Primer Application Processes</u>	<u>(g/l)</u>	<u>(lb/gal)</u>
<u>Motor vehicle glass bonding primer</u>	<u>900</u>	<u>7.5</u>
<u>Plastic solvent welding adhesive primer</u>	<u>650</u>	<u>5.4</u>
<u>Single-ply roof membrane adhesive primer</u>	<u>250</u>	<u>2.1</u>
<u>Other adhesive primer</u>	<u>250</u>	<u>2.1</u>
For the purposes of this table, emission limits are mass of VOC per volume of adhesive or adhesive primer excluding water and exempt compounds, as applied.		

a. The VOC content limits in Table 4-58A for adhesives applied to particular substrates shall apply as follows:

(1) If an owner or other person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 4-58A, such specific limit is applicable rather than an adhesive-to-substrate limit.

(2) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

b. The emission limits in Table 4-58A shall be met by averaging the VOC content of materials used on a single application process unit for each day (i.e., daily within-application process unit averaging). Cross-application process unit averaging (i.e., averaging across multiple application units) shall not be used to determine these emission limits.

c. VOC content shall be determined as follows:

(1) For adhesives that are not reactive adhesives, VOC content shall be determined using Reference Method 24.

(2) For reactive adhesives, VOC content shall be determined using the procedure for reactive adhesives in Appendix A of subpart PPPP of 40 CFR Part 63.

(3) As an alternative to the methods in subdivisions (1) and (2) of this subdivision A 1 c, the manufacturer's formulation data may be used. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, the test method results shall be used unless the facility can demonstrate to the board's satisfaction that the manufacturer's formulation data are correct.

2. Facilities opting to meet a control efficiency in lieu of the specific emission limits in subdivision 1 of this subsection shall meet an overall control efficiency of 85%.

3. The following materials shall not be subject to the limits and controls found in subdivisions 1 and 2 of this subsection but shall be subject to the work practices found in subdivision B 3 of this section:

a. Adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory.

b. Adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace or undersea-based weapon systems.

c. Adhesives or adhesive primers used in medical equipment manufacturing operations.

d. Cyanoacrylate adhesive application processes.

e. Application of aerosol adhesives and adhesive primers applied with a handheld, disposable can that is pressured and that dispenses an adhesive or adhesive primer by means of a propellant. Aerosol adhesives are regulated by VOC Emission Standards for Consumer Products, subpart C of 40 CFR Part 59. Aerosol adhesive primers are regulated as "primers" under VOC Emission

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Standards for Aerosol Coatings, subpart E of 40 CFR Part 59.

f. Processes using polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

g. Processes using adhesives and adhesive primers that are supplied by the manufacturer in containers with a net volume of 16 ounces or less, or a net weight of one pound or less.

h. Cleaning materials.

B. The owner of a facility subject to this article shall implement the following control options as applicable:

1. A facility using low-VOC adhesives or adhesive primers shall use one of the following application methods:

a. Electrostatic spray;

b. HVLP spray;

c. Flow coat;

d. Roll coat or hand application, including nonspray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;

e. Dip coat, including electrodeposition;

f. Airless spray;

g. Air-assisted airless spray; or

h. Other adhesive application method capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

2. A facility with product performance requirements or other needs that dictate the use of higher-VOC materials than those that would meet the emission limits in Table 4-58A shall either (i) use add-on control equipment with an overall control efficiency of 85% or (ii) use a combination of adhesives and add-on control equipment on an application process unit to meet the emission limits in Table 4-58A. Add-on devices may include oxidizers, adsorbers, absorbers, and concentrators.

3. The following work practices for the application of adhesives, adhesive primers, and process-related waste materials, shall be used:

a. All VOC-containing adhesives, adhesive primers, and process-related waste materials shall be stored in closed containers.

b. Mixing and storage containers used for VOC-containing adhesives, adhesive primers, and process-related waste materials shall be kept closed at all times except when these materials are being deposited or removed.

c. Spills of VOC-containing adhesives, adhesive primers, and process-related waste materials shall be minimized.

d. VOC-containing adhesives, adhesive primers, and process-related waste materials shall be conveyed from one location to another in closed containers or pipes.

4. The following work practices for cleaning activities shall be used:

a. All VOC-containing cleaning materials and used shop towels shall be stored in closed containers.

b. Storage containers used for VOC-containing cleaning materials shall be kept closed at all times except when these materials are deposited or removed.

c. Spills of VOC-containing cleaning materials shall be minimized.

d. VOC-containing cleaning materials shall be conveyed from one location to another in closed containers or pipes.

e. VOC emissions from cleaning of application, storage, mixing, and conveying equipment shall be minimized by performing equipment cleaning without atomizing the cleaning solvent and by capturing all spent solvent in closed containers.

5. The application of adhesives and adhesive primers applied with a handheld, disposable can that is pressured and that dispenses an adhesive or adhesive primer by means of a propellant shall not be subject to the application method limits and controls found in subdivisions 1, 2, and 4 of this subsection but shall be subject to the work practices found in subdivisions 3 and 4 of this subsection.

9VAC5-40-8690. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8700. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8710. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8720. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8730. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. The emission standards in 9VAC5-40-4330 apply to coating by coating or to the volume weighted average of coatings where the coatings are used on a single coating application system and the coatings are the same type or perform the same function. Such averaging shall not exceed 24 hours.

C. Compliance determinations for control technologies not based on compliant coatings (i.e., coating formulation alone) shall be based on the applicable standard in terms of pounds of VOCs per gallon solids or pounds of VOCs per gallon

solids applied according to the applicable procedure in 9VAC5-20-121. Compliance may also be based on transfer efficiency greater than the baseline transfer efficiency of 9VAC5-40-8680 B if demonstrated by methods acceptable to the board according to the applicable procedure in 9VAC5-20-121.

9VAC5-40-8740. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~insert date one year after the effective date of this article~~] February 1, 2017].

9VAC5-40-8750. Test methods and procedures.

The provisions of 9VAC5-40-30 (Emission testing) apply.

9VAC5-40-8760. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8770. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8780. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8790. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8800. Permits.

A permit may be required prior to beginning any of the activities specified in this section if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.
6. Operation of a facility.

VA.R. Doc. No. R10-2124; Filed October 29, 2015, 11:48 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: 12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-10, 12VAC5-110-70, 12VAC5-110-80, 12VAC5-110-90).

Statutory Authority: §§ 22.1-271.2, 32.1-12, and 32.1-46 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 14, 2016.

Agency Contact: James Farrell, Director, Division of Immunization, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8055, or email james.farrell@vdh.virginia.gov.

Basis: Sections 22.1-271.2 and 32.1-46 of the Code of Virginia provide the State Board of Health with the authority to promulgate regulations regarding immunization of school children.

Purpose: Regulations are necessary to ensure children are protected to the extent possible from vaccine-preventable diseases and to protect indirectly the health of all Virginians. Recent periodic review of existing regulations identified language that is unclear or should be modified to address technological changes.

Rationale for Using Fast-Track Process: While some changes are the result of comments received during the periodic review process, additional changes are suggested to clarify issues that have been identified since the most recent amendments were enacted. None of the suggested changes will change any currently required immunizations or result in significant changes to current practice.

Substance: Amendments to the current regulations (i) update and clarify definitions; (ii) remove references to outdated versions of forms and ACIP schedules; (iii) clarify that a printout of an electronic record can be accepted without the signature of a nurse or physician; (iv) clarify that pneumococcal conjugate vaccine is not required for children enrolling in kindergarten; (v) clarify how long after the fourth birthday is allowable for those vaccines that are required to be administered on or after the fourth birthday; (vi) add mumps to the list of diseases for which demonstration of immunity is acceptable; (vii) clarify that the certificate of religious exemption must be notarized; and (viii) update responsibilities of admitting officials.

Issues: The primary advantages to the agency and the public are that current regulations ensure that children are appropriately protected to the extent possible from vaccine-preventable diseases. This also indirectly protects the health

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of all citizens of Virginia. Proposed changes should help clarify and simplify processes for providing and documenting immunizations required for school attendance. No disadvantages to the public or the Commonwealth are anticipated.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to:

- Add mumps to the list of diseases for which demonstration of immunity is acceptable in lieu of a vaccine shot;
- Reduce from 30 days to 10 days the time that the admitting official from the school that a student has left must send immunization records and academic records to the student's new school;
- Update and clarify definitions;
- Remove references to outdated versions of forms and U.S. Center for Disease Control and Prevention Advisory Committee on Immunization Practices (CDC-ACIP) schedules;
- Clarify that a printout of an electronic record can be accepted without the signature of a nurse or physician;
- Clarify that pneumococcal conjugate vaccine is not required for children enrolling in kindergarten;
- Clarify how long after the fourth birthday is allowable for those vaccines that are required to be administered on or after the fourth birthday; and
- Clarify that the certificate of religious exemption must be notarized.

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

Estimated Economic Impact. The proposed updating of definitions and the various proposed language amendments to clarify current requirements will enable readers of the regulation to more accurately understand requirements in practice. Thus these proposed amendments will likely produce a small net benefit.

The CDC-ACIP has found that children who have demonstrated existing immunity to mumps are safe to be considered adequately immunized for the disease. Consequently the Board proposes to exempt students who have documentation of antibodies against mumps from the requirement for the mumps immunization shot. In order to prove immunity the child would need to have blood drawn. So for those families who choose to prove immunity rather than have the mumps shot, it will not likely significantly affect cost in time or dollars but does provide an additional option for those who wish to avoid additional vaccines. Thus, this proposed amendment will create a net benefit.

Under the current regulations, the admitting official of the school from which a student is transferring must send the

student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which the student is transferring within 30 days of the transfer to the new school. The Board proposes to shorten the required time within which to send the records to 10 days. The proposed reduction in time is intended to help reduce the potential for delays in enrollment for transferring students.¹

There are no official requirements concerning notifying the old school when a student seeks to enroll in a new school.² Nevertheless, according to the Department of Education the admitting officials of the schools from which students transfer have been notified in sufficient time in practice. The 30-day deadline has been consistently met, but taking upwards of 30 days to send immunization records has in some cases delayed students' enrollment in their new school. To the extent that reducing from 30 days to 10 days the time that the admitting official from the school that a student has left must send immunization records and academic records to the student's new school would reduce enrollment delays, the proposed amendment has the potential to produce significant benefit.

In order for the proposed amendment to make a significant difference in practice, the admitting officials of the old schools will need to be notified of the student's attempt at new enrollment quickly. There are no explicit penalties for failure to meet either the 30-day or 10-day deadline; presumably admitting officials will seek to meet the deadline in effect in order to help the student in question.

Businesses and Entities Affected. The proposed regulations pertain to approximately 4200 private health care providers,³ 135 public health clinics,⁴ admitting officials at schools within the Commonwealth's 132 school districts, and students.

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

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

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

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

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

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

¹ Source: Virginia Department of Education

² Ibid

³ Data source: Virginia Department of Health

⁴ Ibid

Agency's Response to Economic Impact Analysis: The Department of Health concurs with the Department of Planning and Budget's economic impact analysis of 12VAC5-110.

Summary:

The amendments (i) update and clarify definitions; (ii) update the version of the U.S. Center for Disease Control and Prevention Advisory Committee on Immunization Practices schedules that is incorporated by reference; (iii) clarify that a printout of an electronic record can be accepted without the signature of a nurse or physician; (iv) clarify that pneumococcal conjugate vaccine is not required for children enrolling in kindergarten; (v) clarify how long after the fourth birthday is allowable for those vaccines that are required to be administered on or after the fourth birthday; (vi) add mumps to the list of diseases for which demonstration of immunity is acceptable; (vii) clarify that the certificate of religious exemption must be notarized; and (viii) update responsibilities of admitting officials.

Part I
Definitions

12VAC5-110-10. Definitions.

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

"Adequate immunization" means the immunization requirements prescribed under 12VAC5-110-70.

"Admit" or "admission" means the official enrollment or reenrollment for attendance at any grade level, whether full-time or part-time, of any student by any school.

"Admitting official" means the school principal or his designated representative if a public school; if a nonpublic school or child care center, the principal, headmaster or director of the school or center.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Compliance" means the completion of the immunization requirements prescribed under 12VAC5-110-70.

"Conditional enrollment" means the enrollment of a student for a period of 90 days contingent upon the student having received at least one dose of each of the required vaccines and the student possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

"Documentary proof" means an appropriately completed copy of the most current version of Form MCH ~~213F~~ 213G signed by a physician or his designee, registered nurse, or an official of a local health department. A copy of the

immunization record signed or stamped by a physician or his designee, registered nurse, or an official of a local health department indicating the dates of administration including month, day, and year of the required vaccines, shall be acceptable in lieu of recording these dates on Form MCH ~~213F~~ 213G, as long as the record is attached to Form MCH ~~213F~~ 213G and the remainder of Form MCH ~~213F~~ 213G has been appropriately completed. A printout of an immunization record from the provider's electronic health record can be accepted without a signature or stamp. For a new student transferring from an out-of-state school, any immunization record, which contains the exact date (month/day/year) of administration of each of the required doses of vaccines, is signed by a physician or his designee or registered nurse, and complies fully with the requirements prescribed under 12VAC5-110-70 shall be acceptable.

"Immunization" means the administration of a product licensed by the FDA to confer protection against one or more specific pathogens.

"Immunization ~~schedule~~" schedules" means the ~~schedule~~ 2015 Recommended Immunization Schedules for Persons Aged 0 through 18 Years developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

"Physician" means any person licensed to practice medicine in any of the 50 states or the District of Columbia.

"School" means:

1. Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth;
2. Any private or religious school that offers instruction at any level or grade from kindergarten through grade 12;
3. Any private or religious nursery school or preschool, or any private or religious child care center required to be licensed by this Commonwealth;
4. Any preschool classes or Head Start classes operated by the school divisions within this Commonwealth; and
5. Any family day home or developmental center.

"Student" means any person who seeks admission to a school, or for whom admission to a school is sought by a parent or guardian, and who will not have attained the age of 20 years by the start of the school term for which admission is sought.

"Twelve months of age" means the 365th day following the date of birth. For the purpose of evaluating records, vaccines administered up to four days prior to the first birthday (361 days following the date of birth) will be considered valid.

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Part III Immunization Requirements

12VAC5-110-70. Immunization requirements.

Every student enrolling in a school shall provide documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subdivisions, as appropriate for his age according to the immunization ~~schedule~~ schedules. Spacing, minimum ages, and minimum intervals shall be in accordance with the immunization ~~schedule~~ schedules. A copy of every student's immunization record shall be on file in his school record.

1. Diphtheria Toxoid. A minimum of four properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday and prior to entering kindergarten.

2. Tetanus Toxoid. A minimum of four properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday and prior to entering kindergarten.

3. ~~Acellular~~ Pertussis Vaccine. A minimum of four properly spaced doses of ~~aecellular~~ pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade.

4. Poliomyelitis Vaccine. A minimum of four doses of poliomyelitis vaccine with one dose administered on or after the fourth birthday and prior to entering kindergarten.

5. Measles (Rubeola) Vaccine. One dose of live measles vaccine administered at age 12 months or older, and a second dose administered prior to entering kindergarten.

6. Rubella Vaccine. A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

7. Mumps Vaccine. One dose of mumps virus vaccine administered at age 12 months or older and a second dose administered prior to entering kindergarten.

8. Haemophilus Influenzae Type b (Hib) Vaccine. A complete series of Hib vaccine (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213G pertaining to Hib vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 60 months of age or for admission to any grade level, kindergarten through grade 12.

9. Hepatitis B Vaccine. A minimum of three doses of hepatitis B vaccine for all children. The FDA has approved a two-dose schedule only for adolescents 11 through 15 years of age and only when the Merck brand

(RECOMBIVAX HB) Adult Formulation Hepatitis B vaccine is used. The two RECOMBIVAX HB adult doses must be separated by a minimum of four months. The two dose schedule using the adult formulation must be clearly documented in the Hepatitis B section on Form MCH 213G.

10. Varicella (Chickenpox) Vaccine. All children born on and after January 1, 1997, shall be required to have one dose of chickenpox vaccine on or after 12 months of age and a second dose administered prior to entering kindergarten.

11. Pneumococcal Conjugate Vaccine (PCV). A complete series of PCV (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213G pertaining to PCV vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 60 months of age or for admission to any grade level, kindergarten through grade 12.

12. Human Papillomavirus (HPV) Vaccine. Three doses of properly spaced HPV vaccine for females, effective October 1, 2008. The first dose shall be administered before the child enters the sixth grade.

12VAC5-110-80. Exemptions from immunization requirements.

A. Religious and medical exemptions. No certificate of immunization shall be required of any student for admission to school if:

1. The student or his parent or guardian submits a notarized Certificate of Religious Exemption (Form CRE 1), to the admitting official of the school to which the student is seeking admission. Form CRE 1 is an affidavit stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. The form is available on the Division of Immunization website at <http://www.vdh.virginia.gov/Epidemiology/Immunization/requirements.htm>; or

2. The school has written certification on either of the documents specified under "documentary proof" in 12VAC5-110-10 from a physician, registered nurse, or a local health department that one or more of the required immunizations may be detrimental to the student's health. Such certification of medical exemption shall specify the nature and probable duration of the medical condition or circumstance that contraindicates immunization.

3. Upon the identification of an outbreak, potential epidemic, or epidemic of a vaccine-preventable disease in a public or private school, the commissioner has the

authority to require the exclusion from such school of all children who are not immunized against that disease.

B. Demonstration of existing immunity. The demonstration in a student of antibodies against ~~rubeola~~ mumps, measles, rubella, or varicella in sufficient quantity to ensure protection of that student against that disease, shall render that student exempt from the immunization requirements contained in 12VAC5-110-70 for the disease in question. Such protection should be demonstrated by means of a serological testing method appropriate for measuring protective antibodies against ~~rubeola~~ mumps, measles, rubella, or varicella respectively. Reliable history of chickenpox disease diagnosed or verified by a health care provider shall render students exempt from varicella requirements.

C. HPV vaccine. Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the HPV vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the board.

Part IV Procedures and Responsibilities

12VAC5-110-90. Responsibilities of admitting officials.

A. Procedures for determining the immunization status of students. Each admitting official or his designee shall review, before the first day of each school year, the school medical record of every new student seeking admission to his school, and that of every student enrolling in grade six for compliance with the requirements prescribed in 12VAC5-110-70. Such review shall determine into which one of the following categories each student falls:

1. Students whose immunizations are adequately documented and complete in conformance with 12VAC5-110-70. Students with documentation of existing immunity to mumps, measles, rubella, or varicella as defined in 12VAC5-110-80 B shall be considered to be adequately immunized for such disease.
2. Students who are exempt from the immunization requirements of 12VAC5-110-70 because of medical contraindications or religious beliefs provided for by 12VAC5-110-80.
3. Students whose immunizations are inadequate according to the requirements of 12VAC5-110-70.
4. Students without any documentation of having been adequately immunized.

B. Notification of deficiencies. Upon identification of the students described in subdivisions A 3 and 4 of this section, the admitting official shall notify the parent or guardian of the student:

1. That there is no, or insufficient, documentary proof of adequate immunization in the student's school records.

2. That the student cannot be admitted to school unless he has documentary proof that he is exempted from immunization requirements pursuant to 12VAC5-110-70.

3. That the student may be immunized and receive certification by a licensed physician, registered nurse, or an official of a local health department.

4. How to contact the local health department to receive the necessary immunizations.

C. Conditional enrollment. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 calendar days, during which time that student shall complete the immunizations required under 12VAC5-110-70. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days. If a student is a homeless child or youth and does not have documentary proof of necessary immunizations or has incomplete immunizations and is not exempted from immunization as described in 12VAC5-110-80, the school administrator shall immediately admit such student and shall immediately refer the student to the local school division liaison, who shall assist in obtaining the documentary proof of, or completing, immunizations. The admitting official should examine the records of any conditionally enrolled student at regular intervals to ensure that such a student remains on schedule with his plan of completion.

D. Exclusion. The admitting official shall, at the end of the conditional enrollment period, exclude any student who is not in compliance with the immunization requirements under 12VAC5-110-70 and who has not been granted an exemption under 12VAC5-110-80 until that student provides documentary proof that his immunization schedule has been completed, unless documentary proof that a medical contraindication developed during the conditional enrollment period is submitted.

E. Transfer of records. The admitting official of every school shall be responsible for sending a student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which a student is transferring within ~~30~~ 10 days of his transfer to the new school.

F. Report of student immunization status. Each admitting official shall, within 30 days of the beginning of each school year or entrance of a student, or by October 15 of each school year, file with the State Health Department through the health department for his locality, a report summarizing the immunization status of the students in his school as of the first day of school. This report shall be filed using the web-enabled reporting system or on the most current version of Form SIS 4, the Student Immunization Status Report, and

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shall contain the number of students admitted to that school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted. ~~The report for students entering the sixth grade shall include the number with a booster dose of tetanus, diphtheria, or pertussis containing vaccine within the last five years.~~

G. Each admitting official shall ensure that the parent or guardian of a female to be enrolled in the sixth grade receives educational materials describing the link between the human papillomavirus and cervical cancer. Materials shall be approved by the board and provided to the parent or guardian prior to the child's enrollment in the sixth grade.

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 (12VAC5-110)

[Certificate of Religious Exemption, CRE-1 \(rev. 00/1992\)](#)

[School Entrance Health Form, Health Information Form/Comprehensive Physical Examination Report/Certification of Immunization, MCH 213G \(rev. 3/2014\)](#)

[Student Immunization Status Report, Form SIS 3 \(School\) \(rev. 5/2009\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-110)

~~2010 Recommended Immunization Schedule for Persons Aged 0 through 6 Years, U.S. Department of Health and Human Services.~~

~~2010 Recommended Immunization Schedule for Persons Aged 7 through 18 Years, U.S. Department of Health and Human Services.~~

[2015 Recommended Immunization Schedules for Persons Aged 0 through 18 Years, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, effective January 1, 2015](#)

VA.R. Doc. No. R16-4210; Filed October 28, 2015, 12:06 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC5-410. **Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-260).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 14, 2016.

Agency Contact: Susan Puglisi, Policy Analyst, Department of Health, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email susan.puglisi@vdh.virginia.gov.

Basis: The regulation is promulgated under the authority of §§ 32.1-12 and 32.1-127 of the Code of Virginia. Section 32.1-12 grants the board the legal authority "to make, adopt, promulgate, and enforce such regulations necessary to carry out the provisions of Title 32.1 of the Code." Section 32.1-127 of the Code of Virginia directs the board to promulgate regulations with minimum standards for the construction and maintenance of hospitals, the operation, staffing and equipping of hospitals, qualifications and training of staff of hospitals, conditions under which a hospital may provide medical and nursing services to patients in their places of residence, and policies related to infection prevention, disaster preparedness, and facility security.

Purpose: The federal Centers for Medicare and Medicaid Services (CMS) issued a final rule on May 12, 2014, that enables a qualified dietitian or qualified nutrition professional to become privileged to independently order both standard and therapeutic diets within the hospital and critical access hospital settings. According to the CMS rule, hospitals will have the flexibility to either (i) appoint registered dietitians to the medical staff and grant them specific nutritional ordering privileges or (ii) authorize ordering privileges without appointment to the medical staff through the hospital's appropriate medical staff rules, regulations, and bylaws. This rule change became effective on July 11, 2014. 12VAC5-410-260 is currently written in a manner that is more restrictive than the federal regulations because it only allows registered dietitians to write independent nutrition orders in hospitals if they are appointed to the medical staff. This regulatory action will amend the regulations to remove restrictions that are more stringent than federal law. This regulatory action will protect the health and welfare of Virginians by ensuring that patients within a hospital setting are able to obtain the proper standard and therapeutic diets within the Commonwealth.

Rationale for Using Fast-Track Process: These amendments simply ensure that the Commonwealth's regulations are not more restrictive than federal regulations. These amendments have also been prepared with input from the Virginia Academy of Nutrition and Dietetics. Therefore, the department does not expect that this regulatory action will be controversial.

Substance: Amendments to 12VAC5-410-260 remove the requirement that all patient diets be ordered in writing by a member of the medical staff; allow practitioners responsible for the care of the patient, or dietitians authorized by the medical staff, to order patient diets; and allow a hospital or medical staff to privilege qualified dietitians to prescribe diets and order tests to determine appropriate diets for the patient

and specify that therapeutic diets include the provision of enteral and parenteral nutrition.

Issues: The primary advantage to the agency, the Commonwealth, and the public of the proposed regulatory action will be less burdensome regulations. The proposed regulatory action will also lead to greater access to well-rounded patient care. There are no known disadvantages to the agency, the Commonwealth, or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The federal Centers for Medicare and Medicaid Services (CMS) issued a final rule on May 12, 2014, which enables a qualified dietitian or qualified nutrition professional to become privileged to independently order both standard and therapeutic diets within the hospital and critical access hospital settings. This rule change became effective on July 11, 2014. The State Board of Health (Board) proposes to amend this regulation to reflect this change.

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

Estimated Economic Impact. The current regulation requires that all patient diets be ordered in writing by a member of the medical staff. The Board proposes to amend this requirement to state that all patient diets be ordered in writing by a practitioner responsible for the care of the patient or by a dietitian as authorized by the medical staff. The proposed new language will permit medical staff to use their time more efficiently. Permitting a qualified dietitian authorized by the medical staff to do the ordering will enable the medical staff to spend the time they otherwise would have spent on the ordering of diets on other productive health care tasks such as diagnosing and treating patients, etc.

Businesses and Entities Affected. The proposed amendments affect qualified dietitians, the 106 licensed hospitals and critical access hospitals within the Commonwealth, and patients served by hospitals throughout Virginia.

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

Projected Impact on Employment. The proposal to permit authorized dietitians not on the medical staff to order both standard and therapeutic diets within the hospital may encourage hospitals to employ more dietitians for this purpose.

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its

affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

Alternative Method that Minimizes Adverse Impact. The proposed amendments will not adversely affect small businesses.

Adverse Impacts:

Businesses: The proposed amendments will not adversely affect businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

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

Summary:

The amendments (i) remove the requirement that all patient diets be ordered in writing by a member of the medical staff; (ii) add language allowing practitioners responsible for the care of the patient, or dietitians authorized by the medical staff, to order patient diets; and (iii) allow a hospital or medical staff to privilege qualified dietitians to prescribe diets and order tests to determine appropriate diets for the patient and specify that therapeutic diets include the provision of enteral and parenteral nutrition.

12VAC5-410-260. Dietary service.

A. Each hospital shall maintain a dietary service directed by a full-time person, qualified as allowed in 12VAC5-421.

B. Each hospital shall have at least one dietitian, meeting the criteria of § 54.1-2731 of the Code of Virginia, employed on either a full-time, part-time or on a consultative basis, to direct nutritional aspects of patient care and to advise on food preparation and service.

C. Space, equipment and supplies shall be provided for the efficient, safe and sanitary receiving, storage, refrigeration, preparation and serving of food.

D. The hospital food service operation shall comply with applicable standards in 12VAC5-421.

E. A diet manual, approved by the medical staff shall be maintained by the dietary service. Diets served to patients shall comply with the principles set forth in the diet manual.

F. All patient diets ~~shall be ordered in writing by a member of the medical staff, including therapeutic diets, shall be ordered in writing by a practitioner, or by a dietitian as authorized by the medical staff, responsible for the care of the patient.~~

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1. Hospitals and their medical staffs may grant privileges to dietitians meeting the criteria of § 54.1-2731 of the Code of Virginia to order patient diets, including therapeutic diets, and to order laboratory tests to help determine appropriate diets for the patient.

2. Therapeutic diets include the provision of enteral and parenteral nutrition.

G. Pertinent observations and information relative to the special diets and to dietetic treatment shall be recorded in the patient's medical record.

H. A hospital contracting for food service shall require, as part of the contract, that the contractor comply with the provisions of this section.

VA.R. Doc. No. R16-4180; Filed October 28, 2015, 12:17 p.m.

Final Regulation

Title of Regulation: 12VAC5-540. Rules and Regulations for the Identification of Medically Underserved Areas in Virginia (amending 12VAC5-540-10, 12VAC5-540-20, 12VAC5-540-30, 12VAC5-540-40).

Statutory Authority: §§ 32.1-12 and 32.1-122.5 of the Code of Virginia.

Effective Date: December 30, 2015.

Agency Contact: Kenneth Studer, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7428, or email ken.studer@vdh.virginia.gov.

Summary:

The amendments (i) automatically designate the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services as Virginia medically underserved areas; and (ii) remove outdated information regarding scholarship programs that are affected by the designation.

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

Part I General Information

12VAC5-540-10. Authority.

In accordance with the provisions of § 32.1-122.5 of the Code of Virginia, the State Board of Health is required to establish criteria for determining medically underserved areas within the Commonwealth and include in these criteria the need for medical care services in the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services. The criteria are required to be quantifiable measures, sensitive to the unique characteristics of urban and rural jurisdictions.

12VAC5-540-20. Purpose.

The purpose of identifying medically underserved areas within the Commonwealth is to establish geographic areas in need of additional primary health care services. ~~These areas may be selected by trained primary care physicians and other~~

~~health professionals as practice sites in fulfillment of obligations that the physicians and other health professionals accepted in return for medical training and scholarship grant assistance. Each year of practice in a medically underserved area satisfies the repayment requirement of a year of scholarship support from the Virginia Medical Scholarship Program. Additionally, these medically underserved areas will be eligible locations for practicing primary care physicians and other health professionals participating in the state or federal physician loan repayment programs. Further, these medically underserved areas may become eligible for assistance, state or federal, to establish primary care medical centers.~~

Part II

Designating Medically Underserved Areas

12VAC5-540-30. Criteria for determining medically underserved areas.

EDITOR'S NOTE: The proposed amendments to this section were not adopted in the final regulations; therefore, no changes are made to this section.

The following [five] criteria, as available, and as indicated, shall be used to evaluate and identify medically underserved areas throughout the Commonwealth of Virginia [~~and the criteria shall be applied at a minimum five year interval using the most recent data available to update the designations~~]:

1. Percentage of population with income at or below 100% of the federal poverty level. The source for these data shall be the most recent available publication of the Bureau of the Census of the U.S. Department of Commerce [~~or appropriate intercensal estimates of poverty accepted by the Health Resources and Services Administration Shortage Designation Branch for federal health professional shortage area and medically underserved area designations~~].

2. Percentage of population that is 65 years of age or older. The source for these data shall be the [~~Bureau of the Census of the U.S. Department of Commerce, or the latest estimates from the Weldon Cooper Center for Public Service at the University of Virginia, or the~~] Economic Services Division of the Virginia Employment Commission.

3. The primary care physician to population ratio. The source for these data shall be the [Department of Family Practice of the Medical College of Virginia of Virginia Commonwealth University ~~Virginia Department of Health Professions, or Board of Medicine physician profile database. Primary care physicians are defined as board certified or self designated generalist practitioners who practice family medicine, pediatrics, internal medicine, or obstetrics/gynecology~~].

4. The four-year aggregate infant mortality rate. The source for these data shall be the [Center ~~most recent four year infant mortality data for each jurisdiction from the~~

~~Division~~] of Health Statistics of the Virginia Department of Health.

5. The most recent [annual ~~seasonally adjusted quarterly~~] civilian unemployment rate [~~for each jurisdiction~~]. The source for these data shall be [~~the~~] Information Services Division of the Virginia Employment Commission.

[~~6. Medical care services in state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services shall be deemed Virginia medically underserved areas.~~]

12VAC5-540-40. Application of the criteria.

A. Determining medically underserved cities and counties. The criteria enumerated in 12VAC5-540-30 shall be used to construct a numerical index by which the relative degree of medical underservice shall be calculated for each city and county within the Commonwealth. Observations for each of the ~~five~~ criteria will be listed for each Virginia city and county. An interval scale will be used to assign a particular value to each observation. This will be done for each of the ~~five~~ criteria. Each interval scale will consist of four ranges or outcomes of observations. The ranges will be numerically equal. The four ranges will be labeled as Level 1, Level 2, Level 3, and Level 4. The numerical difference between the ranges will be established beginning with the Level 2 range.

The Level 2 range shall have the statewide average for each respective criterion, except the population to primary care physician ratio, as its upper limit. The Level 2 upper limit for the primary care physician to population ratio is established by dividing the difference between the Level 4 upper limit for this criterion and the Level 1 upper limit by two. Each observation which is equal to or less than the Level 2 upper limit, but greater than the Level 1 upper limit, will be assigned a numerical value of two.

The Level 1 range shall have an upper limit which is the quotient of the statewide average divided by two. For the ratio of population to primary care physician criterion, the upper limit of Level 1 shall be the ratio 2500:1 as recommended by the American Academy of Family Physicians. Each observation that is equal to or less than the Level 1 upper limit will be assigned a numerical value of one.

The Level 3 range shall have an upper limit that is equal to the sum of the upper limit of the Level 1 range and the upper limit of the Level 2 range. For the ratio of population to primary care physician criterion, the upper limit of level 3 shall be established at 3500:1, the federal standard for designating health manpower shortage areas. Each observation that is equal to or less than the Level 3 upper limit will be assigned a numerical value of three.

The Level 4 range will include any observation greater than the upper limit of Level 3 range. Each observation in the Level 4 range will be assigned a numerical value of four.

The values for each of the ranges of the ~~five~~ criteria will be summed for each Virginia city and county. Each Virginia city

and county will have an assigned value of five or greater, to a maximum of 20. A statewide average value will be determined by summing the total city and county values and dividing by the number of cities and counties. Any city or county assigned a value that is greater than the statewide average value shall be considered medically underserved. ~~The application of criteria for determining medically underserved cities and counties shall be performed annually and published by the board.~~

B. Determining medically underserved areas within cities and counties. Geographic subsections of cities or counties may be designated as medically underserved areas when the entire city or county is not eligible if the subsection has: (i) a population to primary care physician ratio equal to or greater than 3500:1; and (ii) a population whose rate of poverty is greater than the statewide average poverty rate; and (iii) a minimum population of 3,500 persons residing in a contiguous, identifiable, geographic area. The board shall from time to time, on petition of any person, or as a result of its own decision, apply criteria for determining medically underserved subareas of cities and counties. Once determined to be medically underserved, any subarea of a city or county shall appear on the next list of medically underserved areas published by the board. Areas which qualify as medically underserved areas under 12VAC5-540-40 A and that are within Standard Metropolitan Areas as defined by the U.S. Department of Commerce, must also qualify under this section for purposes of placement of health professionals.

[~~C. Medical care services in state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services will be deemed Virginia medically underserved areas.~~]

VA.R. Doc. No. R10-2199; Filed November 6, 2015, 5:46 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: 12VAC30-120. Waivered Services (adding 12VAC30-120-927).

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

Effective Date: December 30, 2015.

Agency Contact: Melissa Fritzman, Project Manager, Division of Long Term Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4206, FAX (804) 612-0040, or email melissa.fritzman@dmas.virginia.gov.

Summary:

This regulatory action adopts a new section to establish criteria for approval of personal care service hours that exceed the maximum allowed limit of 56 hours per week. This action is required by Item 297 CCCCC of Chapter

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890 of the 2011 Acts of Assembly and only affects the Elderly or Disabled with Consumer Direction Waiver.

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

12VAC30-120-927. Exception criteria for personal care services.

DMAS shall apply the following criteria to individuals who request approval of personal care hours in excess of the maximum allowed 56 hours per week. [~~The~~ In order to qualify for personal care hours in excess of 56 hours per week, the] waiver individual shall:

1. Presently have a minimum level of care of B (the waiver individual has a composite activities of daily living (ADL) score between seven and 12 and has a medical nursing need) or C (the waiver individual has a composite ADL score of nine or higher and has a skilled medical nursing need).

2. In addition to meeting the requirements set out in subdivision 1 of this [~~subsection~~ section], the individual shall have [at least] one [~~or more~~] of the following:

a. Documentation of dependencies in all of the following activities of daily living: bathing, dressing, transferring, toileting, and eating/feeding, as defined by the current preadmission screening criteria (submitted to the service authorization contractor via DMAS-99);

b. Documentation of dependencies in both behavior and orientation as defined by the current preadmission screening criteria (submitted to the service authorization contractor via DMAS-99); or

c. Documentation from the local department of social services that the individual has an open case (as described in subdivisions c (1) and c (2) of this subdivision [2]) with either Adult Protective Services (APS) or Child Protective Services (CPS) and is [therefore] in need of additional services beyond the maximum allowed 56 hours per week. Documentation can be in the form of a phone log contact or any other documentation supplied (submitted to the service authorization contractor via attestation).

(1) For APS an open case is defined as a substantiated APS case with a disposition of needs protective services and the adult accepts the needed services.

(2) For CPS an open case is defined as being open to CPS investigation if it is both founded by the investigation and the completed family assessment documents the case with moderate or high risk.

VA.R. Doc. No. R13-2812; Filed November 6, 2015, 2:19 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-120).**

Statutory Authority: §§ 32.1-325 and 32.1-351 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmass.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance and directs that such plan include a provision for the Family Access to Medical Insurance Security (FAMIS) program. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance when the board is not in session, subject to such rules and regulations as may be prescribed by the board. Section 32.1-351 of the Code of Virginia authorizes DMAS or the director, as the case may be, to develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the Family Access to Medical Insurance Security Plan, and revise such plan and promulgate regulations as may be necessary.

Section 2105 of the Social Security Act (42 USC § 1397ee) provides governing authority for payments for services. The Patient Protection and Affordable Care Act (PPACA) (2010) permits states to extend eligibility in the Children's Health Insurance Program (CHIP) to children of state employees who are otherwise eligible under the state child health plan, known in Virginia as FAMIS. A critical issue reported to the Governor by the agency's director is the denial of access for the children of Virginia state employees to the FAMIS program. Virginia's workforce includes a significant number of lower income employees. Last year, more than 9,600 full-time state employees qualified for the Earned Income Tax Credit, a federal tax subsidy for lower-income working families. Full-time state employees may cover their dependent children through their employee health insurance, but for many families this is not an affordable option. Employees who choose this option face an increase in their insurance premium contributions of approximately \$100 to \$200 per month. Even with the most comprehensive coverage, employees must also pay co-pays of up to \$40 for doctor visits. These health care premiums and cost sharing represent a significant reduction in take home pay for many state workers. Some may be forced to opt for employee-only coverage, thereby leaving their children with no health insurance; others may struggle to pay for rent or other necessities because of the additional cost for their children's insurance. This reduced access to covered medical services

creates increased health risks for the children of Virginia state workers.

Current DMAS regulations exclude state employees from FAMIS eligibility. DMAS now seeks to remove this barrier to the FAMIS program and open up low-cost comprehensive health care coverage for the dependent children of Virginia state employees. This rule change will only affect state employees who are qualified for employer-sponsored health insurance; wage employees are not eligible to receive a state contribution toward the cost of their health coverage.

Purpose: The proposed regulatory action is intended to remove a barrier (i.e., high out-of-pocket costs) to access to health care services for more lower-income families.

At this time, a child who is a member of a family that is eligible for subsidized coverage under any Virginia state employee health insurance plan is not eligible for FAMIS. This policy was originally enacted to be compliant with § 2110(b)(2)(B) of the Social Security Act, which categorically excluded dependents of state employees in the definition of a "targeted low-income child."

Virginia's state employee health benefit policies do not allow adding or dropping dependents to coverage outside of the open enrollment period for the new plan year beginning annually July 1, except in the case of certain qualifying events. Eligibility for Medicaid has been such a qualifying event. Children in very low-income families (at or less than 143% federal poverty level (FPL)) are already eligible for Medicaid; those who are dependents of state employees can, under current rules, be dropped from state-subsidized coverage and enroll in Medicaid. The new rules will allow children in families with income between 144% and 200% FPL to move from state-subsidized coverage and enroll in FAMIS.

The children of working families who cannot afford insurance due to out-of-pocket costs suffer from lack of access to health care. While state employees may cover their dependent children through their employee health insurance, for many low-income families this is not an affordable option due to premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. This regulatory action will allow children of state employees who are otherwise eligible (e.g., by virtue of family income, residency) to be enrolled for health coverage under the FAMIS Plan. The action will remove the current exclusion of such children from enrollment. This will allow employees of the Commonwealth to be treated the same as other families with access to employer-sponsored health insurance who by current policy may apply for coverage under FAMIS.

As a result of this regulatory action, more lower-income families will be able to obtain insurance coverage for preventive services and necessary medical care for their children. This regulatory action is essential to protect the health, safety, and welfare of these affected individuals by

providing an opportunity to access high quality health care services that they may otherwise not be able to afford.

Substance: The intent of this action is to align Virginia policy with changes in federal laws and in doing so to offer more options for health care coverage to more children in lower-income families.

The proposed regulatory action allows state employees to enroll their otherwise-eligible dependent children in the FAMIS plan by removing the language that prohibits such enrollment. Since emergency regulations went into effect in January 2015, state employees who do not currently cover their dependent children on their health benefits have been able to enroll their dependent children in FAMIS if all eligibility standards are met. DMAS and the Department of Human Resources Management (DHRM) are implementing communication strategies to include agency website postings of a fact sheet, electronic newsletters to state benefit administrators, inclusion in the annual notice to all state employees about premium assistance, and the state employee open enrollment newsletter for 2015. It is estimated that 5.0% of the eligible state workforce will be impacted by this change, with a resulting 5,000 children enrolled in FAMIS

Issues: The primary advantage of this proposed action to the public is that more low-income working families will have access to the FAMIS program, with significantly reduced out-of-pocket expenses for health care. This will result in more disposable income for such families to cover their basic necessities or other discretionary expenses. Businesses that offer health insurance to their employees may see a reduction in their health insurance costs if any of their employees have a spouse employed by the state and their eligible children can be enrolled in FAMIS. The primary disadvantage for families is the administrative process of dropping a child from state-sponsored insurance during the open enrollment period (if already covered) and having to apply for FAMIS.

The primary advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. Those employees who currently cover their children on the state health plan could reduce their benefit option to that of an employee only, or employee plus spouse, thus reducing the state's share of premium for family coverage. Since the state employee health plan is self-insured, the actual costs of claims incurred for children covered under the plan would generate additional savings if those children were enrolled in FAMIS. According to DHRM staff, the state health plan's actuary estimates that the reduced cost to the state employee health plan for each child up to age 19 years (i.e., the FAMIS age limit) who leaves the plan averages \$2,877. The employer's average share (both general and nongeneral funds) of this amount is \$2,418.

Therefore, if 100 children leave the state plan for FAMIS coverage, the savings to the plan is projected to be \$287,700, and the employer's share is estimated to be \$241,800. DHRM notes that it has no reliable way to predict how many children

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will leave the health plan for FAMIS coverage. DHRM also cannot predict the specific health status or age of the children who leave, so actual savings may vary from this estimate.

Another advantage to the Commonwealth is reduction of the social and economic costs associated with reducing the number of uninsured children. It is estimated that about 100,000 children remain uninsured in Virginia. This regulatory action aims to reduce that number by 5.0%. DMAS does not anticipate any disadvantages to the public, the agency, or the Commonwealth. The proposed regulatory action fulfills the intent of Governor McAuliffe's A Healthy Virginia Plan to allow FAMIS coverage for children of state employees. It also has the potential to be considered a positive benefit for many state employees that may aid in workforce satisfaction and retention.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes remove the current exclusion in regulations and allow low-income state employees, whose children are otherwise eligible for Family Access to Medical Insurance Security Plan, to be enrolled in the program.

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

Estimated Economic Impact. These regulations establish rules for implementation and oversight of the state's Children's Health Insurance Program (CHIP), known in Virginia as the Family Access to Medical Insurance Security (FAMIS) plan. In the past, the federal government prohibited eligibility of children of state employees for FAMIS under section 2110(b)(2)(B) of the Social Security Act which categorically excluded dependents of state employees in the definition of a "targeted low-income child." However, the federal Patient Protection and Affordable Care Act (PPACA) enacted in 2010 permitted states to extend eligibility in CHIP to children of state employees who are otherwise eligible under FAMIS. The proposed changes remove the current exclusion in regulations and allow low-income state employees, whose children are otherwise eligible for FAMIS, to be enrolled in the program.

According to the Department of Human Resource Management (DHRM), last year, more than 9,600 full-time state employees qualified for the Earned Income Tax Credit, a federal tax subsidy for lower-income working families. Full-time state employees may cover their dependent children through their employee health insurance, but for many families this is not an affordable option. Employees who choose this option face an increase in their insurance premium contributions of approximately \$100 to \$200 per month. Even with the most comprehensive coverage, employees must also pay co-pays of up to \$40 for doctor visits and must pay deductibles. These health care premiums and cost sharing represent a significant reduction in take home pay for many state workers. Some are forced to opt for

employee-only coverage, thereby leaving their children with no health insurance; others may struggle to pay for rent or other necessities because of the additional cost for their children's insurance. This reduced access to covered medical services creates increased health risks for the children of Virginia state workers.

In light of this situation, the Governor charged the Secretary of Health and Human Resources to create a plan to provide Virginians with greater access to health care for uninsured citizens. As a result, the Department of Medical Assistance Services (DMAS) developed and promulgated emergency regulations that became effective on January 1, 2015. The proposed changes will permanently implement the emergency regulations currently in effect.

The new rules allow children in families with income between 144% and 200% federal poverty level who are currently not covered under their parent's state-subsidized plan to enroll in FAMIS.¹ Similarly, if the children are currently covered under their parent's state-subsidized plan, they are allowed to drop their current coverage and enroll in FAMIS. This change allows employees of the Commonwealth to be treated the same as other families with access to employer-sponsored health insurance who by current policy may apply for coverage under FAMIS. It is estimated that five percent of the state workforce eligible for insurance will be impacted by this change, with a resulting 5,000 children enrolled in FAMIS.

The economic effects of the proposed changes are different depending on whether the affected children are currently covered under their parent's policy or not. For state employees currently covering their children, a reduction in out-of-pocket expenses for health care is expected. This will result in more disposable income for such families to cover their basic necessities or other discretionary expenses. According to DMAS, most of the new enrollment in FAMIS is expected to be in this category (i.e., children dropping their existing coverage). For state employees who are not currently covering their children, some reduction in out-of-pocket expenses may also be expected. Such families may be paying out of pocket expenses for emergency or nonemergency services for their uninsured children. A reduction in out of pocket expenses will also result in more disposable income for such families to cover their basic necessities or other discretionary expenses. The primary disadvantage for affected families is the administrative process of having to apply for FAMIS and/or dropping their child from state sponsored insurance during the open enrollment period.

In addition to the savings to the employees, the primary advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. Employees who currently cover their children on the state health plan could reduce their benefit option to that of an employee only, or employee plus spouse, thus reducing the state's share of premium for family coverage. Since the state employee health

plan is self-insured, the actual costs of claims incurred for children covered under the plan would generate additional savings if those children were enrolled in FAMIS instead. According to DHRM, the state health plan's actuary estimates that the reduced cost to the state employee health plan for each child up to age 19 (i.e., the FAMIS age limit) who leaves the plan averages \$2,877 per year. The employer's average share (both general and nongeneral funds) of this amount is \$2,418 per year. Similarly, the Commonwealth may also experience a reduction in uncompensated health care costs for currently uninsured children of state employees.

Similar to the benefits to the Commonwealth, businesses that offer health insurance to their employees also stand to see a reduction in their health insurance costs if any of their employees have a spouse employed by the state and can enroll their eligible children in FAMIS.

The proposed changes may also affect health care providers. Currently, state health plan and FAMIS utilizes several provider networks. If coverage under the state health plan is dropped, affected children may start receiving services from a different provider participating in FAMIS. However, there is significant overlap between providers in state health plan networks and providers in FAMIS networks. Thus, affected children may be able to continue to receive their health care from the same providers. Likewise, a reduction in uninsured children of state employees would also reduce utilization of uncompensated health care services provided and increase utilization of providers in FAMIS.

While the Commonwealth will experience savings due to reduced employer contributions toward family coverage on the state health plan or reduced uncompensated care costs, some of these savings will be offset due to the state's share of FAMIS costs for additional children. Based on 250 new children expected to be enrolled in FAMIS in fiscal year (FY) 2015 and 5,000 new children expected in FY 2016 and thereafter, DMAS estimates \$255,687 increase in total FAMIS expenditures (\$89,490 in general funds, \$166,196 in federal funds) in FY 2015, \$12.9 million increase in total FAMIS expenditures (\$2.3 million in general funds, \$10.6 million in federal funds) in FY 2016, and \$13.6 million increase in total FAMIS expenditures (\$1.6 million in general funds, \$12 million in federal funds) in FY 2017.

The average cost per FAMIS child is estimated to be \$2,454 in FY 2015 (\$859 in general funds due to 65% federal match and \$1,595 in federal funds), is estimated to be \$2,580 in FY 2016 (\$458 in general funds due to 82.25% federal match and \$2,122 in federal funds), and is estimated to be \$2,724 in FY 2017 (\$327 in general funds due to 88% federal match and \$2,397 in federal funds). Given that the Commonwealth is expected to save \$2,418 per child whose family drops their coverage under the state employee health plan, significant net savings to the Commonwealth are expected.

In general, most of the Commonwealth's net savings will be replaced by federal funds and consequently increase inflow of

federal funds coming into Virginia. An increase in federal funds would contribute to the Commonwealth's overall economy.

Businesses and Entities Affected. Under the proposed changes, approximately 250 new children are expected to be enrolled in FAMIS in FY 2015 and 5,000 new children are expected in FY 2016 and thereafter. Most of the new enrollment in FAMIS is expected to be from children dropping their existing coverage.

The proposed changes are also expected to shift utilization of services from providers in state health plan or from providers of other health plans offered to the children of state employees to the providers participating in FAMIS.

The primary affected entity is the Commonwealth of Virginia as it will see a significant reduction in its contributions to the state employee health plan and a relatively small increase in expenditures in FAMIS due to significant federal funding, therefore experiencing significant net savings.

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

Projected Impact on Employment. The proposed amendments may reduce demand for labor by providers in the state health plan or by providers of other health plans offered to the children of state employees and increase the demand for labor by the providers participating in FAMIS. However, DMAS indicates that there is a significant overlap between the providers in the state health plan and in FAMIS.

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

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

Small Businesses.²

Costs and Other Effects. The proposed amendments may affect health care providers who are currently providing services to affected children and who will be providing services through FAMIS as discussed above. The majority of these providers are believed to be small businesses.

Alternative Method that Minimizes Adverse Impact. There is no known alternative method that would minimize the potential adverse impact on providers who are currently providing services to affected children while accomplishing the same goals.

Adverse Impacts:

Businesses: The proposed amendments may have an adverse impact on health care networks currently utilized by the state health plan which are not believed to be small businesses. However, some of these networks also participate in FAMIS and may continue to provide services to majority of the same children affected by the proposed changes.

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Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

¹ Children in very low-income families (at or less than 143% federal poverty level) are already eligible for Medicaid; those who are dependents of state employees can, under the current rules, be dropped from state-subsidized coverage and enroll in Medicaid.

² Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning FAMIS Eligibility for Children of State Employees. The agency raises no issues with this analysis.

Summary:

The proposed amendments remove the exclusion of otherwise eligible, by income and residency, state employees, who have access to subsidized health insurance coverage, from enrolling their dependent children in the Family Access to Medical Insurance Security (FAMIS) Plan and allow low-income state employees, whose children are eligible for the FAMIS Plan, to be enrolled in the program.

Part III

Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;
2. Be under 19 years of age;
3. Be residents of the Commonwealth;
4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;
5. Be uninsured, that is, not have comprehensive health insurance coverage; and
6. ~~Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(e)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and~~

7. ~~6.~~ Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid Services. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible

for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance. Each redetermination of eligibility shall also document inquiry about current health insurance.

b. Health insurance does not include Medicare, Medicaid, FAMIS, or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed

eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-120. Children ineligible for FAMIS.

A. If a child is:

1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, he shall be ineligible for FAMIS;~~

~~3. 2.~~ An inmate of a public institution as defined in 42 CFR 435.1009, he shall be ineligible for FAMIS; or

~~4. 3.~~ An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, he shall be ineligible for FAMIS.

B. If a child's parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the child shall be ineligible for FAMIS.

C. If a child, if age 18, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. The child, if age 18, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

VA.R. Doc. No. R15-4206; Filed October 30, 2015, 2:06 p.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 14VAC5-216. Rules Governing Internal Appeal and External Review (amending

Regulations

14VAC5-216-10, 14VAC5-216-20, 14VAC5-216-40, 14VAC5-216-50; adding 14VAC5-216-65).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

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

Public Comment Deadline: December 18, 2015.

Agency Contact: Tom Bridenstine, Bureau of Insurance Manager, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9746, FAX (804) 371-9944, or email tom.bridenstine@scc.virginia.gov.

Summary:

The proposed amendments (i) define an "exception request" for an enrollee to obtain a prescription drug that is not on a health carrier's closed formulary; (ii) describe the requirements for the exception request process, which enhances and further clarifies the process identified in subdivisions B 2 and B 3 of § 38.2-3407.9:01 of the Code of Virginia and is in accordance with 45 CFR 156.122(c); and (iii) provide further clarification to an existing provision in the urgent care appeals section.

AT RICHMOND, NOVEMBER 9, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2015-00184

Ex Parte: In the matter of Amending Rules
Governing Internal Appeal and External Review

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend certain sections found in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review" ("Rules"), which are set out at 14 VAC 5-216-10, 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-50, and establish a new section at 14 VAC 5-216-65.

The amendments and the new section are necessary to define an "exception request" for an enrollee to obtain a

prescription drug that is not on a health carrier's closed formulary and to describe the requirements for the exception request process that will enhance and further clarify the process identified in § 38.2-3407.9:01 B 2 and 3 of the Code. The amendments also provide further clarification to the urgent care appeals section.

NOW THE COMMISSION is of the opinion that the proposed amendments to 14 VAC 5-216-10, 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-50 and the new section at 14 VAC 5-216-65, as submitted by the Bureau, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Internal Appeal and External Review," which amend the Rules at 14 VAC 5-216-10, 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-50 and establish a new section at 14 VAC 5-216-65, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments and new section, shall file such comments or hearing request on or before December 18, 2015, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2015-00184.

(3) If no written request for a hearing on the proposal to amend and establish new Rules as outlined in this Order is received on or before December 18, 2015, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(4) The Bureau forthwith shall provide notice of the proposal to amend and establish new Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with the proposal, to all insurers, health maintenance organizations and health services plans licensed in Virginia to sell accident and sickness insurance, and to all interested persons.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend and establish new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4).

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle.

Part I
General

14VAC5-216-10. Scope and purpose.

A. This chapter shall apply to all health carriers, except that the provisions of this chapter shall not apply to a policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage; credit; disability income; hospital indemnity; long-term care; dental, vision care, or any other limited supplemental benefit or to a Medicare supplement policy of insurance; coverage under a plan through Medicare, Medicaid, or the federal employees health benefits program; self-insured plans except that a self-insured employee welfare benefit plan may elect to use the state external review process; any coverage issued under Chapter 55 of Title 10 of the U.S. Code (TRICARE), and any coverage issued as supplemental to that coverage; any coverage issued as supplemental to liability insurance, workers' compensation or similar insurance; and automobile medical payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group or individual basis.

B. The purpose of this chapter is to set forth rules to carry out the provisions of Chapter 35.1 (§ 38.2-3556 et seq.) of Title 38.2 of the Code of Virginia as well as federal law to provide a health carrier with guidelines to assist with establishing a procedure for an internal appeals process under which there will be a full and fair review of any adverse benefit determination. This chapter also sets forth requirements for the external review process.

C. This chapter shall apply to any adverse benefit determination made on or after July 1, 2011, by any health carrier for a grandfathered or non-grandfathered health benefit plan, as defined by the PPACA.

D. This chapter also sets forth requirements for an exception request for plan years beginning on or after January 1, 2016.

14VAC5-216-20. Definitions.

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

"Adverse benefit determination" in the context of the internal appeals process means (i) a determination by a health carrier or its designee utilization review entity that, based on the information provided, a request for, a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's

requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the requested benefit; (ii) the denial, reduction, or termination of, or failure to provide or make payment in whole or in part for, a benefit based on a determination by a health carrier or its designee utilization review entity of a covered person's eligibility to participate in the health carrier's health benefit plan; (iii) any review determination that denies, reduces, or terminates or fails to provide or make payment, in whole or in part, for a benefit; (iv) a rescission of coverage determination as defined in § 38.2-3438 of the Code of Virginia; or (v) any decision to deny individual coverage in an initial eligibility determination.

"Adverse determination" in the context of external review means a determination by a health carrier or its designee utilization review entity that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested service or payment for the service is therefore denied, reduced, or terminated.

"Authorized representative" means (i) a person to whom a covered person has given express written consent to represent the covered person; (ii) a person authorized by law to provide substituted consent for a covered person; (iii) a family member of a covered person or the covered person's treating health care professional when the covered person is unable to provide consent; (iv) a health care professional when the covered person's health benefit plan requires that a request for a benefit under the plan be initiated by the health care professional; or (v) in the case of an urgent care internal appeal, a health care professional with knowledge of the covered person's medical condition.

"Clinical peer reviewer" means a practicing health care professional who holds a nonrestricted license in a state, district, or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under appeal.

"Commission" means the State Corporation Commission.

"Concurrent review" means utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or other inpatient or outpatient health care setting.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan. For purposes of this chapter with respect to the administration of appeals, references to a covered person include a covered person's authorized representative, if any.

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

"Exception request" means a process that allows a covered person, authorized representative, or prescribing physician (or other prescriber, as appropriate) to request and gain access to clinically appropriate drugs not otherwise covered by a health benefit plan.

"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review entity, at the completion of the health carrier's internal appeal process.

"Group health plan" means an employee welfare benefit plan (as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" does not include accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with the laws of the Commonwealth.

"Health carrier" means an entity, subject to the insurance laws and regulations of the Commonwealth or subject to the jurisdiction of the commission, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse

any of the costs of health care services, including an accident and sickness insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or a nonstock corporation offering or administering a health services plan, a hospital services plan, or a medical or surgical services plan, or any other entity providing a plan of health insurance, health benefits, or health care services except as excluded under § 38.2-3557 of the Code of Virginia.

"Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations, as well as alleged violations of 14VAC5-216-30 through 14VAC5-216-70 pertaining to internal appeal.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

"Pre-service claim" means a claim for a benefit under a health benefit plan that requires approval of the benefit in whole or in part, in advance of obtaining the service or treatment.

"Post-service claim" means a claim for a benefit under a health benefit plan that is not a pre-service claim, or the service or treatment has been provided to the covered person.

"Self-insured plan" means an "employee welfare benefit plan" that has the meaning set forth in the Employee Retirement Income Security Act of 1974, 29 USC § 1002(1).

"Urgent care appeal" means an appeal for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations (i) could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or (ii) in the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal. An urgent care appeal shall not be available for any post-service claim or retrospective adverse benefit determination.

"Utilization review" means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

14VAC5-216-40. Minimum appeal requirements.

A. Each covered person shall be entitled to a full and fair review of an adverse benefit determination. Within 180 days after the date of receipt of a notice of an adverse benefit determination, a covered person may file an appeal with the health carrier. A health carrier may designate a utilization review entity to coordinate the review. For purposes of this

chapter, "health carrier" may also mean its designated utilization review entity.

B. The health carrier shall conduct the appeal in a manner to ensure the independence and impartiality of the individuals involved in reviewing the appeal. In ensuring the independence and impartiality of such individuals, the health carrier shall not make decisions regarding hiring, compensation, termination, promotion, or other similar matters based upon the likelihood that an individual will support the denial of benefits.

C. 1. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other service is experimental, investigational, or not medically necessary or appropriate, the health carrier shall designate a clinical peer reviewer to review the appeal. The clinical peer reviewer shall not have been involved in any previous adverse benefit determination with respect to the claim.

2. A reviewer of any other type of adverse benefit determination shall be an appropriate person designated by the health carrier. The reviewer of the appeal shall not be the individual who made any previous adverse benefit determination of the subject appeal nor the subordinate of such individual and shall not defer to any prior adverse benefit determination.

D. A full and fair review shall also provide for:

1. The covered person to have an opportunity to submit written comments, documents, records, and other information relating to the appeal for the reviewer or reviewers to consider when reviewing the appeal.

2. Upon request to the health carrier, the covered person to have reasonable access to and free of charge copies of all documents, records, and other information relevant to the covered person's request for benefits. This information shall be provided to the covered person as soon as practicable.

3. An appeal process that takes into account all comments, documents, records, and other information submitted by the covered person relating to the appeal, without regard to whether such information was submitted or considered in the initial benefit determination.

4. The identification of medical or vocational experts whose advice was obtained on behalf of the health ~~benefit plan carrier~~ ^{benefit plan carrier} in connection with a covered person's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

5. An urgent care appeal process.

6. Prior to issuing a final adverse benefit determination, the health carrier to provide free of charge to the covered person any new or additional evidence relied upon or generated by the health carrier or at the direction of the health carrier, in connection with the internal appeal

sufficiently in advance of the date the determination is required to be provided to permit the covered person a reasonable opportunity to respond prior to that date.

E. A health carrier shall notify the covered person of the final benefit determination within a reasonable period of time appropriate to the medical circumstances, but not later than the timeframes established in subdivisions 1 and 2 of this subsection.

1. If an internal appeal involves a pre-service claim review request, the health carrier shall notify the covered person of its decision within 30 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 15 days is allowed for a benefit determination and notification from each level of the appeal.

2. If an internal appeal involves a post-service claim review request, the health carrier shall notify the covered person of its decision within 60 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 30 days is allowed for a benefit determination and notification from each level of the appeal.

14VAC5-216-50. Urgent care appeals.

A. The health carrier shall notify the covered person of its initial benefit determination as soon as possible taking into account medical exigencies, but not later than 72 hours after receipt of the request, unless the covered person fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the health benefit plan. In the case of such failure, the health carrier shall notify the covered person as soon as possible, but not later than 24 hours after receipt of the request, of the specific information necessary to complete the claim. The covered person shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours to provide the specified information. The health carrier shall notify the covered person of its benefit determination not later than 48 hours after the earlier of (i) its receipt of the specified information or (ii) the end of the period afforded to the covered person to provide the specified additional information.

B. The notification of an urgent care adverse benefit determination that is based on a medical necessity, appropriateness, health care setting, level of care, effectiveness, experimental or investigational service or treatment, or similar exclusion or limit, shall include a description of the health carrier's urgent care appeal process including any time limits applicable to those procedures and the availability of and procedures for an expedited external review.

C. Upon receipt of an adverse benefit determination, a covered person may submit a request for an urgent care appeal either orally or in writing to the health carrier. Any appeal request made under this section by a treating health

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care professional shall be handled as an urgent care appeal. If such request is made by the covered person and not the treating health care professional, an individual acting on behalf of the health carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine to determine whether the appeal meets urgent care requirements.

D. All necessary information, including the benefit determination on appeal, shall be transmitted between the health carrier and the covered person by telephone, facsimile, or the most expeditious method available.

E. The health carrier shall notify the covered person and the treating health care professional of its benefit determination as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of an urgent care appeal.

14VAC5-216-65. Exception request for prescription drugs.

A. For plan years beginning on or after January 1, 2016, notwithstanding any other provision of this chapter, a health carrier shall have a process in place that allows for a covered person or his prescribing physician (or other prescriber) to request and gain access to clinically appropriate drugs not otherwise covered by the health benefit plan, known as an exception request, in accordance with the requirements of 45 CFR §156.122 (c).

1. A standard exception request shall be reviewed and a coverage determination provided to the covered person and prescribing physician no later than the earlier of one business day or 72 hours following receipt of the request.

2. An expedited exception request may be made when exigent circumstances exist. Exigent circumstances exist when the covered person is suffering from a health condition that may seriously jeopardize the covered person's life, health, or ability to regain maximum function or when the covered person is undergoing a current course of treatment using a nonformulary drug. An expedited exception request shall be reviewed and a coverage determination provided to the covered person and prescribing physician no later than 24 hours following receipt of the request.

3. If a health carrier denies coverage as a result of a standard exception request or an expedited exception request, the covered person or prescribing physician may submit an external exception request to the health carrier, requiring that the original exception request and subsequent denial be reviewed by an independent review organization. Such request shall be reviewed and a coverage determination provided to the covered person and prescribing physician no later than 72 hours following receipt of the request if the original request was a standard exception request, or 24 hours following receipt of the request if the original request was an expedited exception request.

B. The health carrier shall provide the nonformulary drug or drugs for the duration of the prescription (including refills) if coverage is granted under a standard exception request, or for the duration of the exigency if coverage is granted under an expedited exception request, including those granted through an external exception request. Coverage for each drug approved by an exception request shall be applied as if the drug was part of the prescription formulary.

C. A health carrier shall contract with at least one accredited independent review organization to conduct reviews in accordance with the requirements of subdivision A 3 of this section.

VA.R. Doc. No. R16-4534; Filed November 9, 2015, 11:39 a.m.

Proposed Regulation

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

Title of Regulation: 14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-10, 14VAC5-395-20, 14VAC5-395-30 through 14VAC5-395-80; adding 14VAC5-395-75, 14VAC5-395-100; repealing 14VAC5-395-25).

Statutory Authority: §§ 12.1-13 and 55-525.28 of the Code of Virginia.

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

Public Comment Deadline: December 31, 2015.

Agency Contact: Chuck F. Myers, Supervisor of RESA Investigation Unit, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9619, FAX (804) 371-5661, or email chuck.myers@scc.virginia.gov.

Summary:

The proposed amendments (i) define various terms, including "designated licensed producer," "escrow, closing, or settlement services," and "settlement agent"; (ii) add reporting requirements for settlement agents; (iii) clarify registration, appointments, and the use of title insurance agent independent contractors; (iv) add requirements regarding escrow accounts; (v) require that settlement agents and former settlement agents maintain contact information with the Bureau of Insurance; and (vi) make various other technical and clarifying amendments.

AT RICHMOND, NOVEMBER 9, 2015
 COMMONWEALTH OF VIRGINIA, *ex rel.*
 STATE CORPORATION COMMISSION

CASE NO. INS-2015-00170

Ex Parte: In re: Rules Governing Settlement Agents

ORDER TO TAKE NOTICE

Section 55-525.28 of the Code of Virginia provides that the State Corporation Commission ("Commission") may adopt such regulations as it deems appropriate to effect the purposes of Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia. The Commission's regulations governing title insurance agents, title insurance agencies and title insurance companies providing escrow, closing or settlement services involving real property located in Virginia ("settlement agents") are set forth in Chapter 395 of Title 14 of the Virginia Administrative Code ("Chapter 395").

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to Chapter 395. The amendments to the regulations are being proposed to address changes in business practices, technology, and federal law, and include various technical and other clarifying changes. A copy of the regulations may also be found at the Commission's website:
<http://www.scc.virginia.gov/boi/laws.aspx>.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of February 1, 2016.

Accordingly, IT IS ORDERED THAT:

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

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before December 31, 2015. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. INS-2015-00170. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

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

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

(5) The Bureau shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed and registered title insurance agents, title insurance agencies and title insurance companies providing escrow, closing or settlement services involving real property located in Virginia, and such other interested parties as the Bureau may designate.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance

with the notice requirements of Ordering Paragraph (5).

(7) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose.

14VAC5-395-10. Purpose Applicability.

~~A. The purpose of this Chapter is to implement~~ implements Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia ~~B. This chapter and~~ and applies to all title insurance agents, title insurance agencies, and title insurance companies providing escrow, closing, or settlement services involving the purchase of or lending on the security of any real estate containing not more than four residential dwelling units property in the Commonwealth of Virginia.

~~C. The Bureau of Insurance shall issue the necessary forms to carry out the provisions of Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia and this chapter.~~

14VAC5-395-20. Definitions.

~~Unless otherwise defined herein, all~~ The following words and terms when used in this chapter shall have the meaning as set forth in Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia following meanings unless the context clearly indicates otherwise:

~~"Agent" or "insurance agent" shall have the same meaning as set forth in § 38.2-1800 of the Code of Virginia means an~~ individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in the Commonwealth.

"Bureau" means the State Corporation Commission Bureau of Insurance.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Designated licensed producer" means an individual who (i) possesses a valid Virginia title license to sell, solicit, or negotiate contracts of insurance or annuity in the Commonwealth; (ii) is appointed; (iii) is an employee of the business entity; and (iv) is responsible for the business

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entity's compliance with the insurance laws, rules, and regulations of this Commonwealth.

"Employee" means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a business entity and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling business entity.

"Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include (i) placing orders for title insurance; (ii) receiving and issuing receipts for money received from the parties; (iii) ordering loan checks and payoffs; (iv) ordering surveys and inspections; (v) preparing settlement statements or Closing Disclosure forms; (vi) determining that all closing documents conform to the parties' contract requirements; (vii) setting the closing appointment; (viii) following up with the parties to ensure that the transaction progresses to closing; (ix) ascertaining that the lenders' instructions have been satisfied; (x) conducting a closing conference at which the documents are executed; (xi) receiving and disbursing funds; (xii) completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction; (xiii) handling or arranging for the recording of documents; (xiv) sending recorded documents to the lender; (xv) sending the recorded deed and the title policy to the buyer; and (xvi) reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 of the Code of Virginia, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing or settlement services in connection with a transaction related to any real estate in this Commonwealth, and (iv) is listed as the settlement agent on the settlement statement or Closing Disclosure for such the transaction.

"Settlement agent" shall have the same meaning as set forth in § 55-525.16 of the Code of Virginia means any title insurance agent, title insurance agency, title insurance company, or person, other than a party to the real estate transaction, who provides escrow, closing, or settlement services in connection with a transaction related to real estate in the Commonwealth and who is listed as the settlement agent on the settlement statement or Closing Disclosure for the transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of Chapter 27.3 (§ 55-525.16 et seq.) of the Code of Virginia and this chapter.

"Title insurance agency" means a business entity licensed in this Commonwealth as a title insurance agent.

"Title insurance agent" shall have the same meaning as set forth in § 38.2-1800 of the Code of Virginia.

"Title insurance agency" or "title insurance agent" means any individual or business entity licensed in the Commonwealth, pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2 of the Code of Virginia, as a title insurance agent and appointed by a title insurance company licensed in the Commonwealth who shall perform all of the following services (for which liability arises) relevant to the issuance of title insurance policies, subject to the underwriting directives and guidelines of the agent's title insurance company. These services shall include (i) the evaluation of the title search to determine the insurability of the title; (ii) a determination of whether or not underwriting objections have been cleared; (iii) the actual issuance of a title commitment or binder and endorsements; and (iv) the actual issuance of the policy or policies and endorsements on behalf of the title insurance company. A title insurance agent holding funds in escrow shall promptly deposit the funds in a trust account in a financial institution authorized to do business in this Commonwealth. This trust account shall be separate from all other accounts held by the agent.

"Title insurance company" means any company licensed to transact, or transacting, title insurance in this Commonwealth.

14VAC5-395-25. Lay real estate settlement agents. (Repealed.)

~~Notwithstanding any provision of this chapter to the contrary, and pursuant to § 55-525.18 of the Code of Virginia, a lay real estate settlement agent shall be required to comply with the provisions of this chapter, except as specifically set forth in 14VAC5-395-60.~~

14VAC5-395-30. Registration.

A. Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent shall be required to be registered register with the bureau in accordance with the provisions of § 55-525.30 of the Code of Virginia.

B. At the time of application for registration, a settlement agent shall provide to the bureau (i) its certificate of authorization or charter of a domestic limited liability company or corporation, or certificate of registration or certificate of authority of a foreign limited liability company or corporation, as applicable; (ii) an original surety bond; and (iii) a designated licensed producer.

C. Within 30 days of registration a settlement agent shall furnish to the bureau:

1. Legal name;
2. Any fictitious names;
3. Principal place of business address;
4. Addresses of all other business locations;
5. Telephone numbers;
6. Escrow account numbers and financial institution addresses;
7. Employee and independent contractor list;

8. Website or websites;

9. Affiliated entities; and

10. Such other information as the bureau may require.

14VAC5-395-40. Insurance and bonding requirements.

A. At the time of registration, every ~~title insurance agent and title insurance agency acting as~~ a settlement agent shall file a certification on a form prescribed by the bureau, that the settlement agent has, and thereafter shall keep in force for as long as they are acting as a settlement agent, the following:

1. An errors and omissions insurance policy providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. A deductible is permitted but shall not hinder or delay the payment of a claim.

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may request apply for a waiver of this requirement on their certification form.

B. Every ~~title insurance agent and title insurance agency that acts as~~ a settlement agent in the Commonwealth of Virginia shall file an original surety bond in an amount not less than \$200,000 on a form prescribed by the bureau at the time of application for registration and, if such bond is canceled, at the time a replacement bond is issued.

14VAC5-395-50. Audits.

A. Every ~~title insurance agent and title insurance agency that acts as~~ a settlement agent in the Commonwealth of Virginia shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. The audit month shall be prescribed by the bureau. Such audit shall conform with the standards established by the American Institute of Certified Public Accountants, Statement on Auditing AICPA Professional Standards, Volume 1, as of June 1, 2015, Special Reports Considerations - Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement, and shall be filed by the settlement agent with the bureau no later than 60 days after the date on which the audit is completed. A title insurance company shall be subject to the requirements of this subsection unless such company's financial statements are audited annually by an independent certified public accountant.

B. Every ~~title insurance agent or title insurance agency acting as~~ a settlement agent shall file a copy of its audit report with each title insurance company it represents.

C. In lieu of an audit conducted by a certified public accountant, a ~~title insurance agent or title insurance agency~~

~~acting as~~ a settlement agent shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts at least once each consecutive 12-month period. The form of ~~such~~ the analysis and the analysis month shall be prescribed by the bureau. The title insurance company shall submit a copy of its analysis to the bureau no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent or agency, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis.

D. Every settlement agent shall (i) make a good faith effort to disburse funds in its possession and return the funds to the rightful owner; (ii) escheat unclaimed funds yearly to the Virginia Department of the Treasury; and (iii) comply with The Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) of Title 55 of the Code of Virginia.

E. A settlement agent shall complete and file a close-out audit with the bureau in conformance with this chapter and the bureau's instructions within 180 days from the date the settlement agent ceases conducting settlements.

14VAC5-395-60. Separate fiduciary trust account.

A. Every ~~title insurance agent, title insurance agency and title insurance company that acts as~~ a settlement agent in the Commonwealth of Virginia shall maintain a separate fiduciary trust account for the purpose of handling funds received in connection with escrow, closing, or settlement services involving real estate located only in this Commonwealth. No other funds may be included in this escrow account except funds deposited to guarantee the adequacy of the account. Such trust account shall be with a financial institution authorized to do business in the Commonwealth of Virginia.

B. If the ~~agent, agency, or company acting as~~ a lay real estate settlement agent provides escrow, closing, or settlement services in transactions involving multiple parcels or tracts of real estate and any one of those tracts or parcels is located wholly or partially outside of this Commonwealth, ~~that the settlement agent, agency, or company~~ shall maintain another separate fiduciary trust account for the purpose of handling funds received in connection with such transactions.

C. A settlement agent may utilize a general escrow account for the purpose of receiving funds in connection with an escrow, closing, or settlement involving real estate located in the Commonwealth, provided that the settlement agent (i) handles the funds in a fiduciary capacity and (ii) deposits the funds in a separate fiduciary trust account in compliance with subsection A of this section no later than the close of the second business day after receipt of the funds.

14VAC5-395-70. ~~Access to records~~ Reporting requirements.

A. Every ~~title insurance agent, title insurance agency and title insurance company that acts as~~ a settlement agent in the

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Commonwealth of Virginia shall make all escrow, closing, or settlement records available promptly upon request for examination by the bureau without notice during normal business hours.

B. A settlement agent shall maintain documentation that supports all entries on the settlement statement or Closing Disclosure.

C. A settlement agent shall promptly respond to a bureau request for books, records, documentation, or other information in connection with the bureau's investigation, enforcement, or examination of the settlement agent's compliance with applicable laws and regulations. If no time period is specified by the bureau, a written response as well as any requested books, records, documentation, or information shall be delivered by the settlement agent to the bureau not later than 30 days from the date of such request.

D. Within 30 days following the occurrence of any of the following events, a settlement agent shall report to the bureau if:

1. Any bankruptcy, reorganization, or receivership proceedings are filed by or against the settlement agent.
2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the settlement agent.
3. Any local, state, or federal governmental authority (i) revokes or suspends the settlement agent's registration, license, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the settlement agent relating to its business; or (iii) takes any other action against the settlement agent relating to its business where the total amount of restitution or other payment from the settlement agent exceeds \$2,500.
4. Based on allegations by any local, state, or federal governmental authority that the settlement agent violated any law or regulation applicable to the conduct of its licensed business, the settlement agent enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
5. The settlement agent surrenders its license in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.
6. The settlement agent is denied a license in another state.
7. The settlement agent or any of its members, partners, directors, officers, principals, employees, or independent contractors is indicted or convicted of a felony.
8. Any funds held by the settlement agent are (i) seized by or on behalf of any court or governmental instrumentality or (ii) forfeited to or on behalf of any court or governmental instrumentality.

E. A settlement agent shall immediately notify the bureau following the loss of (i) a designated licensed producer, (ii) required insurance coverage, or (iii) required bond coverage.

F. A settlement agent or former settlement agent shall provide the following information to the bureau within 10 days after such person's license is surrendered, terminated, suspended, or revoked or has lapsed by operation of law, or the licensed and registered business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person; (ii) the location of the settlement agent's or former settlement agent's records; and (iii) any additional information that the bureau may reasonably require. A settlement agent or former settlement agent shall maintain current information with the bureau until all escrow funds are disbursed and all title policies are issued.

G. Sixty days prior to ceasing business, a settlement agent shall provide notice to the bureau of its intent to cease conducting settlements and the anticipated date of business termination.

H. The reports required by this section shall be in the format and contain such additional information as the bureau may reasonably require. The bureau may also require additional reports that it deems necessary.

14VAC5-395-75. Operating requirements.

A settlement agent shall comply with the following requirements:

1. A settlement agent shall continuously maintain the requirements and standards for licensure and registration.
2. A settlement agent shall reconcile its escrow accounts monthly.
3. A settlement agent shall not provide any information to the bureau or a consumer that is false, misleading, or deceptive.
4. A settlement agent shall not charge duplicative or inflated fees for escrow, closing, or settlement services.
5. A settlement agent shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 27.3 (§ 55-525.16 et seq.) of the Code of Virginia or this chapter.
6. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money, including possessing wire transfer authority, shall be properly licensed and shall be deemed a "settlement agent" subject to the applicable requirements of Chapter 27.3 and this chapter.
7. A designated licensed producer shall be appointed by the same title insurance company as its employer settlement agent.
8. A settlement agent may not use or accept the services of a title insurance agent independent contractor unless the title insurance agent independent contractor (i) holds a title

insurance license, (ii) is appointed, (iii) is registered, and (iv) maintains the insurance or bond coverages required by Chapter 27.3 and this chapter.

9. A settlement agent that uses the services of a title insurance agent independent contractor shall be (i) the legal principal of the title insurance agent independent contractor and (ii) liable for all actions of the title insurance agent independent contractor, including unintentional conduct, that occurs during the period services are utilized.

10. A former settlement agent shall remain subject to the provisions of Chapter 27.3 and this chapter in connection with all settlements that the settlement agent performed while licensed and registered, notwithstanding the occurrence of any of the following events:

- a. The settlement agent's license is surrendered, terminated, suspended, or revoked or has lapsed by operation of law; or
- b. The settlement agent ceases conducting settlements.

11. If a settlement agent or former settlement agent disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be disposed of in a secure manner.

14VAC5-395-80. Violations Enforcement.

~~Any violation of Failure to comply with any provision of Chapter 27.3 (§ 55-525.16 et seq. of the Code of Virginia) or this chapter shall be punished as provided for in Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia may result in penalties, license revocation or suspension, the entry of a cease and desist order, restitution, or other enforcement action.~~

14VAC5-395-100. Commission authority.

~~The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.~~

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 (14VAC5-395)

[Settlement Agent Official Registration Form for a Title Agent \(eff. 3/2012\)](#)

[Settlement Agent Official Registration Form for Licensed Title Insurance Company or Agency \(eff. 3/2012\)](#)

[Title Settlement Agency/Agency Financial Responsibility Certification \(undated, filed 11/2015\)](#)

[Waiver of Blanket Fidelity Bond or Employee Dishonesty Insurance Policy for Title Insurance Settlement Agents \(undated, filed 11/2015\)](#)

[Bond for Title Insurance Settlement Agent \(undated, filed 11/2015\)](#)

[Standard Report of Escrow Accounts Maintained by Title Insurance Agents \(eff. 10/2010\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-395)

~~Statement on Auditing Standards, Special Reports, July 1, 1989, American Institute of Certified Public Accountants.~~

~~AICPA Professional Standards, Volume 1, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>~~

~~AICPA Professional Standards, Volume 2, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>~~

VA.R. Doc. No. R16-4541; Filed November 9, 2015, 2:36 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-140. Virginia Confined Space Standard for the Construction Industry (repealing 16VAC25-140-10 through 16VAC25-140-90, Appendix A, Appendix B).**

16VAC25-150. Underground Construction, Construction Industry (repealing 16VAC25-150-10).

16VAC25-170. Virginia Excavation Standard, Construction Industry (29 CFR 1926.650 - 1926.652) (repealing 16VAC25-170-10, 16VAC25-170-20, 16VAC25-170-30).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.953, 16VAC25-175-1926.968, 16VAC25-175-1926.1200 through 16VAC25-175-1926.1213; adding 16VAC25-175-1926.650, 16VAC25-175-1926.651, 16VAC25-175-1926.652,

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16VAC25-175-1926.800; repealing 16VAC25-175-1926.21).

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

Effective Date: January 1, 2016.

Agency Contact: John Crisanti, Policy and Planning Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) adopted a new construction standard on confined spaces in construction, Subpart AA (29 CFR 1926.1200 through 29 CFR 1926.1213), and revisions to related provisions (29 CFR 1926.21, 29 CFR 1926.953, and 29 CFR 1926.968). Subpart AA replaces OSHA's current one training requirement for confined space work with a comprehensive standard that includes a permit program designed to protect employees from exposure to many hazards associated with work in confined spaces, including atmospheric and physical hazards. The final rule is similar in content and organization to the general industry confined space standard, but also incorporates several provisions from the proposed rule to address construction-specific hazards, accounts for advancements in technology, and improves enforceability of the requirements. This action incorporates these changes into the Virginia standard. The new OSHA final rule provides comprehensive and uniform levels of worker protection across industries that previously were lacking in the federal regulations but had been addressed in 16VAC25-140, Virginia Confined Space Standard for the Construction Industry, a Virginia unique regulation. Since 16VAC25-140 is no longer necessary, the board is repealing it as part of this regulatory action.

The OSHA final rule does not apply to excavation or underground construction, which are covered by existing federal regulations. Therefore, the board adopted the existing federal identical regulations for the Excavation Standard (29 CFR 1926.650, 1926.651, and 1926.652) and the Underground Construction Standard (29 CFR 1926.800) and repealed the Virginia unique standards 16VAC25-150, Underground Construction, Construction Industry, and 16VAC25-170, Virginia Excavation Standard, Construction Industry.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar

of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On October 29, 2015, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Confined Spaces in Construction, as published in 80 FR 25365 through 80 FR 25526 on May 4, 2015, with an effective date of August 3, 2015.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for the Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
August 3, 2015	January 1, 2016

VA.R. Doc. No. R16-4562; Filed November 10, 2015, 11:26 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Proposed Regulation

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-10; adding 18VAC30-20-241).**

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

Public Hearing Information:

December 11, 2015 - 8:45 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd Floor, Richmond, VA

Public Comment Deadline: January 29, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations Governing the Practice of Audiology and Speech-Language Pathology (18VAC30-20) are promulgated under the general authority of subdivision 6 of § 54.1-2400 of the Code of Virginia, which provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system.

Authority for the board to adopt regulations for limited cerumen management in the practice of audiology is pursuant to Chapter 327 of the 2014 Acts of Assembly.

Purpose: Since cerumen management is a more advanced skill in the practice of audiology, requiring additional knowledge and training, regulations specify the education and specific training necessary to perform it on patients. Additionally, audiologists must know the contraindications for performance by an audiologist and the conditions that require referral to a medical doctor. The goal of the amended regulation is to provide a framework for safe practice in an advanced procedure that prior to 2014 was not recognized in Virginia as being within the scope of practice of an audiologist. By the change in law and regulation, the practice is expanded to include limited cerumen management, but the qualifications for such practice and the limitations of practice by an audiologist are essential to protect patients.

If an audiologist does not have the clinical knowledge and skills or if he attempts to perform cerumen management on a patient beyond his scope of practice or in spite of contraindications, he can do serious damage to a patient's ear. If an audiologist is adequately trained and practices according to the standard of care and the board's regulation, the public's health and safety should be protected.

Substance: 18VAC30-20-10 is amended to include a definition for "limited cerumen management."

18VAC30-20-241 is a new section, in which subsection A sets out the basic educational qualification for performance of cerumen management, subsection B sets out the training an audiologist must satisfactorily complete to perform cerumen management and specifies that documentation of such training must be maintained, subsection C sets out the contraindications for performance of cerumen management, and subsection D provides that an audiologist performing cerumen management shall obtain informed written consent of the patient or legally responsible adult and maintain documentation of such consent and the procedure performed in the patient record. It also specifies that the audiologist shall refer patients to a physician if they exhibit contraindications or experience any complication, such as dizziness, during the procedure.

Issues: There are no disadvantages to the public. With the passage of Chapter 327 of the 2014 Acts of Assembly, it is clear that cerumen management of a limited nature is within the scope of practice of audiologists who have been specially trained in the procedure. Proposed regulations protect patients by specifying the necessary training and the medical conditions and situations in which it is not appropriate for a patient to have cerumen removed by an audiologist. There are no particular 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 proposed regulation provides a regulatory framework for practice in cerumen management, which was not recognized in Virginia as being within the scope of practice of an audiologist before 2014.

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

Estimated Economic Impact. Prior to 2014, Virginia law and regulations did not address cerumen (commonly known as ear wax) management within the scope of practice of an audiologist though various forms of it were practiced by some audiologists to various extents. Cerumen management involves identification and removal of cerumen from the ear canal. According to the Board of Audiology and Speech-Language Pathology (Board), if an audiologist does not have the clinical knowledge and skills or if he attempts to perform cerumen management on a patient beyond his or her scope of practice or in spite of contraindications, he or she can do serious damage to a patient's ear.

In order to address potential health and safety concerns, Chapter 327 of the 2014 Acts of the Assembly (HB500) added "limited cerumen management" to the scope of audiology practice and directed the Board to establish criteria for its practice. Pursuant to the legislative mandate, the Board promulgated emergency regulations, which became effective on December 29, 2014. The proposed regulation will replace the emergency regulation permanently.

With this action, the Board proposes to define "limited cerumen management" as the identification and removal of cerumen from the cartilaginous outer one-third portion of the external auditory canal. The Board also proposes to allow the practice of limited cerumen management by only those audiologists i) who are a graduate of an accredited doctoral program in audiology that included didactic education and supervised clinical experience in cerumen management, or ii) who completed an approved course or workshop in cerumen management. Furthermore, the Board sets out the contraindications to identify cases when the procedure shall not be performed, but the patient be referred to a physician; requires audiologists to obtain written consent of the patient or legally responsible adult; and maintain documentation. The proposed rules do not require audiologists to submit evidence of training and education, or consent documents to the Board, but instead require the evidence be available when and if the Department of Health Professions investigates a complaint.

The proposed training and education could occur within a practice under direct supervision. Training courses are also being developed by the state and national professional associations specifically for cerumen management. Parts of the training may be done online, but certain parts of the training must be done in-person with an audiologist who is already qualified or with a physician. The cost of the training

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and education may vary. The Speech-Language Hearing Association of Virginia is currently offering a one-day training in September 2015 at a cost of \$230 for members and \$300 for non-members. However, since the proposed regulation applies only if an audiologist wishes to perform limited cerumen management and if an audiologist chooses to obtain education and training to perform it, we can reliably infer that the anticipated benefits likely exceed compliance costs to him or her in terms of time, travel, and training fees.

Other benefits of the proposed regulation include: explicitly allowing qualified audiologists to perform cerumen management on a limited basis and possibly avoiding an extra visit to a physician's office for limited cerumen management, establishing what the allowed scope of cerumen management by an audiologist is, establishing under what circumstances it may or may not be performed, and consequently providing a greater degree of patient health and safety compared to its practice without any standards.

While the proposed regulation is expected to be beneficial, the magnitude of benefits may be relatively small. As mentioned above, prior to 2014, various forms of cerumen management had been performed by some audiologist to various extents. The Board is unaware of any complaints or investigations related to practice of cerumen management when there was no regulatory framework on cerumen management by audiologists.

Businesses and Entities Affected. The proposed rules affect audiologists who want to include limited cerumen management in their practice. Currently, there are 517 licensed audiologists in Virginia, but the Board does not know how many of them are currently practicing cerumen management and how many may choose to perform this procedure in the future.

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

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

Effects on the Use and Value of Private Property. The proposed rules are not anticipated to affect the use and value of private property.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed rules introduce compliance costs to audiologists in terms of time, travel, and course fees to obtain training and education only if the audiologist does not have the appropriate training and education and he or she chooses to perform limited cerumen

management and he or she would have performed it without obtaining the appropriate training and education if there were no regulations. However, it is highly unlikely that an audiologist would have performed a procedure that he or she is not trained and educated in for liability reasons. Thus, the compliance costs are likely negligible.

Alternative Method that Minimizes Adverse Impact. The adverse impact on audiologists is likely negligible as discussed above.

Adverse Impacts:

Businesses: The proposed regulation is not anticipated to adversely impact non-small businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: No other entities are anticipated to be adversely affected.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 327 of the 2014 Acts of Assembly, the proposed action provides a framework for safe practice of limited cerumen management by an audiologist including (i) a definition of "limited cerumen management," (ii) the education and specific training necessary to perform limited cerumen management on patients, (iii) the contraindications for performance by an audiologist of limited cerumen management on patients, and (iv) the conditions that require referral to a medical doctor.

Part I

General Provisions

18VAC30-20-10. Definitions.

A. The words and terms "audiologist," "board," "practice of audiology," "practice of speech-language pathology," "speech-language disorders," and "speech-language pathologist" when used in this chapter shall have the meanings ascribed to them in § 54.1-2600 of the Code of Virginia.

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

"Contact hour" means 60 minutes of time spent in continuing learning activities.

"Limited cerumen management" means the identification and removal of cerumen from the cartilaginous outer one-third portion of the external auditory canal in accordance with minimum standards and procedures set forth in this chapter.

"School speech-language pathologist" means a person licensed pursuant to § 54.1-2603 of the Code of Virginia to provide speech-language pathology services solely in public school divisions.

"Supervision" means that the audiologist or speech-language pathologist is responsible for the entire service being rendered or activity being performed, is available for consultation, and is providing regular monitoring and documentation of clinical activities and competencies of the person being supervised.

"Type 1" means continuing learning activities that must be offered by an accredited sponsor or organization as specified in 18VAC30-20-300.

"Type 2" means continuing learning activities that may or may not be approved by an accredited sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning. In Type 2 activities, licensees document their own participation on the Continued Competency Activity and Assessment Form and are considered self-learning activities.

18VAC30-20-241. Limited cerumen management.

A. In order for an audiologist to perform limited cerumen management, he shall:

1. Be a graduate of a doctoral program in audiology that is accredited by the Council on Academic Accreditation of the American Speech-Language-Hearing Association or other accrediting body recognized by the board and that included didactic education and supervised clinical experience in cerumen management as specified in subsection B of this section; or
2. Complete a course or workshop in cerumen management that provides training as specified in subsection B of this section and that is approved by the American Speech-Language Hearing Association or the American Academy of Audiology.

B. An audiologist shall maintain documentation evidencing satisfactory completion of training in cerumen management to include the following:

1. Recognizing the presence of preexisting contraindications that necessitate referral to a physician;
2. Recognizing patient distress and appropriate action to take if complications are encountered;
3. Use of infection control precautions;
4. Procedures for removal of cerumen, including cerumen loop, gentle water irrigation, suction, and the use of material for softening;
5. Observation of each type of cerumen management procedure performed by a qualified audiologist or physician; and
6. Successful performance, under direct supervision by an audiologist qualified to perform cerumen management or a physician, of each type of cerumen management procedure.

C. An audiologist shall not perform cerumen management on a patient who has any of the following preexisting contraindications:

1. A perforated tympanic membrane;

2. Inflammation, tenderness, drainage, or open wounds or traces of blood in the external ear canal;
3. History of ear surgery that results in distortion of the external ear canal;
4. HIV infection or bleeding disorders;
5. Actual or suspected foreign body in the ear, excluding hearing aid components that are located in the lateral one-third portion of the ear canal;
6. Stenosis or bony exostosis of the ear canal; or
7. Cerumen impaction that totally occludes the visualization of the tympanic membrane.

D. An audiologist performing cerumen management shall:

1. Obtain informed written consent of the patient or legally responsible adult and maintain documentation of such consent and the procedure performed in the patient record.
2. Refer patients to a physician if they exhibit contraindications or experience any complication, such as dizziness, during the procedure.

VA.R. Doc. No. R15-4115; Filed November 9, 2015.

Proposed Regulation

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-240).**

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

Public Hearing Information:

December 11, 2015 - 8:40 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd Floor, Richmond, VA

Public Comment Deadline: January 29, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. Authority for the board to adopt regulations for a person practicing as an assistant speech-language pathologist (SLPA) is found in the amendment to § 54.1-2600 of the Code of Virginia in Chapter 661 of the 2014 Acts of the Assembly.

Purpose: Chapter 661 of the 2014 Acts of Assembly authorizes a person "who has met the qualifications prescribed by the Board" to practice as an assistant speech-language pathologist under the supervision of a licensed speech-language pathologist. The purpose of the proposed regulatory action is to set out the qualifications for such a person, the scope of his practice, and the responsibilities of the licensed supervisor.

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The practice of speech-language pathology includes "facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders" (§ 54.1-2600 of the Code of Virginia). Unlicensed assistants may be utilized to extend but not replace the practice of a licensed SLP. The American Speech-Language-Hearing Association white paper on the scope of practice for assistants states: "The decision to shift responsibility for implementation of the more repetitive, mechanical, or routine clinical activities to SLPA's should be made only by qualified professionals and only when the quality of care and level of professionalism will not be compromised." The proposed regulatory action for the establishment of assistant competency and scope of practice is essential to ensure the quality and continuity of care under the legal and professional responsibility of a licensed SLP to protect the health and safety of clients receiving speech-language services.

Substance: Current regulations in 18VAC30-20-240 specify that a licensed speech-language pathologist shall provide documented supervision to unlicensed assistants, shall be held fully responsible for his performance and activities, and shall ensure that he performs only those activities that do not constitute the practice of speech-language pathology and that are commensurate with his level of training. Further, regulations provide that the identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

Amendments to set out the qualifications of an assistant speech-language pathologist to include a bachelor's degree or associate's degree and specific training as necessary to be determined by the supervising SLP. Minimal competency in performance must be documented before the supervising SLP can assign tasks to the assistant. After demonstration of competency, the assistant may perform duties planned, designed, and supervised by a licensed SLP. Regulations specify which duties are appropriate to the practice of an assistant and which would constitute licensed practice of an SLP and therefore are not to be performed by an unlicensed assistant. Generally speaking, activities that require assessment and professional judgment in speech-language pathology are not appropriate for delegation to an assistant. Finally, regulations specify the supervisory responsibilities of the licensed SLP for the activities of the assistant, the number of assistants who may be supervised, the frequency with which there must be on-site supervision of assistants, and the frequency with which the licensed SLP must personally see and evaluate the client. Ultimate responsibility for the client and the outcomes of his care and treatment remains with the licensed SLP.

Issues: The primary advantage to the public is minimal qualifications for unlicensed assistants who are providing direct services to clients and clearer specifications about the appropriate role of an assistant and responsibility of a

supervisor. There are no disadvantages as persons receiving services are better protected by proposed regulations.

There are no real advantages and disadvantages to the agency or the Commonwealth, except greater clarity and specification in regulation to reduce ambiguity for licensees.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 661 of the 2014 Acts of the Assembly, the Board of Audiology and Speech-Language Pathology proposes to amend its regulation to clarify rules for supervising unlicensed assistants and to set education and/or experience requirements that assistants must have in order for licensed speech-language pathologists to be able to hire or supervise them.

Result of Analysis. Benefits may outweigh costs for some of these proposed regulatory changes. For one regulatory change, there is insufficient information to ascertain whether benefits will outweigh costs. For one regulatory change, costs likely outweigh benefits.

Estimated Economic Impact. Current regulation requires licensed audiologists and licensed speech-language pathologists to provide documented supervision to their unlicensed assistants. Licensed audiologists and licensed speech-language pathologists are currently responsible for ensuring that assistants do not perform tasks that would constitute the practice of audiology or speech-language pathology¹ and must also ensure that assistants only perform tasks for which they have been trained.

In 2014, the General Assembly passed legislation, which reads "A person who has met the qualifications prescribed by the Board may practice as an assistant speech-language pathologist and may perform duties not otherwise restricted to the practice of a speech-language pathologist under the supervision of a speech-language pathologist."

Pursuant to this legislation, the Board now proposes to amend its regulation 1) so that rules for audiologists and speech-language pathologists are separate (with rules for audiologist supervision of assistants remaining unchanged), 2) to clarify the rules for supervision of assistants, 3) to specify which duties a speech-language pathologist assistant can perform and which would constitute the practice of speech-language pathology and 4) to set education requirements for those assistants. Most of the amendments that will clarify the rules for supervision and the duties that assistants may perform are not new but instead will formally delineate current practice in this regulation. Board staff reports, for instance, that the requirement for speech-language pathologists to provide on-site supervision of at least two assistant lead client sessions every 30 days and to directly provide at least one client session every 30 days is reported to be current practice in the field and is also required for CMS (Centers for Medicare and Medicaid Services) reimbursement for services. Clarifying changes such as these are unlikely to increase costs for any

affected entity but will provide the benefit of greater understanding for the rules of supervision and provision of client services. Benefits will outweigh costs for these clarifying changes.

The Board newly proposes to limit the number of assistants that a speech-language pathologist may supervise at any time to two. Board staff reports that this limit is being imposed at the request of the Virginia Department of Education (VDOE) and of the speech-language pathologists that provided comment on the proposed regulation. To the extent that some speech-language pathologists may be currently supervising more than two assistants without compromising patient care, this change will likely adversely affect them as it will limit the number of clients they may serve. There is insufficient information available, however, to ascertain whether any benefits to clients that may accrue on account of speech-language pathologists being limited to two assistants will outweigh any adverse impacts to the speech-language pathologists themselves.

Board staff reports that the Board convened a Regulatory Advisory Panel (RAP) committee to provide subject matter expertise in developing the proposed regulation. This committee agreed that the responsibility for the training of assistants and for their practice belongs to the supervising speech-language pathologist. Board staff reports that the committee considered just requiring that assistants complete documented training with a licensed speech-language pathologist in topics that would allow them to complete assigned duties competently. By count, 7 of the 15 comments received at the NOIRA stage of this action suggested that assistants be required to have a bachelor's degree (one suggested that they be required to complete education specific to speech-language disorders). With that feedback the Board now proposes to require that assistants who are supervised by speech-language pathologists either 1) have been employed as an assistant in a U.S. jurisdiction at some time in the five years preceding the effective date of this proposed regulation or 2) have a bachelor's or associate's degree in any field and documented training by a speech-language pathologist. Board staff reports that the Board is not proposing formal education specifically in speech-language pathology because there are no associate's or bachelor's level programs in speech language pathology in the Commonwealth. Board staff further reports that there are several bachelors' programs in communication sciences and disorders in the Commonwealth: at Longwood University, the University of Virginia, James Madison University (JMU), Radford University, Old Dominion University (ODU), Hampton University and Norfolk State University.

These education requirements will likely cost new assistant speech-language pathologists entering the field after this proposed regulation becomes effective at least \$20,000 for a two year associate's degree to many more tens of thousands of dollars for a bachelor's degree at a traditional four year university. The bachelors' programs in communications

sciences and disorders reported by Board staff, and for which DPB could find cost information, would cost between \$48,384 at ODU to \$98,000 at JMU for a four year degree. These greatly increased costs to enter the field will likely limit the number of individuals able to work as assistant speech-language pathologists. This, in turn, will likely increase costs for local school districts and health care institutions that hire the majority of speech-language pathologists that will be competing to hire from a smaller pool of approved assistants. Speech language pathologists who work in private practice will also see increased costs, or a decreased client capacity with fewer assistants. These education requirements will also put future assistants at a competitive disadvantage when compared to assistants now working as they will have paid much more to enter the field which will not be as remunerative for them once they account for the financial outlay of required formal education. It is also likely hard to justify this education requirement when 1) there is likely little nexus between requiring just any degree and competent practice as an assistant and 2) there is no suggestion that current assistants are practicing incompetently with training from their supervising speech-language pathologist. Without some evidence that current assistant practice is suffering from issues that formal education would specifically address, all affected entities, including clients, would likely benefit from amending the proposed regulation to eliminate the requirement for formal higher education. Costs likely outweigh benefits for this proposed change.

Businesses and Entities Affected. Board staff reports that this proposed regulation will affect all speech-language pathologists in the Commonwealth as well as any assistants that they supervise. The Board currently licenses 3,662 speech-language pathologists but Board staff does not know how many individuals are employed as speech-language pathologist assistants. According to the Department of Health Profession's Healthcare Workforce Data Center, as of 2013 approximately 14% of speech-language pathologists worked in private practice and so would likely qualify as small businesses. All other speech-language pathologists work for either large health care institutions or school systems.

Localities Particularly Affected. New education requirements for speech-language pathologist assistants will require a bachelor's or associate's degree of assistants hired for the first time to do this job after the effective date of this proposed regulation. Local school systems that have not been requiring this level of education in the assistants that they hire will likely have a smaller pool of individuals to hire from and may have to pay more to secure the services of these individuals.

Projected Impact on Employment. This regulatory action will likely decrease the number of individuals who may be hired as speech-language pathologists.

Effects on the Use and Value of Private Property. To the extent that this regulatory action raises the cost of hiring speech-language pathology assistants, private practice

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speech-language pathologists as well as large health institutions may either choose to hire fewer assistants (thus somewhat limiting the number of clients they may serve) or may have to cover increased salary costs. Both of these responses to increased costs would tend to slightly decrease profits.

Small Businesses: Costs and Other Effects. Private practice speech-language pathologists may experience increased employment costs for hiring assistants once assistants are required to have a bachelor's or associate's degree.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Absent some evidence that current speech-language pathologist assistants are practicing in ways that would raise competency issues that are best addressed by the formal education requirements in this proposed regulation, speech-language pathologists, their assistants and their clients will likely benefit from eliminating those requirements and allowing speech-language pathologists to provide training in the specific tasks that they plan to assign their assistants.

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

¹ Assistants may not 1) hold themselves out as being an audiologist or speech-language pathologist, 2) perform any tests or evaluations, 3) perform procedures that require professional clinical skills, 4) interpret results of tests or evaluations or provide interpretive information on client status or services, 5) participate in conferences or meetings without the presence of their supervisor or 6) write, develop or modify client treatment plans.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology does not concur with the analysis of the Department of Planning and Budget (DPB) on 18VAC30-20, Regulations Governing the Practice of Audiology and Speech-Language, relating to its assertions about the unnecessary burden of requiring an associate's degree or bachelor's degree for persons working as speech-language pathology assistants.

At its meeting on June 11, 2015, the board considered the economic impact analysis prepared by DPB and chose to retain its original proposal for the following reasons:

1) While an assistant will perform activities as directed and supervised by a licensed speech-language pathologist (SLP), he will be providing significant services to clients, often with children or the elderly. The assistant must have the knowledge and skills to assist with screenings, assist with assessments, follow a treatment plan and document results, assist with programming devices and in training the client on such devices, and document performance and report to the SLP. Members concurred that a post-secondary level of education was essential for the core knowledge and skills to train an assistant for safe, competent practice. Much in the same way a basic baccalaureate degree is necessary to secure admission in graduate programs, the board believes an associate's or bachelor's degree should be the foundational

educational level for an assistant who will then receive special training in speech-language pathology duties.

2) By setting the qualification at the associate or bachelor level, the regulation may open opportunities for persons who hold those degrees but do not have specialized training and experience that qualifies them for employment.

3) It is not accurate to state that there are no bachelor's level programs in speech-language pathology or communication disorders. The agency background document has been revised to clarify that such programs and degrees are available and do graduate several hundred persons each year.

4) Current capacity for hiring bachelor's degree persons should be more than adequate to meet demand. A master's degree is required for licensure as an SLP. Recent information from masters-level programs in speech-language pathology or communication-speech disorders in Virginia indicates that there are significantly more applicants with bachelor's degrees than slots in graduate programs. At James Madison University, there were 249 applications for the online program, and 20 were admitted; there were 349 applications for the on-campus program; 22 were admitted. At Longwood University, there were 240 applications, 50 were admitted with intent of securing a class of 22. At the University of Virginia, there were 300 applicants for 25 available seats. It is apparent that there are several hundred graduates who have an interest in speech-language disorders who do not qualify for licensure but would benefit from the opportunity to be hired as an assistant and gain valuable knowledge and experience to possibly help secure a position in a graduate program.

5) According to the Speech-Language Hearing Association of Virginia and the members of the Ad Hoc Committee and the board, speech-language pathologists who work in private practices do not currently hire persons as SLP assistants who have less than a bachelor's degree, so it is not accurate to state there they will see increased costs or a decreased client capacity.

6) The economic impact analysis stated that the Assistant Attorney General advised the board that it must include a requirement for "formal education." In fact, the Assistant Attorney General advised that the law specified that the board must set "qualifications" for an assistant speech-language pathologist and that allowing them to be trained on the job was not necessarily a qualification for practice.

7) Finally, there were six persons who commented on the Notice of Intended Regulatory Action that a bachelor's degree in speech-language or communication disorders should be the minimum qualification for an assistant SLP; two others stated that the minimum qualification should be a bachelor of arts degree or a bachelor of sciences degree.

Summary:

The proposed regulations for the supervision of unlicensed assistants include the (i) responsibility of the licensed

speech-language pathologist for the training and assignment of duties of an assistant, (ii) qualifications of an assistant, (iii) duties that may be performed by an assistant, (iv) scope of practice of a speech-language pathologist that may not be delegated to an assistant, (v) the level and limitation on supervision of assistants, and (vi) the obligation of the licensee to provide the necessary level of supervision to ensure quality of care, including on-site observation of at least two client sessions for each assistant every 30 days and direct delivery of service to each client at least every 30 days.

18VAC30-20-240. Supervisory responsibilities; supervision of unlicensed assistants.

A. Responsibility of a licensee.

1. A licensed audiologist and speech-language pathologist shall provide documented supervision to who supervises unlicensed assistants shall document such supervision, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which that do not constitute the practice of audiology or speech-language pathology and which that are commensurate with their level of training.

2. A licensed speech-language pathologist who supervises unlicensed assistants shall document such supervision, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities that do not constitute the practice of speech-language pathology and that are commensurate with their level of training.

a. A speech-language pathologist shall not supervise an assistant without the speech-language pathologist's knowledge and consent by the assistant and the licensee documented prior to assumption of supervisory responsibilities.

b. The frequency in which the speech-language pathologist personally delivers treatment or services to a client who is receiving some services from an assistant shall be up to the professional judgment of the speech-language pathologist and shall be determined by the treatment needs of the client, the type of services being provided, and the setting in which the client is being served, but shall occur at least every 30 days.

~~B.~~ 3. The identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

B. Qualifications of a speech-language pathologist assistant.

1. A person acting as a speech-language pathologist assistant shall have:

a. A bachelor's degree or associate's degree and documented training by a licensed speech-language pathologist in topics related to the client population to be served; or

b. Employment as a speech-language pathologist assistant in a United States jurisdiction within the last five years preceding (the effective date of the regulations).

2. A speech-language pathologist supervising an assistant shall be responsible for determining that the knowledge, skills, and clinical experience of the assistant are sufficient to ensure competency to perform all tasks to which the assistant is assigned. The speech-language pathologist shall document competency after training and direct observation of the assistant's performance of such tasks, and a record of skills and competencies shall be maintained.

C. Scope of practice of a speech-language pathologist assistant. After demonstration and documentation of competency for the duties to be assigned, an assistant shall only engage in those duties planned, designed, and supervised by a licensed speech-language pathologist, to include the following:

1. Assist with speech, language, and hearing screenings without clinical interpretation of results.

2. Assist during assessment of a client exclusive of administration or interpretation.

3. Perform activities for each session that are routine and do not require professional judgment, in accordance with a plan developed and directed by the speech-language pathologist who retains the professional responsibility for the client.

4. Document a client's performance and report information to the supervising speech-language pathologist.

5. Assist with programming augmentative and alternative communication devices and assist the client in repetitive use of such devices.

6. Sign or initial informal treatment notes and, upon request, co-sign formal documents with the supervising speech-language pathologist.

7. Engage in the following activities:

a. Preparing materials;

b. Scheduling appointments and activities;

c. Preparing charts, records, or graphs and performing other clerical duties;

d. Performing checks and maintenance of equipment; and

e. Assisting a client with transitioning to and from therapy sessions.

8. Perform duties not otherwise restricted to the practice of speech-language pathology.

D. A speech-language pathologist assistant shall not engage in the practice of speech-language pathology, including the following:

1. Represent himself as a speech-language pathologist.

2. Perform standardized or nonstandardized diagnostic tests or formal or informal evaluations.

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3. Perform procedures that require a professional level of clinical acumen and technical skill.
4. Tabulate or interpret results and observations of feeding and swallowing evaluations or screenings performed by a speech-language pathologist.
5. Participate in formal conferences or meetings without the presence of the supervising speech-language pathologist.
6. Provide interpretative information to the client, the family of the client, or others regarding the client's status or service.
7. Write, develop, or modify a client's treatment plan.
8. Assist in or provide services as specified in subsection C of this section unless directed by the supervising speech-language pathologist.
9. Sign any formal documents in lieu of the supervising speech-language pathologist.
10. Select a client for service or discharge a client from service.
11. Make a decision on the need for additional services or make referrals for service.
12. Disclose clinical or confidential information either orally or in writing to anyone other than the supervising speech-language pathologist, unless mandated by law or authorized by the supervising speech-language pathologist.
13. Develop or determine the swallowing or feeding strategies or precautions for a client or provide feeding or swallowing treatment.

E. Supervision of an assistant in speech-language pathology.

1. The practice of an assistant shall only be supervised by a speech-language pathologist who retains full legal and ethical responsibility for the client. A speech-language pathologist shall only supervise the equivalent of two full-time assistants.
2. The speech-language pathologist shall provide the level of supervision to the speech-language pathologist assistant necessary to ensure quality of care to include on-site supervision of at least two client sessions for each assistant being supervised every 30 days to directly observe and evaluate the performance of the assistant. The speech-language pathologist shall document such on-site observation and evaluation in the client record for each session.

VA.R. Doc. No. R15-4179; Filed November 9, 2015, 9:58 a.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-320, 18VAC85-20-340, 18VAC85-20-350, 18VAC85-20-370, 18VAC85-20-380).**

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Public Hearing Information:

December 4, 2015 - 8:30 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: January 29, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of office-based anesthesia is found in § 54.1-2912.1 of the Code of Virginia.

Purpose: A Notice of Intended Regulatory Action was approved by the Board of Medicine on October 16, 2014, in response to a petition for rulemaking from the Medical Society of Virginia. The intent of the board is to address the need for additional public protection in the administration of office-based anesthesia. As more medical and surgical procedures are being performed in office-based settings, there is a greater need for standards in the administration of anesthesia to address possible consequences that could result in an emergency transport to a hospital and even in the death of a patient. Therefore, changes are recommended in the applicability of requirements for office-based anesthesia, documentation of complications, duration of such a procedure, informed consent by patient of the anesthesia plan, discharge planning, and emergency transfer protocols. The board adopted regulatory changes as necessary to protect the health and safety of patients who undergo procedures in office-based settings.

Substance: Amendments to the requirements for office-based anesthesia are adopted to (i) include the administration of 300 milligrams or more of lidocaine under the applicability of the requirements; (ii) ensure that the patient has adequate information in giving informed consent, including knowledge about whether the physician is board certified or board eligible; (iii) require documentation of complications during surgery or recovery; (iv) set a time limit on procedures that may be performed in an office; (v) specify the availability of a hospital to which a patient may be transferred; and (vi) specify that the anesthesia provider or the doctor supervising the anesthesia must give the order for discharge.

Issues: The primary advantage to the public is greater protection for office-based procedures requiring moderate sedation or anesthesia and more information about the physician, the plan for anesthesia and expectations for discharge. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth. This proposal was carefully negotiated with specialty groups of physicians to ensure that the central issue remained public protection but qualified providers were not excluded.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking from the Medical Society of Virginia, the Board of Medicine (Board) proposes to amend its requirements for office-based anesthesia to: 1) define the administration of 300 milligrams or more of lidocaine (or equivalent doses of local anesthetics) as moderate sedation that is subject to the requirements of this regulation, 2) limit the duration of a procedure that include sedation that falls under the requirements of this regulation to last no longer than four hours if the anesthesia is not administered by an anesthesiologist or a certified registered nurse anesthetist or eight hours if anesthesia is administered by one of these entities and 3) define "reasonable proximity" for the safe transfer of patients to a hospital in case of an emergency as "accessible within 30 minutes of the office." The Board also proposes several clarifying changes that will likely not affect costs.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for one proposed substantive change. Benefits likely outweigh costs for all proposed clarifying changes and the two other proposed substantive changes.

Estimated Economic Impact. Current regulation applies to "the administration of moderate sedation/conscience sedation, deep sedation, general anesthesia or regional anesthesia consisting of a major conductive block" in an office setting. On the recommendation of the Medical Society of Virginia, and particularly plastic surgeons that are part of that group, the Board proposes to also require that any procedure that involves the administration of 300 milligrams or more of lidocaine (or equivalent doses of local anesthesia) be subject to this regulation. This would mean that doctors who choose to use lidocaine or other local anesthetics in the described dosages as a part of an office surgery or procedure would newly have to follow all the requirements laid out in this regulation including: ensuring a pre-anesthetic check-up is performed, developing an anesthesia plan and having written protocols for office-based anesthesia, procedure selection and patient evaluation. Doctors' offices where such procedures are performed would also newly be required to be within reasonable proximity of a licensed general hospital capable of

providing necessary emergency services (within 30 minutes' drive, according to the proposed regulation).

This new requirement will likely increase costs (or decrease revenue) for doctors who perform office-based procedures or surgeries under lidocaine or other local anesthetics; these doctors will either incur additional bookkeeping and other time costs for any procedure that requires these local anesthetics, have to stop performing those procedures if they know or suspect that the patient will require 300 milligrams or more of lidocaine (or equivalent for other local anesthetics) or will have to switch to other, presumably less optimal, forms of anesthesia. Specifically, doctors will definitely incur additional costs that accrue on a per patient basis (such as time spent either performing pre-anesthesia checkups or ensuring that such checkups have been performed) but will only incur time and other costs for writing and keeping required protocols if they only perform in-office surgeries that are currently exempt from this regulation but will not be exempt under the proposed regulation. Doctors who now only perform surgery and procedures requiring minor, local or topical anesthesia and whose offices are more than 30 minutes from a hospital would either have to move offices, switch to using other, presumably less optimal, anesthesia or stop performing the surgeries they now offer altogether. Affected patients will likely also incur costs on account of pre-anesthesia checkup requirements as well as other requirements that would extend the time and doctor resources required to care for them.

Research indicates that lidocaine is given in doses that vary according to the weight of the patient. Specifically, Drugs.com¹ reports that the usual adult dose for lidocaine used as a local anesthetic "varies with procedure, degree of anesthesia needed, vascularity of tissue, duration of anesthesia required and physical condition of (the) patient" but can go up to a maximum dosage of 4.5 milligrams per kilogram of weight not more than every two hours. The website for the University of Iowa Healthcare System² reports that the maximum safe dosage of lidocaine without epinephrine for pediatric patients is 4 milligrams per kilogram of weight. This means that for adults, any procedure involving administration of the maximum safe dosage of lidocaine for patients weighing more than approximately 147 lbs.³ would automatically fall under the more stringent rules for moderate or deep sedation or general anesthesia even if that patient is in excellent general health and would otherwise not need the heightened scrutiny and care plans required under this regulation.

In addition to disproportionately affecting patients that weigh more than 147 pounds, this requirement may have a disproportionate adverse impact on patients that live in rural parts of Virginia that do not have a local hospital within 30 minutes. Patients that now can have minor procedures or surgeries involving lidocaine (300 milligrams or more) in a local doctor's office would, under the proposed requirement, have to incur travel expenses, and possibly higher medical

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costs to have that procedure or surgery done either at a hospital or at a non-local doctor's office that is close enough to a hospital to meet the requirements of this regulation. All of these potential costs would have to be measured against the possible benefits to patients of limiting the absolute amount of lidocaine that can be used in a procedure without enhanced requirements kicking in. There is currently insufficient information on the magnitude of potential benefits that may accrue on account of this change to ascertain whether benefits will outweigh costs.

Current regulation does not set a limit on the duration of in-office surgeries using moderate sedation/conscience sedation, deep sedation, general anesthesia or regional anesthesia consisting of a major conductive blocks but only requires that such surgeries be "of a duration and degree of complexity that will permit the patient to recover and be discharged from the facility in less than 24 hours." The Board now proposes to specify that surgeries occurring under the auspices of this regulation may last no longer than four hours if the anesthesia is not administered by an anesthesiologist or a certified registered nurse anesthetist or eight hours if anesthesia is administered by one of these entities. Because research indicates⁴ that the odds of a whole host of potential side effects and adverse outcomes increase as the length of time spent under anesthesia increases, patients will likely benefit from this restriction. Patient benefits will likely outweigh any costs doctors incur for not being able to perform surgeries over four (or eight) hours in their offices.

Current regulation requires that doctors who perform in-office surgery using moderate sedation/conscience sedation, deep sedation, general anesthesia or regional anesthesia consisting of a major conductive blocks be able to transfer their patients to a hospital in "reasonable proximity" to their office. The Board now proposes to specify that reasonable proximity is within 30 minutes of the doctor's office. Although the actual specified time is new, it is likely that the Board already enforced this provision using the same or similar time limits. In any case, all affected entities in both the regulated and regulating community will likely benefit from the additional certainty that this change will bring.

Businesses and Entities Affected. Board staff reports that these changes will potentially affect all Board licensed doctors of medicine, osteopathy and podiatry that perform surgeries in their offices as well as all of these doctors' patients.

Localities Particularly Affected. Rural communities that are not in close proximity to a hospital will be disproportionately affected by these proposed changes.

Projected Impact on Employment. These proposed changes may moderately decrease employment in doctors' offices that currently are not subject to these regulations but will become subject to them on account of the proposed changes.

Effects on the Use and Value of Private Property. The value of some medical, osteopathic or podiatric practices may

decrease if they incur costs on account of these proposed changes.

Real Estate Development Costs. These proposed changes will likely not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Small business doctors will likely incur additional costs that accrue on a per patient basis (such as time spent either performing pre-anesthesia checkups or ensuring that such checkups have been performed) but will only incur time and other costs for writing and keeping required protocols if they only perform in-office surgeries that are currently exempt from this regulation but will not be exempt under the proposed regulation. Doctors who now only perform surgery and procedures requiring minor, local or topical anesthesia and whose offices are more than 30 minutes from a hospital would either have to move offices, switch to using other, presumably less optimal, anesthesia or stop performing the surgeries they now offer altogether.

Alternative Method that Minimizes Adverse Impact. Doctors and their patients would incur fewer costs if lidocaine standards were written so that any imposed limit on the amount of lidocaine is evidence based and varies directly with the weight of the patient as that appears to be the way lidocaine is administered.

Adverse Impacts:

Businesses: Doctors who own their practices will likely incur additional costs that accrue on a per patient basis (such as time spent either performing pre-anesthesia checkups or ensuring that such checkups have been performed) but will only incur time and other costs for writing and keeping required protocols if they only perform in-office surgeries that are currently exempt from this regulation but will not be exempt under the proposed regulation. Doctors who now only perform surgery and procedures requiring minor, local or topical anesthesia and whose offices are more than 30 minutes from a hospital would either have to move offices, switch to using other, presumably less optimal, anesthesia or stop performing the surgeries they now offer altogether.

Localities: Rural localities that currently do not have a hospital in close proximity (as defined by this proposed regulation) may see a disproportionate adverse impact on the availability of minor out-patient surgical services offered.

Other Entities: The proposed changing categorization of lidocaine in doses at or over 300 milligrams (or like amounts of other local anesthetics) may have a disproportionate adverse impact on patients that live in rural parts of Virginia who do not have a local hospital within 30 minutes. Patients who now can have minor procedures or surgeries involving

lidocaine (300 milligrams or more) in a local doctor's office would, under the proposed requirement, have to incur travel expenses and possibly higher medical costs to have that procedure or surgery done either at a hospital or at a non-local doctor's office that is close enough to a hospital to meet the requirements of this regulation.

¹<http://www.drugs.com/dosage/lidocaine.html>

²<https://wiki.uiowa.edu/display/protocols/Maximum+Recommended+Doses+and+Duration+of+Local+Anesthetics>

³300/4.5= 66.6666666667 kilograms which is just shy of 147 pounds.

⁴See, for instance, "Duration of General Anesthesia and Surgical Outcome": Yoho, Robert, et al. (http://www.dryoho.com/dryoho/clinical/duration_anesthesia.pdf). This study notes that research found the odds of patient death, post-operative nausea and vomiting, venous thromboemboli, post-operative surgical site *S. aureus* infection, post-operative core hypothermia and cardiopulmonary complication increased either as time under anesthesia increased or in surgeries over a certain duration (in this study, either two or three hours).

Agency's Response to Economic Impact Analysis: The Board of Medicine submits the following response to the analysis of the Department of Planning and Budget (DPB) of amendments to 18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic, relating to rules for office-based anesthesia.

As the petitioner for the proposed regulations, the Medical Society of Virginia (MSV) was asked to comment on the DPB analysis. The board concurs with the comments listed below:

MSV agrees with the DBP analysis that "Benefits likely outweigh costs for all proposed clarifying changes and two other proposed substantive changes.

As to DPB's analysis of what we presume they are referring to as "one proposed substantive change," we do concur that the ability to accurately quantify whether or not the benefits exceed the costs is not a precise calculation. However, several of the items noted by the DPB analysis as potentially increasing costs may indeed already be part of a physician's routine standard of care. For example, a pre-anesthetic check-up, an anesthesia plan, and written protocols for office-based anesthesia, procedure selection, and patient evaluation are accepted, specialty developed standards of care for physicians routinely performing these procedures. Though the proposed regulations may increase costs for those physicians not currently following these standards, we believe that number to be relatively limited, that some may elect to do this voluntarily, but that for those who choose not to follow accepted quality and safety standards, appropriate regulations may create the added incentive needed for proper patient care.

The analysis also suggests that "Doctors who now only perform surgery and procedures requiring minor, local or topical anesthesia, and whose offices are more than 30 minutes from a hospital would either have to move offices, switch to using other, presumably less optimal anesthesia or stop performing the surgeries they now offer altogether" and

therefore would incur higher costs or less revenue. It is the MSV's understanding that doctors only performing surgery that involves the administration of topical anesthesia, local anesthesia, minor conductive blocks, or minimal sedation/anoxiolysis that do not result in alteration of consciousness beyond minimal pre-operative tranquilization are not subject to these regulations. (See 18VAC85-20-320 A 1 - Applicability of requirements for office-based anesthesia). Therefore, additional costs would not be incurred.

In addition, the DPB analysis discusses the application of the 300 milligrams or more of lidocaine as the base threshold for complying with these regulations and the extent to which it would apply based upon a dosage to weight ratio. The MSV work group that developed these proposed regulations consisted of board certified physicians from several specialties, including family practice, plastic surgery, orthopedics, and pediatrics. The 300 milligrams dosage was chosen for these proposed regulations in order to provide for an amount that was easily understood, measurable, applicable across the board, and recognized by other states with comparable regulations on office-based anesthesia. Further, the use of 300 mg or more of lidocaine for certain prolonged invasive procedures when it is not used primarily as a local anesthetic is not always the best practice and will signal to the physician that an alternative, more appropriate anesthetic agent should be used. Guidelines and trigger warnings like these can be readily captured in written protocols for office-based anesthesia, leading to better and safer quality of care.

Summary:

The proposed amendments (i) define the administration of 300 milligrams or more of lidocaine as moderate sedation, (ii) address informed consent by patients, including knowledge about whether the physician is board certified or board eligible, (iii) require documentation of complications during surgery or recovery, (iv) establish a time limit on procedures that may be performed in an office, (v) address proximity to a hospital to which a patient may be transferred, and (vi) specify that the anesthesia provider or the doctor supervising the anesthesia must give the order for discharge.

18VAC85-20-320. General provisions.

A. Applicability of requirements for office-based anesthesia.

1. The administration of topical anesthesia, local anesthesia, minor conductive blocks, or minimal sedation/anoxiolysis, not involving a drug-induced alteration of consciousness other than minimal preoperative tranquilization, is not subject to the requirements for office-based anesthesia in this part. A health care practitioner administering such agents shall adhere to an accepted standard of care as appropriate to the level of anesthesia or sedation, including evaluation, drug selection, administration, and management of complications.

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2. The administration of moderate sedation/conscious sedation, deep sedation, general anesthesia, or regional anesthesia consisting of a major conductive block are subject to these requirements for office-based anesthesia in this part. The administration of 300 milligrams or more of lidocaine or equivalent doses of local anesthetics shall be deemed to be subject to these requirements for office-based anesthesia in this part.

3. Levels of anesthesia or sedation referred to in this chapter shall relate to the level of anesthesia or sedation intended and documented by the practitioner in the preoperative anesthesia plan.

B. A doctor of medicine, osteopathic medicine, or podiatry administering office-based anesthesia or supervising such administration shall:

1. Perform a preanesthetic evaluation and examination or ensure that it has been performed;
2. Develop the anesthesia plan or ensure that it has been developed;
3. Ensure that the anesthesia plan has been discussed with the patient or responsible party preoperatively and informed consent has been obtained;
4. Ensure patient assessment and monitoring through the ~~pre~~, ~~peri~~ preprocedure, periprocedure, and post-procedure phases, addressing not only physical and functional status, but also physiological and cognitive status;
5. Ensure provision of indicated post-anesthesia care; ~~and~~
6. Remain physically present or immediately available, as appropriate, to manage complications and emergencies until discharge criteria have been met; and
7. Document any complications occurring during surgery or during recovery in the medical record.

C. All written policies, procedures, and protocols required for office-based anesthesia shall be maintained and available for inspection at the facility.

18VAC85-20-340. Procedure/anesthesia selection and patient evaluation.

A. A written protocol shall be developed and followed for procedure selection to include but not be limited to:

1. The doctor providing or supervising the anesthesia shall ensure that the procedure to be undertaken is within the scope of practice of the health care practitioners and the capabilities of the facility.
2. The procedure or combined procedures shall be of a duration and degree of complexity that shall not exceed four hours and that will permit the patient to recover and be discharged from the facility in less than 24 hours. The procedure or combined procedures may be extended for up to eight hours if the anesthesia is provided by an anesthesiologist or a certified registered nurse anesthetist.
3. The level of anesthesia used shall be appropriate for the patient, the surgical procedure, the clinical setting, the

education and training of the personnel, and the equipment available. The choice of specific anesthesia agents and techniques shall focus on providing an anesthetic that will be effective, and appropriate and will address the specific needs of patients while also ensuring rapid recovery to normal function with maximum efforts to control post-operative pain, nausea, or other side effects.

B. A written protocol shall be developed for patient evaluation to include but not be limited to:

1. The preoperative anesthesia evaluation of a patient shall be performed by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. It shall consist of performing an appropriate history and physical examination, determining the patient's physical status classification, developing a plan of anesthesia care, acquainting the patient or the responsible individual with the proposed plan, and discussing the risks and benefits.
2. The condition of the patient, specific morbidities that complicate anesthetic management, the specific intrinsic risks involved, and the nature of the planned procedure shall be considered in evaluating a patient for office-based anesthesia.
3. Patients who have pre-existing medical or other conditions that may be of particular risk for complications shall be referred to a facility appropriate for the procedure and administration of anesthesia. Nothing relieves the licensed health care practitioner of the responsibility to make a medical determination of the appropriate surgical facility or setting.

C. Office-based anesthesia shall only be provided for patients in physical status classifications for Classes I, II and III. Patients in Classes IV and V shall not be provided anesthesia in an office-based setting.

18VAC85-20-350. Informed consent.

A. Prior to administration, the anesthesia plan shall be discussed with the patient or responsible party by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. Informed consent for the nature and objectives of the anesthesia planned shall be in writing and obtained from the patient or responsible party before the procedure is performed. Such consent shall include a discussion of discharge planning and what care or assistance the patient is expected to require after discharge. Informed consent shall only be obtained after a discussion of the risks, benefits, and alternatives, contain the name of the anesthesia provider, and be documented in the medical record.

B. The surgical consent forms shall be executed by the patient or the responsible party and shall contain a statement that the doctor performing the surgery is board certified or board eligible by one of the American Board of Medical Specialties boards, the Bureau of Osteopathic Specialists of the American Osteopathic Association, or the American

Board of Foot and Ankle Surgery. The forms shall either list which board or contain a statement that doctor performing the surgery is not board certified or board eligible.

C. The surgical consent forms shall indicate whether the surgery is elective or medically necessary. If a consent is obtained in an emergency, the surgical consent form shall indicate the nature of the emergency.

18VAC85-20-370. Emergency and transfer protocols.

A. There shall be written protocols for handling emergency situations, including medical emergencies and internal and external disasters. All personnel shall be appropriately trained in and regularly review the protocols and the equipment and procedures for ~~handling~~ handling emergencies.

B. There shall be written protocols for the timely and safe transfer of patients to a prespecified hospital or hospitals within a reasonable proximity. For purposes of this section, "reasonable proximity" shall mean that a licensed general hospital capable of providing necessary services is normally accessible within 30 minutes of the office. There shall be a written or electronic transfer agreement with such hospital or hospitals.

18VAC85-20-380. Discharge policies and procedures.

A. There shall be written policies and procedures outlining discharge criteria. Such criteria shall include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain, and minimal nausea and vomiting.

B. Discharge from anesthesia care is the responsibility of the health care practitioner providing or the doctor supervising the anesthesia care and shall only occur when ~~patients have~~:

1. The patient has met specific physician-defined criteria; and
2. The health care practitioner providing or the doctor supervising the anesthetic care has given the order for discharge.

C. Written instructions and an emergency phone number shall be provided to the patient. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

D. At least one person trained in advanced resuscitative techniques shall be immediately available until all patients are discharged.

VA.R. Doc. No. R15-01; Filed November 9, 2015, 8:49 a.m.

Fast-Track Regulation

Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-160).

Statutory Authority: §§ 54.1-2400 and 54.1-2952.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. Section 54.1-2952.1 of the Code of Virginia authorizes the Board of Medicine, in consultation with the Board of Pharmacy, to promulgate regulations governing the prescriptive authority of physician assistants.

Purpose: The purpose of the amendment is to modify a regulation that is considered burdensome by physician assistants. Facilitating prescribing practice by physician assistants, under the supervision of a physician, will enhance efficiency and access to patient care. Since disclosures about the supervising physician and the licensure of the physician assistant remain in regulation, the amendment to the regulation will not lessen protection for the health and safety of the patient.

Rationale for Using Fast-Track Process: There is no controversy in the adoption of this amendment; it is recommended by physician assistants and the supervising physicians with whom they work.

Substance: The amended regulation will eliminate the requirement for the name of the supervising physician on a prescription written by a physician assistant if the assistant is writing a prescription for a Schedule VI drug. The physician's name on the prescription will continue to be required if the assistant is writing a prescription for Schedule II through V drugs. Amendments also will clarify how the physician assistant can comply with the disclosure requirement specified in § 54.1-2952.1 of the Code of Virginia.

Issues: The primary advantage to the public is facilitation of prescribing by physician assistants for greater efficiency and access. There are no disadvantages to the public. 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. As a result of a recommendation from the Advisory Board on Physician Assistants, the Board of Medicine (Board) proposes to eliminate the requirement for the signature of a supervising physician or podiatrist on prescriptions for Schedule VI drugs written by physician assistants.

Result of Analysis. There is insufficient information to ascertain if benefits will outweigh costs for this regulatory action.

Estimated Economic Impact. Current law requires that physician assistants practice under a written supervisory

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agreement with a licensed physician or podiatrist "which provides for the direction and supervision by the licensee of the prescriptive practices of the assistant. Such agreement must contain the controlled substances that the physician assistant is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician or podiatrist providing direction and supervision." As part of that supervision, physician assistants are required to have their supervising physician's or podiatrist's name on all prescriptions that they write whatever the Schedule the prescribed drugs might be in. In February of 2015, the Board considered a recommendation from the Advisory Board on Physician Assistants to eliminate the requirement that a supervising physician's or podiatrist's name be on prescriptions for all Schedule drugs (Schedules II through VI) written by physician assistants as this requirement was seen as unnecessarily burdensome. The Board decided at its meeting on June 18, 2015, to eliminate the requirement for the signature of a supervising physician or podiatrist on prescriptions for Schedule VI drugs but to retain that requirement for prescriptions of Schedule II through V drugs.

Board staff reports that the Board chose to amend this regulation in the way they did because the current system for electronic prescriptions used in the Commonwealth only has a place for two names (the prescribing physician assistant and the supervising physician or podiatrist) on prescriptions for Schedule II through V drugs that fall under the federal Controlled Substances Act. Board staff reports that this change will make it easier for physician assistants to write electronic prescriptions for Schedule VI drugs which are not controlled under federal law but are controlled under Virginia Code. To the extent that physician assistants currently write paper prescriptions for Schedule VI drugs when an electronic prescription sent directly to the pharmacy would allow the patient to avoid spending time and gas to physically pick up their prescription, this change will likely benefit both physician assistants and patients.

Schedule VI drugs include topical anesthetics, and topical and oral anti-allergy drugs (including antihistamines and mast cell stabilizers), anti-fungals, anti-glaucoma drugs, anti-infective drugs (including antibiotics and antivirals) and anti-inflammatory drugs (including steroids like prednisone and Solu-Medrol). While these drugs are not addictive or as potentially dangerous as drugs in Schedules II through V, they can still be dangerous if prescribed incorrectly or for too long. Steroids, for instance, can induce Cushing's Syndrome in individuals who take them long term. Although Board staff reports that physician assistants have other requirements to disclose the name of their supervising physician that will likely protect patient health, removing the supervising physician's or podiatrist's name from Schedule VI drug prescriptions may decrease the ability of outside entities like pharmacists, who are not privy to information about the physician assistant's supervisor outside of the information explicitly contained on a prescription, to report potential

contra-indications and problematic prescriptive practices directly to that supervisor. Without knowing either the magnitude of time savings for physician assistants and patients due to easier electronic prescribing or the potential magnitude of any possible harm that may arise from this change, it is not possible to say if benefits will outweigh costs for this regulatory change.

Businesses and Entities Affected. This regulatory change will affect all physician assistants as well as the patients who see them. Board staff reports that there are currently 3,058 individuals who are licensed as physician assistants in the Commonwealth.

Localities Particularly Affected. This proposed change will not particularly affect any locality in the Commonwealth.

Projected Impact on Employment. This proposed change is unlikely to impact employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed change will likely have no impact on the use or value of private property.

Real Estate Development Costs. This proposed change will likely not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. No small businesses will incur costs on account of this regulatory change.

Alternative Method that Minimizes Adverse Impact. No small businesses will incur costs on account of this regulatory change.

Adverse Impacts:

Businesses: This proposed change is unlikely to adversely impact any business in the Commonwealth.

Localities: This proposed change is unlikely to adversely impact localities.

Other Entities: This proposed change may adversely affect patients prescribed Schedule VI drugs if pharmacists are less likely or able to contact supervising physicians when problems with those prescriptions arise and contacting the prescribing physician assistant does not yield corrective action.

Agency's Response to Economic Impact Analysis: In the adoption of a fast-track regulation, the Board of Medicine does not concur with the statement of the Department of Planning and Budget that "removing the supervising physician's or podiatrist's name from Schedule VI drug prescriptions may decrease the ability of outside entities like pharmacists, who are not privy to information about the physician assistant's supervisor outside of the information explicitly contained on a prescription, to report potential

contra-indications and problematic prescriptive practices directly to that supervisor." Pharmacists will have access to that information through the national provider number on each prescription. Additionally, nurse practitioners are not required to list the physician with whom they have a practice agreement on any prescription in Schedules II through VI.

Summary:

The amendments (i) eliminate the requirement for the supervising physician's name to appear on a prescription written by a physician assistant for a Schedule VI drug and (ii) and clarify how a physician assistant may comply with the requirement to disclose to a patient that he is a licensed physician assistant.

18VAC85-50-160. Disclosure.

A. Each prescription for a Schedule II through V drug shall bear the name of the supervising physician and of the physician assistant.

B. The physician assistant shall disclose to the patient that he is a licensed physician assistant, and also the name, address and telephone number of the supervising physician. Such disclosure ~~may~~ shall either be included on the prescription ~~pad~~ or ~~may~~ be given in writing to the patient.

VA.R. Doc. No. R16-4276; Filed November 9, 2015, 1:32 p.m.

Fast-Track Regulation

Title of Regulation: 18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-10).

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

The specific legal authority to promulgate regulations for licensure is found in § 54.1-2957.4 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to define a "student athletic trainer" so there is no confusion between the activities of a person enrolled in an athletic training educational program at the bachelor's or master's degree level and a person who is a high school student who is acting as an aide to the athletic director or a coach. The student athletic trainer is permitted to perform tasks within the scope of a licensee provided he is appropriately trained and supervised

in accordance with the provisions of 18VAC85-120-130 B. However, using a high school aide who does not have the educational background and skills to perform such tasks is potentially dangerous to the health and safety of student athletes. Therefore, it is necessary to define the term "student athletic trainer" to ensure that there is no confusion about the application of the regulation.

Rationale for Using Fast-Track Process: There is no controversy in the adoption of this amendment; it is clarifying in nature and may prevent a misunderstanding of the regulations.

Substance: The amended regulation will define a "student athletic trainer" as a person enrolled in an accredited bachelor's or master's level educational program in athletic training.

Issues: The primary advantage to the public is clarity in the regulation so that a high school student is not allowed to practice as a "student athletic trainer" in the performance of tasks that should be reserved for persons enrolled in an athletic training program on the college or university level. There are no disadvantages to the public.

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 Medicine (Board) proposes to add a definition for student athletic trainer to its regulation that sets rules for the licensing of athletic trainers.

Result of Analysis. The benefits likely exceed the costs for this proposed regulation.

Estimated Economic Impact. Currently, this regulation contains rules for student athletic trainers but does not contain a definition of what a student athletic trainer is. The Board now proposes to define a student athletic trainer as "a person enrolled in an accredited bachelor's or master's level educational program in athletic training." No entities are likely to incur costs on account of this change. To the extent that adding this definition clarifies the Board's rules, individuals who are seeking to understand these rules will benefit.

Businesses and Entities Affected. This proposed change will affect all student athletic trainers as well as any other individuals who might read this regulation.

Localities Particularly Affected. This proposed change will not particularly affect any locality in the Commonwealth.

Projected Impact on Employment. This proposed change will likely not affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed change will likely have no impact on the use or value of private property.

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Real Estate Development Costs. This proposed change will likely not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. No small businesses will incur costs on account of this regulatory change.

Alternative Method that Minimizes Adverse Impact. No small businesses will incur costs on account of this regulatory change.

Adverse Impacts:

Businesses: This proposed change is unlikely to adversely impact any business in the Commonwealth.

Localities: This proposed change is unlikely to adversely impact localities.

Other Entities: This proposed change is unlikely to adversely impact any other entities in the Commonwealth.

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment clarifies that the term "student athletic trainer" as used in the regulation means a person enrolled in an accredited bachelor's or master's level education program in athletic training.

Part I
General Provisions

18VAC85-120-10. Definitions.

In addition to words and terms defined in § 54.1-2900 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:

"Advisory board" means the Advisory Board on Athletic Training to the board as specified in § 54.1-2957.5 of the Code of Virginia.

"Athletic trainer" means a person licensed by the Virginia Board of Medicine to engage in the practice of athletic training as defined in § 54.1-2900 of the Code of Virginia.

"Board" means the Virginia Board of Medicine.

"NATABOC" means the National Athletic Trainers' Association Board of Certification.

"Student athletic trainer" means a person enrolled in an accredited bachelor's or master's level educational program in athletic training.

VA.R. Doc. No. R16-4277; Filed November 9, 2015, 8:52 a.m.

BOARDS OF NURSING AND MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-70).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

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 provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. The specific mandate to promulgate regulations for the practice of nurse practitioners is found in § 54.1-2957 of the Code of Virginia.

Purpose: To be licensed as a nurse practitioner in Virginia, one must have certification from one of the national certifying bodies that examine the competency of applicants in certain specialties. While nurse practitioners are allowed to renew their national certification and their Virginia license in specialty categories that are revised or eliminated, categories and titles are revised to reflect changes in the practice environment and to be more focused on patient populations. The public will benefit from nurse practitioners who have specialty education and training that prepares them to protect the health and safety of patients.

Rationale for Using Fast-Track Process: The fast-track action is appropriate because the amendments align licensure categories with current professional certification from national certifying bodies. The amendment follows the pattern of allowing a nurse practitioner to retain a specialty category that was amended or eliminated or to be issued a new specialty if he meets the criteria for certification.

Substance: Amendments to the regulation conform the categories of nurse practitioner specialties to the changes in national certification categories. Nurse practitioners who hold a title in a specialty category that is amended will be allowed to retain the specialty category in which they were initially licensed or, if qualified, be issued a license in a new specialty category.

Issues: There are no advantages or disadvantages to the public as there are no changes in scope of practice or qualification for licensure. 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. Under the Regulations Governing the Licensure of Nurse Practitioners, the Boards of Nursing and Medicine (Boards) issue nurse practitioner licenses by specialty category. The Boards propose to conform the categories of nurse practitioner specialties in the regulation to the current categories for which national certifications are available.

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

Estimated Economic Impact. Nurse practitioners may only work within the specialty category for which they are licensed. In order to renew a license biennially, the nurse practitioner shall hold current professional certification¹ in the area of specialty practice from one of the national certifying agencies.² According to the Department of Health Professions, the national certifying agencies permit certification renewal of eliminated categories. Similarly, the Boards permit renewal of licenses in categories no longer specified in this regulation, as long as the national certification remains current.³

Thus, the Boards' proposal to eliminate, add, and amend specialty category names in order to conform the categories to those currently offered by the national certifying agencies will have no impact on current licensees. The proposal is beneficial in that it will make clear to potential new licensees the categories in which they may gain licensure.

Businesses and Entities Affected. The proposed amendments particularly affect individuals seeking nurse practitioner licensure. The 8371 individuals currently licensed as nurse practitioners are not significantly affected.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed amendments do not significantly affect small businesses.

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

Adverse Impacts:

Businesses: The proposed amendments do not adversely affect businesses.

Localities: The proposed amendments do not adversely affect localities.

Other Entities: The proposed amendments do not adversely affect other entities.

¹If the nurse practitioner was initially licensed prior to May 8, 2002, he may alternatively complete at least 40 hours of continuing education in the area of specialty practice.

²Specifically the Board accepts certification from the following: American Midwifery Certification Board, American Nurses Credentialing Center, National Board of Certification and Recertification for Nurse Anesthetists, Pediatric Nursing Certification Board, National Certification Corporation, American Academy of Nurse Practitioners, and American Association of Critical-Care Nurses Certification Corporation.

³Source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-30, relating to the specialty categories for licensure of nurse practitioners.

Summary:

The amendments conform the categories of nurse practitioner specialties to the current categories for which national certification is available.

18VAC90-30-70. Categories of licensed nurse practitioners.

A. The boards shall license nurse practitioners consistent with their specialty education and certification in the following categories (a two-digit suffix appears on licenses to designate category):

1. Adult/geriatric acute care nurse practitioner (01);
2. Family nurse practitioner (02);
3. Pediatric/primary care nurse practitioner (03);
4. ~~Geriatric~~ Adult/geriatric primary care nurse practitioner (07);
5. Certified registered nurse anesthetist (08);
6. Certified nurse midwife (09);
7. Neonatal nurse practitioner (13);
8. Women's health nurse practitioner (14);
9. ~~Acute care nurse practitioner (16); and~~
10. ~~9.~~ Psychiatric nurse/mental health practitioner (17); and
10. Pediatric/acute care nurse practitioner (18).

B. Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

C. Nurse practitioners licensed prior to ~~March 9, 2005~~ January 15, 2016, may ~~retain~~ retain:

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1. Retain the specialty category in which they were initially licensed; or, ~~if~~

2. If the specialty category has been subsequently deleted and if qualified by certification, be ~~reissued~~ issued a license in a specialty category listed in subsection A of this section that is consistent with such certification.

VA.R. Doc. No. R16-4457; Filed November 9, 2015, 8:54 a.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing 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 Nursing will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-60).**

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

Effective Date: December 30, 2015.

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.

Summary:

Pursuant to Chapter 522 of the 2015 Acts of Assembly, the amendment includes the statutory authorization to issue a restricted volunteer license for nurse practitioners.

Part II Licensure

18VAC90-30-60. Licensure, general.

A. No person shall perform services as a nurse practitioner in the Commonwealth of Virginia except as prescribed in this chapter and when licensed by the Boards of Nursing and Medicine.

B. The boards shall license applicants who meet the qualifications for licensure as set forth in 18VAC90-30-80 or 18VAC90-30-85.

C. The boards may issue a restricted volunteer license for practice in accordance with provisions of § 54.1-2957.001 of the Code of Virginia.

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 (18VAC90-30)

[Instructions for Licensure -- Nurse Practitioner \(rev. 2/2009\)](#)

[Application for Licensure as a Nurse Practitioner \(rev. 6/2011\)](#)

[Application for Reinstatement of License as a Nurse Practitioner \(rev. 6/2011\)](#)

[License Verification Form \(rev. 7/2007\)](#)

[Application for Restricted Volunteer License \(eff. 7/2015\)](#)

VA.R. Doc. No. R16-4543; Filed November 2, 2015, 10:29 a.m.

BOARD OF PHARMACY

Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

December 1, 2015 - 9 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: January 29, 2016.

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.

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 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of Chapter 24 or of Chapter 1 (§ 54.1- 100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of Title 54.1. The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy including regulations pertaining to the safety and integrity of drugs is found in § 54.1-3307 of the Code of Virginia.

Purpose: While the board is not aware of studies documenting the error rate for pharmacists working extensive hours continuously, every pharmacist who spoke to the board and members of the board are aware that fatigue and lack of concentration can and do lead to errors in filling, reviewing for drug interactions, and dispensing prescription drugs. For other professions who rely on mental acuity, such as airline pilots, there is a limitation on continuous hours of work. Therefore, the board believes it is essential for public health and safety that some reasonable limitation be instituted on continuous hours of work without any breaks for pharmacists in Virginia.

Regulation is necessary to prevent, to the extent possible, prescription errors due to fatigue and lack of concentration by

pharmacists in the important task of assuring the accuracy and integrity of controlled substances.

Substance: The proposed regulation provides that, except in an emergency, a pharmacy cannot require a pharmacist to work longer than 12 continuous hours in any work day without being allowed at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours must be allowed to take a 30-minute break.

Issues: The primary advantage to the public would be greater assurance of safety in prescription medications dispensed by pharmacists who are not overly-fatigued from excessive hours of work without any break. Pharmacists would have the option of continuing with a patient beyond the prescribed hours or remaining on duty if a replacement pharmacist is not available, so patients would not be neglected. There are no disadvantages to the public.

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 Pharmacy (Board) proposes to provide in these regulations that, except in an emergency, a pharmacy cannot require a pharmacist to work longer than 12 continuous hours in any work day without being allowed at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours must be allowed to take a 30-minute break.

Result of Analysis. The proposed amendments are beneficial for some entities and are costly for others.

Estimated Economic Impact. The proposal was initially brought forth through a petition for rulemaking by a practicing Virginia pharmacist. According to the petitioner, there are hundreds of retail pharmacists in Virginia who are required to work more than 12 continuous hours (often up to 14 hours) per day, and a large percentage of them are not allowed to leave the pharmacy for at least a 30 minute meal break. Under the proposed language a pharmacist can agree to work longer than 12 continuous hours in a work day without at least six hours of off-time between consecutive shifts or work longer than six continuous hours without taking a break, but cannot be required to do so. Thus, the proposed amendments will be beneficial for pharmacists who object to such work requirements.

Also, the peer reviewed literature does indicate that fatigue contributes to pharmacist dispensing errors.¹ Working numerous hours without a break and working long shifts with little time off in between surely does contribute to fatigue. Thus, the proposed amendments have the potential to reduce dispensing errors. Of note, the peer-reviewed literature appears to imply that high workload per hour is an even greater source of pharmacist dispensing error than a high quantity of consecutive hours worked.²

As demonstrated by the petition for rulemaking, there are pharmacists who are currently required to work longer than 12 continuous hours in a work day without at least six hours of offtime between consecutive shifts or work longer than six continuous hours without taking a break. Thus, the proposed prohibition on requiring such work hours will likely cause some pharmacies to increase staffing or redeploy existing staff in a less profit-maximizing manner.

Businesses and Entities Affected. The proposed amendments potentially affect the 12,011 pharmacists and 1,776 pharmacies currently licensed in the Commonwealth. According to the Department of Health Professions, most of the licensed pharmacies are owned by national chain drug stores and would not be considered small businesses.

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

Projected Impact on Employment. The net effect of the proposed amendments on total employment is uncertain. On the one hand, the proposed limitation on requiring certain work hours may cause some pharmacies to increase staffing to cover all hours of operation. On the other hand, the prohibition will increase costs for affected pharmacies. Such pharmacies may choose to operate for fewer hours in response and effectively employ fewer hours of pharmacist labor.

Effects on the Use and Value of Private Property. The proposed amendments will likely cause some pharmacies to increase staffing or redeploy existing staff in a less profit-maximizing manner.

Small Businesses: Costs and Other Effects. Most of the affected businesses are part of large chain pharmacies. Those small pharmacies which are currently requiring staff pharmacists to work longer than 12 continuous hours in a work day without at least six hours of off-time between consecutive shifts or work longer than six continuous hours without taking a break may incur higher staffing costs or be forced to be open fewer hours due to the proposed amendments if their staff do not voluntarily agree to work such hours.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is not an apparent alternative method that achieves the same policy goal at a lower cost.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

¹Schaheutle EI, Seston EM, Hassell K. "Factors influencing pharmacist performance: A review of the peerreviewed literature." *Health Policy*: 102 (2011) 178-192.

²Ibid

Agency's Response to the Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget.

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Summary:

The proposed amendments establish that (i) except in an emergency, a pharmacy cannot require a pharmacist to work longer than 12 continuous hours in any work day without being allowed at least six hours of off-time between consecutive shifts and (ii) a pharmacist working longer than six continuous hours is allowed to take a 30-minute break.

Part IV Pharmacies

18VAC110-20-110. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day without being allowed at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break.

~~B. C.~~ C. The pharmacist-in-charge (PIC) or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

~~C. D.~~ D. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, he shall immediately return the pharmacy permit to the board indicating the effective date on which he ceased to be the PIC.

~~D. E.~~ E. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Schedule II through V controlled substances on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

~~E. F.~~ F. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

~~F. G.~~ G. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

~~G. H.~~ H. Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

~~H. I.~~ I. Before any permit is issued, the applicant shall attest to compliance with all federal, state and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after September 2, 2009.

VA.R. Doc. No. R12-19; Filed November 9, 2015; 1:10 p.m.

BOARD OF COUNSELING

Proposed Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-40 through 18VAC115-20-70, 18VAC115-20-130).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-20, 18VAC115-50-30 through 18VAC115-50-96, 18VAC115-50-100, 18VAC115-50-110, 18VAC115-50-120).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-20, 18VAC115-60-40 through 18VAC115-60-90, 18VAC115-60-110, 18VAC115-60-115, 18VAC115-60-116, 18VAC115-60-120, 18VAC115-60-130, 18VAC115-60-140; repealing 18VAC115-60-55).

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

Public Hearing Information:

December 8, 2015 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd Floor, Hearing Room 5, Richmond, VA 23233

Public Comment Deadline: January 29, 2016.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific authority for the promulgation of regulations for counseling-related professions is found in § 54.1-3505 of the Code of Virginia.

Purpose: In 2011, the board began a comprehensive review of current regulations governing the practice of professional counseling, marriage and family therapy, and licensed substance abuse practitioners. It determined that it is essential to continue the regulation of these licensed professions as

mandated by the Code of Virginia, but that there are modifications necessary to clarify and update requirements. Subsequently, the board amended 18VAC115-20 in response to the Governor's Regulatory Reform Project, but did not complete its review of 18VAC115-50 and 18VAC115-60 until recently. The board's intent is to amend all three chapters in this action for consistency in requirements for licensed professionals.

Since the board's primary responsibility is to license persons with competency adequate to safely treat the public, certain amendments to definitions, coursework, and requirements for supervised experience are being proposed. The intent of the amendments is to ensure that applicants have essential courses and experiences to prepare them for independent practice as licensed practitioners. Without minimal competency in the provision of clinical services, a licensee could provide inadequate or harmful care to a person with mental health issues. The goal of the action is to ensure accountability and competency for residents, supervisors, and licensees who provide clinical services to individuals and families in need of counseling. Failure to provide competent mental health services can have a detrimental effect on the individual being served and his or her family and community.

Substance: In addition to editing and deleting outdated language in the regulations, the board proposes to adopt changes that will make general requirements for each profession consistent. In summary, the substance of the changes are as follows:

Definitions:

- Delete terms that are no longer defined in the Code of Virginia or used in the regulation and to update certain definitions, such as the term "internship."
- Add definitions for terms that require some clarification, such as "face-to-face," or have been added to the regulation, such as "ancillary services."

Fees: Delete outdated language on one-time fee reduction and payment to a contractor.

Licensure by examination:

- Update language relating to submission of transcripts to allow electronic transfer of documents directly from the educational program to the board.
- Clarify that the board requires verification of a "mental health or health" professional license held in another jurisdiction and that there must be no unresolved disciplinary action on that license or certificate.
- Clarify that passage of the licensing examination is required.
- Require a report from the National Practitioner Data Bank (NPDB).

Licensure by endorsement:

- Add a requirement for a current report from NPDB to check on discipline in other states and malpractice history.

- Add a requirement for an affidavit that the applicant has read and understood the laws and regulations governing the profession and the board.
- Modify the clinical experience required for applicants who do not meet Virginia's education and residency requirements to allow licensure for those who have clinical practice for 24 out of the last 60 months, rather than five out of the last six years. (Change already made in 18VAC115-20 in regulatory reform project).

Degree program requirements: The sections will be amended to acknowledge that an educational program credentialed by the applicable profession meets the board's requirement for the program specifications of this section. 18VAC115-20 will be amended to add back a previous recognition of Council for Accreditation of Counseling and Related Educational Programs and Council on Rehabilitation Education approval.

Course work requirements:

- In marriage and family regulations, three course work topics will be added to the required courses for consistency with other counseling licenses.
- Add language deleted from the residency section specifying that the internship must include 20 hours of individual on-site supervision and 20 hours of individual or group off-site supervision and that internship hours cannot begin until completion of 30 semester hours toward the graduate degree.
- For marriage and family and substance abuse treatment practice, add language to specify the acceptance of certain coursework taken in the process of obtaining licensure in another mental health profession.

Residency:

- Reduce the total number of hours in a supervised residency to account for the minimum of 600 hours in an internship which is a prerequisite for beginning a residency and is currently counted towards the total of 4,000 hours.
- Clarify that the residency must be spent in provision of clinical counseling services and that case management and recordkeeping are considered ancillary services and are limited to 1,000 of the 2,000 hours of client contact in a residency.
- Add a requirement that the residency be completed in no less than 18 months or more than four years. An applicant who needs more time in the residency may submit evidence of why he or she should be allowed to continue practicing under supervision.
- Amend the requirement for 200 hours of face-to-face supervision in a residency to include the use of real-time, visual contact technology.
- Delete other professions over which the board has no regulatory or disciplinary authority, including psychologists, social workers, and physicians, as qualified

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to serve as supervisors for residents in counseling, marriage and family therapy, or substance abuse treatment.

General examination requirements:

- Amend to require an applicant to pass the examination within two years rather than take the examination within two years (consistent with social work). Change is necessary to avoid licensure of applicant many years after completion of education and supervised experience.
- Delete requirements for additional education or training for applicants who fail the examination twice, as the board has oversight for the deficiency of the applicant on the examination.
- Specify that applicants who are waiting to take or retake the examination must remain under supervision if they are going to continue practicing.

Renewal of licensure:

- Clarify that practice with a lapsed or expired license is prohibited.

Continuing competency activity criteria.

- Add local government agencies in the groups that can offer continuing education to include local community service boards and others and update the names of other organizations.

Late renewal; reinstatement: Specify that the hours of continuing competency activities or courses required for reactivation or reinstatement must be obtained within the four years immediately preceding application in Virginia.

Standards of practice:

- Strengthen prohibition on dual relationships to add "romantic relationship" to "sexual intimacies." Add "students" to the prohibition on relationship with a "supervisee."

Grounds for disciplinary action:

- Add "registration" as a category that may be disciplined to include persons registered with the board in a residency.
- Specify that commission of fraud or misrepresentation in the submission of supervisory forms is grounds for disciplinary action to address recent problems with supervision.
- Add a general provision that provides grounds for discipline for "performance of an act likely to deceive, defraud, or harm the public."

Issues:

There are no disadvantages to the public. A clearer standard on sexual relationships will provide greater protection for clients who are vulnerable to abuse in the practitioner/client relationship or the supervisor/supervisee or supervisor/student relationship. Some applicants for licensure by endorsement who do not qualify under the current practice requirement will be eligible under the proposed regulations, which could

result in a very modest increase in the numbers of licensees available to provide mental health services in the Commonwealth.

There are no particular 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. As a result of a 2011 periodic review, the Board of Counseling (Board) proposes to amend three sets of regulations under its purview. The Board proposes many clarifying changes and several substantive changes including:

- Re-including the Council for Accreditation of Counseling and Related Educational Programs and the Council on Rehabilitation Education as groups that can approve educational programs under the professional counselor licensure program,
- Not requiring a transcript to be included when applying for licensure if one was already submitted for approval of residency,
- Modifying experience requirements in 18VAC115-50 and 18VAC115-60 for individuals seeking licensure by endorsement so that they only have to have clinical practice 24 of the 60 months immediately before licensure application (rather than the now required five of the last six years),
- Allowing the use of real time visual contact technology (Skype or other like services) to meet face-to-face supervision requirements during residency,
- Allowing 20 hours of supervision obtained during an internship to count toward the 200 hours of face-to-face supervision required during residency (so long as the internship supervision was under a licensed professional counselor or, in the case of interns working toward licensure as a marriage and family therapist, a licensed professional counselor or a licensed marriage and family therapist),
- Requiring that residencies be completed in not less than 18 months and not more than four years,
- Adding local governments to the groups whose continuing education programs are approved by the Board to count toward continuing education requirements,
- Disallowing certain professionals from providing supervision for residencies because the Board does not have disciplinary or regulatory authority over these groups and
- Requiring applicants for licensure to provide a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank, which contains disciplinary and malpractice history.

Result of Analysis. Benefits likely outweigh costs for most proposed regulatory changes. For several regulatory changes, there is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact. According to Board staff, the Council for Accreditation of Counseling and Related Educational Programs (CACREP) and the Council on Rehabilitation Education (CORE) used to be listed in 18VAC115-20 as groups that could approve educational programs but that they were removed at some point. The Board now proposes to add these groups back into the regulation. This change will allow students more flexibility in choosing education that will allow them to eventually be licensed. This may allow them to choose cheaper educational opportunities if there is a cost differential between programs that are currently approved and ones that will be approved once CACREP and CORE are added as approving bodies. Students may also benefit if increasing educational opportunities allow them to choose programs that are more convenient to where they live.

Currently, the Board requires that a transcript of coursework completed be submitted with an application for licensure. Since transcripts must also be submitted for approval of residency, some individuals have ended up submitting the same transcript twice. To fix this situation, the Board proposes to only require that new transcripts be submitted during application for licensure if additional course work has been done since they were submitted for approval of residency. This change will benefit applicants because they would normally only have to obtain and submit transcripts once rather than twice. This will save them time and, when they are getting and mailing paper copies of transcripts also save them copy fees and mailing costs.

Current regulations for marriage and family therapists and drug abuse treatment practitioners require that applicants for licensure by endorsement show that they have actively practiced their craft for five of the six years immediately preceding application for licensure. The Board proposes to amend this requirement so that applicants will only have to show active practice for 24 of the 60 months immediately preceding. This change will likely benefit licensees in other states who may wish to move to Virginia as they will have to show a shorter period of active practice before they can apply for licensure to ensure their ability to practice in Virginia. This change will also harmonize these regulations with those for professional therapists.

Current regulations require residents to complete 200 hours of face-to-face (in person) supervision. The Board proposes to allow 20 hours of face-to-face supervision completed during an internship to count toward those 200 hours. The Board also proposes to allow supervisors to use Skype or other real time visual contact technology to meet with their supervisees. Both of these changes will likely benefit residents because they normally have to pay by the hour for supervision. These changes will allow them to pay for 20 fewer hours of supervision and will also allow them to meet with their supervisors using technology. This will likely require less travel on the part of the supervisor or the resident or both which may lower the per hour cost of supervision.

Currently there is no time limit on residencies for these licensure programs. The Board proposes to require that residencies be completed in not less than 18 months and not more than four years (individuals who are in the midst of completing their residencies when these proposed regulations become effective will have four years from the regulations' effective date to finish). Individuals who cannot finish their residencies in four years will be able to explain the delay to the Board and ask for a time extension. Board staff reports that residents must complete 3,400 hours during their residency (plus 600 hours that are normally credited from their supervised internship) so it would be very hard, if not impossible, to complete these hours in fewer than 18 months. Individuals would be working slightly over 44 hours per week to complete 3,400 hours in 18 months. Board staff reports that most programs already would not allow individuals to complete their residencies in fewer than 18 months and that the Board has never had an issue with any applicant for licensure having a residency that would breach this new rule. Some individuals in the future may incur some time costs for applying for a time variance if they need more than four years to complete their residency.

For licensees with continuing education requirements, the Board has listed in these regulations education criteria and groups that may offer continuing education that the Board will accept. The Board proposes to add local governments to the list of groups whose educational opportunities are acceptable to the Board. This will benefit licensees as they will have additional continuing education possibilities with local community service boards. This may allow licensees to complete continuing education at lower cost or at more convenient times or places.

Current regulations allow residencies for those seeking licensure as professional counselors to be supervised by a licensed professional counselor, a licensed marriage and family therapist, a licensed substance abuse treatment practitioner, a school psychologist, a clinical psychologist, a clinical social worker or a psychiatrist. Residencies for those seeking licensure as marriage and family therapists can be supervised by a licensed professional counselor, a licensed marriage and family therapist, a clinical psychologist, a clinical social worker or a psychiatrist. Residencies for those seeking licensure as a substance abuse treatment practitioner can be supervised by a licensed professional counselor, a licensed marriage and family therapist, a licensed substance abuse treatment practitioner, a school psychologist, a clinical psychologist, a clinical social worker, a clinical nurse specialist or a psychiatrist.

The Board proposes to eliminate all non-Board licensees from the lists of approved supervisors and to remove licensed substance abuse treatment practitioners from the list of licensees who may supervise professional counseling residents. Under the proposed regulations professional counseling residents and marriage and family therapy residents may only be supervised by licensed professional

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counselors and licensed marriage and family therapists, and substance abuse treatment practitioner residents may be supervised by licensed professional counselors, licensed marriage and family therapists, and licensed substance abuse treatment practitioners. This change will eliminate issues that may arise with the Board being unable to discipline or set rules for individuals who they do not license. To the extent that this change limits the pool of available supervisors, costs for supervision may increase, and it may take longer for residents to obtain supervision and complete their residencies.

The Board also proposes to add the requirement that all individuals applying for licensure provide a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank. This will allow the Board to check if applicants have any disciplinary or malpractice history in another state. Applicants will have to pay a \$5 fee to obtain this report.

Businesses and Entities Affected. Board staff reports that these proposed regulations will affect all applicants for licensure as professional counselors, marriage and family therapists and substance abuse treatment practitioners. Board staff further reports that the Board has, in the last year, received 1,387 applications for licensure as professional counselors, 118 applications for licensure as marriage and family therapists and 11 applications for licensure as substance abuse treatment practitioners.

Localities Particularly Affected. No locality will be particularly affected by this regulatory action.

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

Effects on the Use and Value of Private Property. This regulatory action will likely not affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small businesses will be affected by this proposed regulatory package.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will be affected by this proposed regulatory package.

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

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the Analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) add the Council for Accreditation of Counseling and Related Educational Programs and the Council on Rehabilitation Education as groups that can approve educational programs under the professional counselor licensure program; (ii) eliminate the requirement that a transcript be included when

applying for licensure if one was already submitted for approval of residency; (iii) modify experience requirements in 18VAC115-50 and 18VAC115-60 for individuals seeking licensure by endorsement so that they only have to have clinical practice 24 of the 60 months immediately before licensure application, instead of five of the last six years as currently required; (iv) allow the use of real-time visual contact technology (e.g., Skype or other like services) to meet face-to-face supervision requirements during residency; (v) allow 20 hours of supervision obtained during an internship to count toward the 200 hours of face-to-face supervision required during residency so long as the internship supervision was under a licensed professional counselor or, in the case of interns working toward licensure as a marriage and family therapist, a licensed professional counselor or a licensed marriage and family therapist; (vi) require that residencies be completed in not less than 18 months and not more than four years; (vii) add local governments to the groups whose continuing education programs are approved by the board to count toward continuing education requirements; (viii) disallow certain professionals from providing supervision for residencies because the board does not have disciplinary or regulatory authority over these groups; and (ix) require applicants for licensure to provide a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank, which contains disciplinary and malpractice history.

Part I

General Provisions

18VAC115-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

~~"Appraisal activities"~~

"Board"

"Counseling"

~~"Counseling treatment intervention"~~

"Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience

requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"CORE" means Council on Rehabilitation Education.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the ~~United States~~ U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a ~~post-graduate~~ postgraduate, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction that is specific to the clinical counseling services being performed with respect to the clinical skills and competencies of the person supervised.

Part II
Requirements for Licensure

18VAC115-20-40. Prerequisites for licensure by examination.

Every applicant for licensure examination by the board shall:

1. Meet the degree program requirements prescribed in 18VAC115-20-49, the course work requirements prescribed in 18VAC115-20-51, and the experience requirements prescribed in 18VAC115-20-52; ~~and~~

2. Pass the licensure examination specified by the board;

3. Submit the following to the board:

a. A completed application;

b. Official transcripts documenting the applicant's completion of the degree program and coursework requirements prescribed in 18VAC115-20-49 and 18VAC115-20-51. Transcripts previously submitted for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained;

c. Verification of Supervision forms documenting fulfillment of the residency requirements of 18VAC115-20-52 and copies of all required evaluation forms, including verification of current licensure of the supervisor if any portion of the residency occurred in another jurisdiction;

d. Verification of any other mental health or health professional license or certificate ever held in another jurisdiction; ~~and~~

e. The application processing and initial licensure fee as prescribed in 18VAC115-20-20; and

f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

~~3.~~ 4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-20-45. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall hold or have held a professional counselor license in another jurisdiction of the United States and shall submit the following:

1. A completed application;

2. The application processing fee and initial licensure fee as prescribed in 18VAC115-20-20;

3. Verification of all mental health or health professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The

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board will consider history of disciplinary action on a case-by-case basis;

4. Documentation of having completed education and experience requirements as specified in subsection B of this section;

5. Verification of a passing score on an examination required for counseling licensure in the jurisdiction in which licensure was obtained; ~~and~~

6. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

~~6.~~ 7. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; ~~or~~

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of post-licensure clinical practice in counseling, as defined in § 54.1-3500 of the Code of Virginia, for 24 of the last 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical counseling services or clinical supervision of counseling services; or

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18VAC115-20-49. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice counseling ~~and counseling treatment intervention~~, as defined in § 54.1-3500 of the Code of Virginia, which is offered by a college or university accredited by a regional accrediting agency and which meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;

2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

B. Programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section.

18VAC115-20-51. Coursework requirements.

A. The applicant shall have successfully completed 60 semester hours or 90 quarter hours of graduate study in the following core coursework with a minimum of three semester hours or 4.0 quarter hours in each of subdivisions 1 through 12 of this subsection:

1. Professional counseling identity, function, and ethics;
2. Theories of counseling and psychotherapy;
3. Counseling and psychotherapy techniques;
4. Human growth and development;
5. Group counseling and psychotherapy theories and techniques;
6. Career counseling and development theories and techniques;
7. Appraisal, evaluation, and diagnostic procedures;
8. Abnormal behavior and psychopathology;
9. Multicultural counseling theories and techniques;
10. Research;
11. Diagnosis and treatment of addictive disorders;
12. Marriage and family systems theory; and
13. Supervised internship of at least 600 hours to include 240 hours of face-to-face client contact. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

B. If 60 graduate hours in counseling were completed prior to April 12, 2000, the board may accept those hours if they meet the regulations in effect at the time the 60 hours were completed.

18VAC115-20-52. Residency requirements.

A. Registration. Applicants who render counseling services shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-20-49 to include completion of the coursework and internship requirement specified in 18VAC115-20-51; and
3. Pay the registration fee.

B. Residency requirements.

1. The applicant for licensure shall have completed a 3,400-hour supervised residency in the role of a professional counselor working with various populations, clinical problems, and theoretical approaches in the following areas:

- a. Assessment and diagnosis using psychotherapy techniques;
- b. Appraisal, evaluation, and diagnostic procedures;
- c. Treatment planning and implementation;
- d. Case management and recordkeeping;
- e. Professional counselor identity and function; and
- f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of ~~face-to-face~~ in-person supervision between supervisor and resident in the consultation and review of clinical counseling services provided by the resident. Supervision shall occur at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency. For the purpose of meeting the 200-hour supervision requirement, ~~face-to-face~~ in-person may include the use of secured technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.

3. No more than half of the 200 hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

4. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.

5. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical counseling services. The remaining hours may be spent in the performance of ancillary counseling services.

6. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-20-49, may count for up to an additional 300 hours towards the requirements of a residency.

7. The residency shall be completed in not less than 18 months or more than four years. Residents who began a residency before (insert effective date of the regulation) shall complete the residency by (insert four years after the effective date). An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue.

8. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervision.

~~8.~~ 9. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing of the resident's status and the supervisor's name, professional address, and phone number.

~~9.~~ 10. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

11. Residency hours approved by the licensing board in another U.S. jurisdiction that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in professional counseling shall:

1. Document two years of post-licensure clinical experience;

2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106; and

3. Shall hold an active, unrestricted license as a professional counselor; or a marriage and family therapist; substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, or psychiatrist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

5. The supervisor shall provide supervision as defined in 18VAC115-20-10.

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Part III Examinations

18VAC115-20-70. General examination requirements; schedules; time limits.

A. Every applicant for initial licensure by examination by the board as a professional counselor shall pass a written examination as prescribed by the board.

B. Every applicant for licensure by endorsement shall have passed a licensure examination in the jurisdiction in which licensure was obtained.

C. A candidate approved to sit for the examination shall ~~take~~ pass the examination within two years from the date of such initial approval. If the candidate has not ~~taken~~ passed the examination by the end of the two-year period here prescribed:

1. The initial approval to sit for the examination shall then become invalid; and
2. ~~In order to be considered for the examination later, the~~ The applicant shall file a new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the applicant shall pass the examination within two years of such approval. If the examination is not passed within the additional two-year period, a new application will not be accepted.

D. The board shall establish a passing score on the written examination.

E. A candidate for examination or an applicant shall not provide clinical counseling services unless he is under supervision approved by the board.

Part V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the ~~United States~~ U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;
2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;
3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;
4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and
5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:
 - a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;
 - b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or
 - c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;
2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating

the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-50-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"CACREP" means the Council for Accreditation of Counseling and Related ~~Education~~ Educational Programs.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Clinical marriage and family services" means activities such as assessment, diagnosis, and treatment planning and treatment implementation for couples and families.

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"Face-to-face" means the in-person delivery of clinical marriage and family services for a client.

"Internship" means a supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings formal academic course from a regionally accredited university in which supervised practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the ~~United States~~ U.S. Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Residency" means a ~~post-internship~~ postgraduate, supervised clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract to the board and has received board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, individual or group consultation, guidance and instruction with respect to the clinical skills and competencies of the person or persons being supervised.

18VAC115-50-20. Fees.

A. The board has established fees for the following:

Registration of supervision	\$50
Add or change supervisor	\$25
Initial licensure by examination: Processing and initial licensure	\$140
Initial licensure by endorsement: Processing and initial licensure	\$140
Active annual license renewal	\$105
Inactive annual license renewal	\$55
Penalty for late renewal	\$35
Reinstatement of a lapsed license	\$165
Verification of license to another jurisdiction	\$25
Additional or replacement licenses	\$5
Additional or replacement wall certificates	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500

~~One time reduction for renewal of an active license due on June 30, 2010~~ \$52

~~One time reduction for renewal of an inactive license due on June 30, 2010~~ \$27

~~B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.~~

~~C. Examination fees shall be determined and made payable as determined by the board.~~

18VAC115-50-30. Application for licensure by examination.

Every applicant for ~~examination~~ for licensure by examination by the board shall:

1. Meet the education and experience requirements prescribed in 18VAC115-50-50, 18VAC115-50-55 and 18VAC115-50-60;

2. Meet the examination requirements prescribed in 18VAC115-50-70;

~~2.~~ 3. Submit to the board office the following items:

a. A completed application;

b. The application processing and initial licensure fee prescribed in 18VAC115-50-20;

c. Documentation, on the appropriate forms, of the successful completion of the residency requirements of 18VAC115-50-60 along with documentation of the supervisor's out-of-state license where applicable;

d. Official transcript or transcripts ~~in the original sealed envelope with the registrar's signature across the sealed envelope flap~~ submitted from the appropriate institutions of higher education ~~directly to the applicant~~, verifying satisfactory completion of the education requirements set forth in 18VAC115-50-50 and 18VAC115-50-55. Previously submitted transcripts for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained; and

e. Verification on a board-approved form ~~that any of any mental health or health~~ out-of-state license, certification, or registration ~~is in good standing.~~ ever held in another jurisdiction; and

f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-50-40. Application for licensure by endorsement.

A. Every applicant for licensure by endorsement shall hold or have held a marriage and family license in another jurisdiction in the United States and shall submit:

1. A completed application;
2. The application processing and initial licensure fee prescribed in 18VAC115-50-20; ~~and~~
3. Documentation of licensure as follows:
 - a. Verification of all mental health or health professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis; and
 - b. Documentation of a marriage and family therapy license obtained by standards specified in subsection B of this section;
4. Verification of a passing score on a marriage and family therapy licensure examination in the jurisdiction in which licensure was obtained;
5. An affidavit of having read and understood the regulations and laws governing the practice of marriage and family therapy in Virginia; and
6. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-50-50 and 18VAC115-50-55 and experience requirements consistent with those specified in 18VAC115-50-60; ~~or~~
2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:
 - a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and
 - b. Evidence of ~~post-licensure~~ clinical practice as a marriage and family therapist for ~~five~~ 24 of the last ~~six~~ 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical services in marriage and family therapy or clinical supervision of marriage and family services; or
3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18VAC115-50-50. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice marriage and family therapy ~~or a discipline related to the practice of marriage and family therapy~~ as defined in § 54.1-3500 of the Code of Virginia from a college or university which is accredited by a regional accrediting agency and which meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare students to practice marriage and family therapy as documented by the institution;
2. There must be an identifiable marriage and family therapy training faculty and an identifiable body of students who complete that sequence of academic study; and
3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

B. Programs that are approved by CACREP as programs in marriage and family counseling/therapy or by COAMFTE are recognized as meeting the ~~definition of a graduate degree program that prepares individuals to practice marriage and family therapy or a discipline related to the practice of marriage and family therapy as defined in § 54.1-3500 of the Code of Virginia~~ requirements of subsection A of this section.

18VAC115-50-55. ~~Course~~ ~~work~~ Coursework requirements.

A. The applicant shall have successfully completed 60 semester hours or 90 quarter hours of graduate ~~study in the following core areas~~ coursework with a minimum of six semester hours or nine quarter hours completed in each of the core areas identified in subdivisions 1 and 2 of this subsection, and three semester hours or 4.0 quarter hours in each of the core areas identified in subdivisions 3 through ~~6~~ 9 of this subsection (~~suggested courses are listed in parentheses after each core area~~):

1. Marriage and family studies (marital and family development; family systems theory);
2. Marriage and family therapy (systemic therapeutic interventions and application of major theoretical approaches);
3. Human growth and development (~~theories of counseling; psychotherapy techniques with individuals; human growth and lifespan development; personality theory; psychopathology; human sexuality; multicultural issues~~) across the lifespan;
4. Abnormal behaviors;
5. Diagnosis and treatment of addictive behaviors;
6. Multicultural counseling;
4. ~~7.~~ Professional studies (~~professional identity and function; ethical and legal issues~~) ethics;
5. ~~8.~~ Research (research methods; quantitative methods; statistics);

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~~6. 9.~~ Assessment and treatment (appraisal, assessment and diagnostic procedures); and

~~7. 10.~~ Supervised internship of at least 600 hours to include 240 hours of direct client contact. Three hundred of the internship hours and 120 of the direct client contact, of which 200 hours shall be with couples and families. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

~~B. If the graduate hours in marriage and family therapy were begun prior to January 19, 2000, the board may accept those hours if they meet the requirements which were in effect on July 9, 1997. If the applicant holds a current, unrestricted license as a professional counselor, clinical psychologist, or clinical social worker, the board may accept evidence of successful completion of 60 semester hours or 90 quarter hours of graduate study, including a minimum of six semester hours or nine quarter hours completed in marriage and family studies (marital and family development; family systems theory) and six semester hours or nine quarter hours completed in marriage and family therapy (systemic therapeutic interventions and application of major theoretical approaches).~~

18VAC115-50-60. Residency requirements.

~~A. Registration. 4.~~ Applicants who render ~~counseling marriage and family therapy services shall:~~

~~a. 1.~~ With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

~~b. 2.~~ Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-50-50 to include completion of the coursework and internship requirement specified in 18VAC115-50-55; and

~~e. 3.~~ Pay the registration fee.

~~2. After September 3, 2008, applicants who are beginning their residencies in exempt settings shall register supervision with the board to assure acceptability at the time of application.~~

B. Residency requirements.

1. The applicant shall have completed ~~at least two years of supervised post graduate degree experience, representing no fewer than 4,000~~ 3,400 hours of supervised work ~~experience~~ residency in the role of a marriage and family therapist, to include 200 hours of in-person supervision with the supervisor in the practice of marriage and family therapy consultation and review of marriage and family services provided by the resident. For the purpose of meeting the 200 hours of supervision required for a residency, in-person may also include the use of technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist.

a. Residents shall receive a minimum of one hour and a maximum of four hours of supervision for every 40 hours of supervised work experience.

b. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

c. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed marriage and family therapist or a licensed professional counselor.

~~2. Of the 4,000 hours stipulated, The residency shall include documentation of at least 2,000 hours must be acquired in direct client contact of which 1,000 hours shall be clinical marriage and family services of which 1,000 hours shall be face-to-face client contact with couples or families or both. The remaining hours may be spent in the performance of ancillary counseling services. For applicants who hold current, unrestricted licensure as a professional counselor, clinical psychologist, or clinical social worker, the remaining hours may be waived.~~

3. The residency shall consist of practice in the core areas set forth in 18VAC115-50-55.

4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18VAC115-50-50.

5. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-50-50, may count for ~~no more than 600 of the required 4,000 hours of experience. The internship shall include 20 hours of individual on-site supervision, and 20 hours of individual or group off-site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree up to an additional 300 hours towards the requirements of a residency.~~

~~6. A graduate level degree internship completed in a COAMFTE approved program or a CACREP approved program in marriage and family counseling/therapy may count for no more than 900 of the required 4,000 hours of experience. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.~~

~~7. In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.~~

~~8. 7.~~ Residents shall not call themselves marriage and family therapists, ~~solicit clients,~~ directly bill for services rendered, or in any way represent themselves as marriage and family therapists. During the residency, they may use

their names, the initials of their degree and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address and telephone number of the resident's supervisor.

~~9.~~ 8. Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

~~10. Residents who do not become candidates for licensure after five years of supervised training shall submit an explanation to the board stating reasons the residency should be allowed to continue.~~ 9. The residency shall be completed in not less than 18 months or more than four years. Residents who began a residency before (insert effective date of the regulation) shall complete the residency by (insert four years after the effective date). An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue.

10. Residency hours that are approved by the licensing board in another U.S. jurisdiction and that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in marriage and family therapy shall:

1. Hold an active, unrestricted license as a marriage and family therapist; ~~or professional counselor, clinical psychologist, clinical social worker or psychiatrist~~ in the jurisdiction where the supervision is being provided;
2. Document two years post-licensure marriage and family therapy experience; and
3. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-50-96. ~~Persons who have provided supervision for a residency prior to September 3, 2008 shall complete such coursework or continuing education by September 3, 2010.~~ At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist.

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.
2. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.
3. The supervisor shall provide supervision as defined in 18VAC115-50-10 and shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the residency.

18VAC115-50-70. General examination requirements.

A. All applicants for initial licensure shall pass an examination, with a passing score as determined by the board. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor issued by the board.

B. The examination shall concentrate on the core areas of marriage and family therapy set forth in subsection A of 18VAC115-50-55.

~~Approved applicants shall~~ A candidate approved to sit for the examination shall pass the examination within two years from the initial notification date of approval. Failure to do so will result in the revocation of approval and obligate the applicant to file a new application for examination. If the candidate has not passed the examination within two years from the date of initial approval:

1. The initial approval to sit for the examination shall then become invalid; and
2. The applicant shall file a new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the candidate shall pass the examination within two years of such approval. If the examination is not passed within the additional two-year period, a new application will not be accepted.

~~D. Applicants who fail the examination twice in succession shall document completion of 45 clock hours of additional education or training acceptable to the board addressing the areas of deficiency as reported in the examination results prior to obtaining board approval for reexamination. Applicants or candidates for examination shall not provide marriage and family services unless they are under supervision approved by the board.~~

18VAC115-50-90. Annual renewal of license.

A. All licensees shall renew licenses on or before June 30 of each year.

B. All licensees who intend to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-50-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-50-20. No person shall practice marriage and family therapy in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-50-100 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the

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address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. After the renewal date, the license is expired; practice with an expired license is prohibited and may constitute grounds for disciplinary action.

18VAC115-50-95. Continued competency requirements for renewal of a license.

A. ~~After July 1, 2004, marriage~~ Marriage and family therapists shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice or laws governing behavioral science professions in Virginia.

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

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individual will only be required to provide the hours set out in subsection A of this section or subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling, or subsection A of 18VAC115-60-115 in the Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

18VAC115-50-96. Continuing competency activity criteria.

A. Continuing competency activities must focus on increasing knowledge or skills in one or more of the following areas:

1. Ethics, standards of practice or laws governing behavioral science professions;
2. Counseling theory;
3. Human growth and development;
4. Social and cultural foundations;
5. The helping relationship;
6. Group dynamics, processing and counseling;
7. Lifestyle and career development;
8. Appraisal of individuals;
9. Research and evaluation;
10. Professional orientation;
11. Clinical supervision;
12. Marriage and family therapy; or

13. Addictions.

B. Approved hours of continuing competency activity shall be one of the following types:

1. Formally organized learning activities or home study. Activities may be counted at their full hour value. Hours shall be obtained from one or a combination of the following board-approved, mental health-related activities:

- a. Regionally accredited university or college level academic courses in a behavioral health discipline.
- b. Continuing education programs offered by universities or colleges.
- c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state, or local governmental agencies or licensed health facilities and licensed hospitals.
- d. Workshops, seminars, conferences, or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

- (1) The ~~American~~ International Association of Marriage and Family Counselors and its state affiliates.
- (2) The American Association ~~of~~ for Marriage and Family ~~Therapists~~ Therapy and its state affiliates.
- (3) The American Association of State Counseling Boards.
- (4) The American Counseling Association and its state and local affiliates.
- (5) The American Psychological Association and its state affiliates.
- (6) The Commission on Rehabilitation Counselor Certification.
- (7) NAADAC, The Association for Addiction Professionals, and its state and local affiliates.
- (8) National Association of Social Workers.
- (9) National Board for Certified Counselors.
- (10) A national behavioral health organization or certification body.
- (11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.
- (12) The American Association of Pastoral Counselors.

2. Individual professional activities.

a. Publication/presentation/new program development.

(1) Publication of articles. Activity will count for a maximum of eight hours. Publication activities are limited to articles in refereed journals or a chapter in an edited book.

(2) Publication of books. Activity will count for a maximum of 18 hours.

(3) Presentations. Activity will count for a maximum of eight hours. The same presentations may be used only once in a two-year period. Only actual presentation time may be counted.

(4) New program development activity will count for a maximum of eight hours. New program development includes a new course, seminar, or workshop. New courses shall be graduate or undergraduate level college or university courses.

b. Dissertation. Activity will count for a maximum of 18 hours. Dissertation credit may only be counted once.

c. Clinical supervision/consultation. Activity will count for a maximum of ten hours. Continuing competency can only be granted for clinical supervision/consultation received on a regular basis with a set agenda. Continuing competency cannot be granted for supervision that you provide to others.

d. Leadership. Activity will count for a maximum of eight hours. The following leadership positions are acceptable for continuing competency credit: officers of state or national counseling organization; editor and/or reviewer of professional counseling journals; member of state counseling licensure/certification board; member of a national counselor certification board; member of a national ethics disciplinary review committee rendering licenses; active member of a counseling committee producing a substantial written product; chair of a major counseling conference or convention; other leadership positions with justifiable professional learning experiences. The leadership positions must take place for a minimum of one year after the date of first licensure.

e. Practice related programs. Activity will count up to a maximum of eight hours. The board may allow up to eight contact hours of continuing competency as long as the regulant submits proof of attendance plus a written justification of how the activity assists him in his direct service of his clients. Examples include language courses, software training, medical topics, etc.

18VAC115-50-100. Late renewal, reinstatement.

A. A person whose license has expired may renew it within one year after its expiration date by paying the ~~penalty~~ late fee prescribed in 18VAC115-50-20 as well as the license fee prescribed for the period the license was not renewed and providing evidence of having met all applicable continuing competency requirements.

B. A person seeking reinstatement of a license one year or more after its expiration date must ~~apply~~:

1. Apply for reinstatement, and pay the reinstatement fee, ~~submit~~;

2. Submit documentation of any mental health license he holds or has held in another jurisdiction, if applicable;

3. Submit evidence regarding the continued ability to perform the functions within the scope of practice of the

license, if required by the board to demonstrate competency; and ~~provide~~

4. Provide evidence of having met all applicable continuing competency requirements not to exceed a maximum of 80 hours obtained within the four years immediately preceding application for reinstatement.

C. A person wishing to reactivate an inactive license shall submit (i) the renewal fee for active licensure minus any fee already paid for inactive licensure renewal and (ii) documentation of continued competency hours equal to the number of years the license has been inactive, not to exceed a maximum of 80 hours, obtained within the four years immediately preceding application for reinstatement. The board may require additional evidence regarding the person's continued ability to perform the functions within the scope of practice of the license.

18VAC115-50-110. Standards of practice.

A. The protection of the public's health, safety and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new marriage and family therapy information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform client of the risks and benefits of any such treatment. Ensure that the welfare of the client is not

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compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the ~~United States~~ U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release client records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. ~~Counselors~~ Marriage and family therapists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and also not counsel persons with whom they have had a sexual intimacy or romantic relationship. Marriage and family therapists shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationships or sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of marriage and family therapy.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-50-120. Disciplinary action.

A. Action by the board to revoke, suspend, deny issuance or removal of a license, or take other disciplinary action may be taken in accordance with the following:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of marriage and family therapy, or any provision of this chapter;
2. Procurement of a license, including submission of an application or supervisory forms, by fraud or misrepresentation;
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or the general public or if one is unable to practice marriage and family therapy with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition;
4. Intentional or negligent conduct that causes or is likely to cause injury to a client or clients;
5. Performance of functions outside the demonstrable areas of competency;
6. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of marriage and family therapy, or any part or portion of this chapter; ~~or~~
7. Failure to comply with the continued competency requirements set forth in this chapter; or
8. Performance of an act likely to deceive, defraud, or harm the public.

B. Following the revocation or suspension of a license, the licensee may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

Part I
General Provisions

18VAC115-60-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

- "Board"
- "Licensed substance abuse treatment practitioner"
- "Substance abuse"
- "Substance abuse treatment"

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

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related ~~Education~~ Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical substance abuse treatment services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical substance abuse treatment services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

~~"Internship" means supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings~~ a formal academic course from a regionally accredited university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods and techniques.

"Jurisdiction" means a state, territory, district, province or country which has granted a professional certificate or license

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to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting which does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the ~~United States~~ U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a ~~post-internship~~ postgraduate, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in substance abuse treatment under supervision.

18VAC115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner:

Registration of supervision (initial)	\$50
Add/change supervisor	\$25
Initial licensure by examination: Processing and initial licensure	\$140
Initial licensure by endorsement: Processing and initial licensure	\$140
Active annual license renewal	\$105
Inactive annual license renewal	\$55
Duplicate license	\$5
Verification of license to another jurisdiction	\$25
Late renewal	\$35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One time reduction for renewal of an active license due on June 30, 2010	\$52
One time reduction for renewal of an inactive license due on June 30, 2010	\$27

~~B. Fees shall be paid directly to the board or its contractor, or both, in appropriate amounts as specified in the application instructions. All fees are nonrefundable.~~

C. Examination fees shall be determined and made payable as determined by the board.

Part II Requirements for Licensure

18VAC115-60-40. Application for licensure by examination.

Every applicant for ~~examination~~ for licensure by examination by the board shall:

1. Meet the degree program, ~~course work~~ coursework, and experience requirements prescribed in 18VAC115-60-60, 18VAC115-60-70, and 18VAC115-60-80; ~~and~~
2. Pass the examination required for initial licensure as prescribed in 18VAC115-60-90;
3. Submit the following items to the board:
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and course work requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70. Transcripts previously submitted for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained;
 - c. Verification of supervision forms documenting fulfillment of the ~~experience~~ residency requirements of 18VAC115-60-80 and copies of all required evaluation forms, including verification of current licensure of the supervisor of any portion of the residency occurred in another jurisdiction;
 - d. Documentation of any other mental health or health professional license or certificate ever held in another jurisdiction; ~~and~~
 - e. The application processing and initial licensure fee; as prescribed in 18VAC115-60-20; and
 - f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-60-50. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit:

1. A completed application;
2. The application processing and initial licensure fee as prescribed in 18VAC115-60-20;
3. Verification of all mental health or health professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or

certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Further documentation of one of the following:

a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or

b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18VAC115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience;

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of post-licensure clinical practice for ~~five~~ 24 of the last ~~six years~~ 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical substance abuse treatment services or clinical supervision of such services.

5. Verification of a passing score on a substance abuse licensure examination as established by the jurisdiction in which licensure was obtained. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor within the Commonwealth of Virginia;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70; ~~and~~

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia; ~~and~~

8. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board

may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18VAC115-60-55. ~~Time limited waiver of certain licensure requirements. (Repealed.)~~

~~Until February 26, 2004, individuals who do not meet the licensure requirements set forth in 18VAC115-60-50 and 18VAC115-60-60 through 18VAC115-60-90 may be eligible for licensure if they submit a completed application and processing fee and provide evidence that they meet the following criteria:~~

~~1. A passing score on a board approved examination;~~

~~2. A minimum of three comprehensive reports from:~~

~~a. At least two licensed mental health professionals, one of whom must be licensed in Virginia, that affirm competence in all areas outlined in 18VAC115-60-80 C-1 and attest to the applicant's ability to practice autonomously; and~~

~~b. One or more clinical supervisors who have provided supervision, as defined in 18VAC115-60-10, of the applicant for a total of one year within the applicant's most recent five years of practice. If supervision was provided in an exempt setting, the report may be submitted by an unlicensed mental health professional; and~~

~~3. One of the following:~~

~~a. Five years full time experience in substance abuse treatment plus a master's degree in a mental health field from a regionally accredited institution of higher learning with a total of 36 graduate hours covering mental health content to include three graduate semester hours or 4.5 graduate quarter hours in each area of the following:~~

~~(1) Counseling and psychotherapy techniques;~~

~~(2) Appraisal, evaluation and diagnostic procedures;~~

~~(3) Abnormal behavior and psychopathology;~~

~~(4) Group counseling and psychotherapy, theories and techniques; and~~

~~(5) Research.~~

~~The remaining graduate semester hours shall include content in the following areas:~~

~~(1) Assessment, appraisal, evaluation and diagnosis specific to substance abuse;~~

~~(2) Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;~~

~~(3) Understanding addictions: The biochemical, socio-cultural and psychological factors of substance use and abuse;~~

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~~(4) Addictions and special populations, including, but not limited to, adolescents, women, ethnic groups and the elderly; and~~

~~(5) Client and community education; or~~

~~b. Ten years full-time experience in substance abuse treatment plus a bachelor's degree from a regionally accredited institution of higher learning, plus 30 graduate hours covering mental health content to include three graduate semester hours or 4.5 graduate quarter hours in each area of the following:~~

~~(1) Counseling and psychotherapy techniques;~~

~~(2) Appraisal, evaluation and diagnostic procedures;~~

~~(3) Abnormal behavior and psychopathology;~~

~~(4) Group counseling and psychotherapy, theories and techniques; and~~

~~(5) Research.~~

~~The remaining graduate hours shall include content in the following areas:~~

~~(1) Assessment, appraisal, evaluation and diagnosis specific to substance abuse;~~

~~(2) Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;~~

~~(3) Understanding addictions: the biochemical, socio-cultural and psychological factors of substance use and abuse;~~

~~(4) Addictions and special populations, including, but not limited to, adolescents, women, ethnic groups and the elderly; and~~

~~(5) Client and community education.~~

18VAC115-60-60. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice substance abuse treatment or a related counseling discipline as defined in § 54.1-3500 of the Code of Virginia from a college or university accredited by a regional accrediting agency that meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;
2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and
3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

~~B. Education that does not come from a degree program meeting the requirements set forth in this section shall not be acceptable for licensure. Programs that are approved by CACREP as programs in addictions counseling are~~

recognized as meeting the requirements of subsection A of this section.

18VAC115-60-70. Course—work Coursework requirements.

A. The applicant shall have successfully completed 60 semester hours or 90 quarter hours of graduate study.

B. The applicant shall have completed a general core curriculum containing a minimum of three semester hours or 4.0 quarter hours in each of the areas identified in this section:

1. Professional identity, function and ethics;
2. Theories of counseling and psychotherapy;
3. Counseling and psychotherapy techniques;
4. Group counseling and psychotherapy, theories and techniques;
5. Appraisal, evaluation and diagnostic procedures;
6. Abnormal behavior and psychopathology;
7. Multicultural counseling, theories and techniques;
8. Research; and
9. Marriage and family systems theory.

C. The applicant shall also have completed 12 graduate semester credit hours or 18 graduate quarter hours in the following substance abuse treatment competencies.

1. Assessment, appraisal, evaluation and diagnosis specific to substance abuse;
2. Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;
3. Understanding addictions: The biochemical, sociocultural and psychological factors of substance use and abuse;
4. Addictions and special populations including, but not limited to, adolescents, women, ethnic groups and the elderly; and
5. Client and community education.

D. The applicant shall have completed a supervised internship of 600 hours to include 240 hours of direct client contact. ~~At least 450 of the internship hours and, of which 200 of the direct client contact hours shall be in treating substance abuse-specific treatment problems. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.~~

E. One course may satisfy study in more than one content area set forth in subsections B and C of this section.

F. If the applicant holds a current, unrestricted license as a professional counselor, clinical psychologist, or clinical social worker, the board may accept evidence of successful completion of 60 semester hours or 90 quarter hours of graduate study, including the hours specified in subsection C of this section.

18VAC115-60-80. Residency requirements.

A. Registration. Applicants who render substance abuse treatment services shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-60-60 to include completion of the coursework and internship requirement specified in 18VAC115-60-70; and
3. Pay the registration fee.

B. ~~After September 3, 2008, applicants~~ Applicants who are beginning their residencies in exempt settings shall register supervision with the board to assure acceptability at the time of application.

C. Residency requirements.

1. The applicant for licensure shall have completed ~~a 4,000 hour~~ no fewer than 3,400 hours in a supervised residency in substance abuse treatment with various populations, clinical problems and theoretical approaches in the following areas:

- a. Clinical evaluation;
- b. Treatment planning, documentation and implementation;
- c. Referral and service coordination;
- d. Individual and group counseling and case management;
- e. Client family and community education; and
- f. Professional and ethical responsibility.

2. The residency shall include a minimum of 200 hours of in-person supervision between supervisor and resident occurring at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency.

- a. No more than half of these hours may be satisfied with group supervision.
- b. One hour of group supervision will be deemed equivalent to one hour of individual supervision.
- c. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.
- d. For the purpose of meeting the 200-hour supervision requirement, in-person supervision may include the use of technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident.
- e. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.

3. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical substance abuse treatment services with individuals, families, or groups of individuals suffering from the effects of substance abuse or dependence. The remaining hours may be spent in the performance of ancillary services.

4. A graduate level degree internship in excess of 600 hours, which is completed in a program that meets the requirements set forth in 18VAC115-60-70, may count for ~~no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of individual on site supervision, and 20 hours of individual or group off site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree up to an additional 300 hours towards the requirements of a residency.~~

5. ~~A graduate level degree internship completed in a COAMFTE or CACREP approved program may count for no more than 900 of the required 4,000 hours of experience. The residency shall be completed in not less than 18 months or more than four years. Residents who began a residency before (insert effective date of the regulation) shall complete the residency by (insert four years after the effective date). An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue.~~

6. ~~In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection D of this section.~~

7. ~~6.~~ The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

8. ~~7.~~ Residents may not call themselves substance abuse treatment practitioners, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or substance abuse treatment practitioners. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Substance Abuse Treatment" in all written communications. Clients shall be informed in writing of the resident's status, the supervisor's name, professional address, and telephone number.

9. ~~8.~~ Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

9. Residency hours that are approved by the licensing board in another U.S. jurisdiction and that meet the requirements of this section shall be accepted.

D. Supervisory qualifications.

1. A person who provides supervision for a resident in substance abuse treatment shall hold an active, unrestricted

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license as a professional counselor, ~~marriage and family therapist, or~~ substance abuse treatment practitioner, ~~school psychologist, clinical psychologist, clinical social worker, clinical nurse specialist or psychiatrist~~ in the jurisdiction where the supervision is being provided.

2. All supervisors shall document two years post-licensure substance abuse treatment experience, and at least 100 hours of didactic instruction in substance abuse treatment, and training or experience in supervision. ~~Within three years of January 19, 2000, supervisors~~ Supervisors must document a three-credit-hour course in supervision, a 4.0-quarter-hour course in supervision, or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-60-116.

E. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision C 1 of this section.

F. Documentation of supervision. Applicants shall document successful completion of their residency on the Verification of Supervision form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. ~~Supervised experience obtained prior to January 19, 2000, may be accepted towards licensure if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.~~

Part III Examinations

18VAC115-60-90. General examination requirements; schedules; time limits.

A. Every applicant for initial licensure as a substance abuse treatment practitioner by examination shall pass a written examination as prescribed by the board.

B. Every applicant for licensure as a substance abuse treatment practitioner by endorsement shall have passed ~~an~~ a substance abuse examination deemed by the board to be substantially equivalent to the Virginia examination.

C. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor issued by the board.

D. A candidate approved by the board to sit for the examination shall ~~take~~ pass the examination within two years from the date of such initial board approval. If the candidate

has not ~~taken~~ passed the examination ~~by the end of the two-year period prescribed in this subsection~~ within two years from the date of initial approval:

1. The initial board approval to sit for the examination shall then become invalid; and

2. ~~In order to be considered for the examination later, the~~ The applicant shall file a complete new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the applicant shall pass the examination within two years of such approval. If the examination is not passed within the additional two-year period, a new application will not be accepted.

~~D. Applicants who fail the examination twice in succession shall document completion of 45 clock hours of additional education or training acceptable to the board, addressing the areas of deficiency as reported in the examination results prior to obtaining board approval for reexamination.~~

E. The board shall establish a passing score on the written examination.

F. A candidate for examination or an applicant shall not provide clinical services unless he is under supervision approved by the board.

Part IV

Licensure Renewal; Reinstatement

18VAC115-60-110. Renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each year.

B. Every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-60-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-60-20. No person shall practice substance abuse treatment in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-60-120 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. After the renewal date, the license is expired; practice with an expired license is prohibited and may constitute grounds for disciplinary action.

18VAC115-60-115. Continued competency requirements for renewal of a license.

A. ~~After July 1, 2004, licensed~~ Licensed substance abuse treatment practitioners shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standard of practice or laws governing behavioral science professions in Virginia.

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

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section or subsection A of 18VAC115-50-95 in the Regulations Governing the Practice of Marriage and Family Therapy, or subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling.

18VAC115-60-116. Continuing competency activity criteria.

A. Continuing competency activities must focus on increasing knowledge or skills in one or more of the following areas:

1. Ethics, standards of practice or laws governing behavioral science professions;
2. Counseling theory;
3. Human growth and development;
4. Social and cultural foundations;
5. The helping relationship;
6. Group dynamics, processing and counseling;
7. Lifestyle and career development;
8. Appraisal of individuals;
9. Research and evaluation;
10. Professional orientation;
11. Clinical supervision;
12. Marriage and family therapy; or
13. Addictions.

B. Approved hours of continuing competency activity shall be one of the following types:

1. Formally organized learning activities or home study. Activities may be counted at their full hour value. Hours

shall be obtained from one or a combination of the following board-approved, mental health-related activities:

- a. Regionally accredited university-or college-level academic courses in a behavioral health discipline.
- b. Continuing education programs offered by universities or colleges.
- c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state, or local governmental agencies or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences, or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

- (1) ~~The American~~ International Association of Marriage and Family Counselors and its state affiliates.
- (2) The American Association ~~of~~ for Marriage and Family ~~Therapists~~ Therapy and its state affiliates.
- (3) The American Association of State Counseling Boards.
- (4) The American Counseling Association and its state and local affiliates.
- (5) The American Psychological Association and its state affiliates.
- (6) The Commission on Rehabilitation Counselor Certification.
- (7) NAADAC, The Association for Addiction Professionals, and its state and local affiliates.
- (8) National Association of Social Workers.
- (9) The National Board for Certified Counselors.
- (10) A national behavioral health organization or certification body.
- (11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

2. Individual professional activities.

- a. Publication/presentation/new program development.
 - (1) Publication of articles. Activity will count for a maximum of eight hours. Publication activities are limited to articles in refereed journals or a chapter in an edited book.
 - (2) Publication of books. Activity will count for a maximum of 18 hours.
 - (3) Presentations. Activity will count for a maximum of eight hours. The same presentations may be used only once in a two-year period. Only actual presentation time may be counted.
 - (4) New program development. Activity will count for a maximum of eight hours. New program development

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includes a new course, seminar, or workshop. New courses shall be graduate or undergraduate level college or university courses.

b. Dissertation. Activity will count for a maximum of 18 hours. Dissertation credit may only be counted once.

c. Clinical supervision/consultation. Activity will count for a maximum of 10 hours. Continuing competency can only be granted for clinical supervision/consultation received on a regular basis with a set agenda. Continuing competency cannot be granted for supervision that you provide to others.

d. Leadership. Activity will count for a maximum of eight hours. The following leadership positions are acceptable for continuing competency credit: officers of state or national counseling organization; editor and/or reviewer of professional counseling journals; member of state counseling licensure/certification board; member of a national counselor certification board; member of a national ethics disciplinary review committee rendering licenses; active member of a counseling committee producing a substantial written product; chair of a major counseling conference or convention; other leadership positions with justifiable professional learning experiences. The leadership positions must take place for a minimum of one year after the date of first licensure.

e. Practice related programs. Activity will count up to a maximum of eight hours. The board may allow up to eight contact hours of continuing competency as long as the regulant submits proof of attendance plus a written justification of how the activity assists him in his direct service of his clients. Examples include language courses, software training, medical topics, etc.

18VAC115-60-120. Late renewal; reinstatement.

A. A person whose license has expired may renew it within one year after its expiration date by paying the late renewal fee prescribed in 18VAC115-60-20, as well as the license fee prescribed for the year the license was not renewed and providing evidence of having met all applicable continuing competency requirements.

B. A person who fails to renew a license after one year or more and wishes to resume practice shall apply for reinstatement, pay the reinstatement fee for a lapsed license, submit ~~evidence regarding the continued ability to perform the functions within the scope of practice of the license~~ verification of any mental health license he holds or has held in another jurisdiction, if applicable, and provide evidence of having met all applicable continuing competency requirements not to exceed a maximum of 80 hours obtained within the four years immediately preceding application for reinstatement. The board may require the applicant for reinstatement to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

C. A person wishing to reactivate an inactive license shall submit (i) the renewal fee for active licensure minus any fee already paid for inactive licensure renewal ~~and~~; (ii) documentation of continued competency hours equal to the number of years the license has been inactive not to exceed a maximum of 80 hours obtained within the four years immediately preceding application for reactivation; and (iii) verification of any mental health license he holds or has held in another jurisdiction, if applicable. The board may require the applicant for reactivation to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

Part V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-60-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training and experience accurately to clients;
3. Stay abreast of new substance abuse treatment information, concepts, application and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the ~~United States~~ U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client; and

5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a ~~sexual~~ romantic relationship or sexual intimacy. Licensed substance abuse treatment practitioners shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual intimacy or romantic relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

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4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of substance abuse treatment.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-60-140. Grounds for revocation, suspension, probation, reprimand, censure, or denial of renewal of license.

A. Action by the board to revoke, suspend, deny issuance or renewal of a license, or take other disciplinary action may be taken in accord with the following:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of substance abuse treatment, or any provision of this chapter;
2. Procurement of a license, including submission of an application or supervisory forms, by fraud or misrepresentation;
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice substance abuse treatment with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition;
4. Intentional or negligent conduct that causes or is likely to cause injury to a client;
5. Performance of functions outside the demonstrable areas of competency;
6. Failure to comply with the continued competency requirements set forth in this chapter; ~~or~~
7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of licensed substance abuse therapy, or any part or portion of this chapter; or
8. Performance of an act likely to deceive, defraud, or harm the public.

B. Following the revocation or suspension of a license the licensee may petition the board for reinstatement upon good

cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

VA.R. Doc. No. R14-4067; Filed November 9, 2015, 1:03 p.m.

Fast-Track Regulation

Titles of Regulations: **18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-30, 18VAC115-30-40, 18VAC115-30-45, 18VAC115-30-60).**

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20, 18VAC115-40-25, 18VAC115-40-28).

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaimе.һoуle@dһp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific authority for the promulgation of regulations for counseling-related professions is found in § 54.1-3505 of the Code of Virginia.

Purpose: The purpose of the regulatory action is to fulfill the requirement for a periodic review of regulations to ensure that they are clearly written and necessary to protect the public. The addition of a requirement for submission of a National Practitioner Data Bank (NPDB) report as part of the application process is intended to ensure that the board has sufficient information about any disciplinary history and criminal activity in order to make a decision on certification that will protect the health, safety, and welfare of persons receiving substance abuse or rehabilitation services by certificate holders in Virginia.

Rationale for Using Fast-Track Process: The action is clarifying in nature and has unanimous approval of the Board of Counseling. The board does not expect it to be controversial.

Substance: Other than the submission of an NPDB report by applicants for certification, there are no substantive changes in this action.

Issues: There are no disadvantages to the public. Inclusion of a requirement for applicants to submit a report from the NPDB may provide additional protection for persons who are receiving substance abuse or rehabilitation services in the Commonwealth. There are no particular advantages or disadvantages to the agency or the Commonwealth.

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 Board of Counseling (Board) proposes to require applicants for substance abuse counselor or rehabilitation provider certification submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB). The Board also proposes to remove obsolete provisions and amend language for improved clarity.

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

Estimated Economic Impact. The NPDB is an electronic information repository created by Congress. It contains information on medical malpractice payments and certain adverse actions related to health care practitioners, entities, providers, and suppliers.¹ Section 150 of the Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants and Section 50 of the Regulations Governing the Certification of Rehabilitation Providers list the grounds on which to deny certification, including various actions that would endanger persons receiving services from substance abuse counselors or rehabilitation providers. The NDPB includes findings of past activities that may have endangered the health, safety, or welfare of patients. Thus the proposal to require that applicants submit a current report of the NPDB has potential significant benefit. According to the Virginia Department of Health Professions (DHP) the cost for applicants to have the report sent from the U.S. Department of Health and Human Services to DHP is only \$3. Thus the benefit of the proposal likely exceeds the cost.

Businesses and Entities Affected. The proposed amendments affect applicants for substance abuse counselor or rehabilitation provider certification. Approximately 100 to 125 individuals apply for substance abuse counselor certification and less than 5 people apply for rehabilitation provider certification annually.²

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.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its

affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed amendments will not significantly affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments will not significantly affect small businesses.

Adverse Impacts:

Businesses: The proposed amendments will not significantly affect businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not significantly affect other entities.

¹ Source: U.S. Department of Health & Human Services

² Source: Virginia Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments require applicants for substance abuse counselor or rehabilitation provider certification to submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank, remove obsolete provisions, and amend language for improved clarity.

18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55
Substance abuse counseling assistant annual certification renewal	\$40
Substance abuse counselor initial certification by examination: Application processing and initial certification	\$90
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	\$90
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	\$90
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate certificate	\$5

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Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time fee reduction for renewal of certification as a substance abuse counselor due on June 30, 2010	\$27
One-time fee reduction for renewal of certification as a substance abuse counseling assistant due on June 30, 2010	\$20

B. All fees are nonrefundable.

Part II

Requirements for Certification

18VAC115-30-40. Prerequisites for certification by examination for substance abuse counselors.

A. A candidate for certification as a substance abuse counselor shall meet all the requirements of this section and shall pass the examination prescribed in 18VAC115-30-90.

B. Every applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18VAC115-30-50 and 18VAC115-30-60;
2. Submit the following to the board:
 - a. A completed application form;
 - b. Official transcript documenting attainment of a bachelor's degree;
 - c. Official transcripts or certificates verifying completion of the didactic training requirement set forth in subsection B of 18VAC115-30-50;
 - d. Verification of supervisor's education and experience as required under 18VAC115-30-60;
 - e. Verification of supervision forms documenting fulfillment of the experience requirements of 18VAC115-30-60;
 - f. Documentation of any other professional health or mental health license or certificate ever held in another jurisdiction;
g. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
~~g. h.~~ h. The application processing and initial certification fee.

18VAC115-30-45. Prerequisites for certification by endorsement for substance abuse counselors.

Every applicant for certification by endorsement shall submit:

1. A completed application;
2. The application processing fee;
3. Verification of all professional health or mental health licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis. The board will also determine whether any or all other professional licenses or certificates held in another jurisdiction are substantially equivalent to those sought in Virginia;

4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB);

~~4.~~ 5. Affidavit of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia; and

~~5.~~ 6. Further documentation of one of the following:

- a. Licensure or certification as a substance abuse counselor in another jurisdiction in good standing obtained by standards substantially equivalent to the education and experience requirements set forth in this chapter as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency, or a copy of the regulations in effect at the time of initial licensure or certification and verification of a passing score on a licensure examination in the jurisdiction in which licensure or certification was obtained, and that is deemed substantially equivalent by the board; or
- b. Verification of a current certification in good standing issued by NAADAC or other board-recognized national certification in substance abuse counseling obtained by educational and experience standards substantially equivalent to those set forth in this chapter.

18VAC115-30-60. Experience requirements for substance abuse counselors.

A. Registration. Supervision obtained without prior board approval will not be accepted if it does not meet the requirements set forth in subsections B and C of this section. ~~Individuals who wish to~~ To register supervision for board approval prior to obtaining the supervised experience, an applicant shall submit in one package:

1. A supervisory contract;
2. Verification of the supervisor's education and experience as required under subsection C of this section; and
3. The registration fee.

B. Experience requirements.

1. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.
2. The supervised experience shall include a minimum of one hour and a maximum of four hours per week of supervision between the supervisor and the applicant to total 100 hours within the required experience. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.
3. Applicants must document successful completion of their supervised experience on the Verification of Supervision Form at the time of application.

C. Supervisor qualifications. A board-approved clinical supervisor shall be:

1. A licensed substance abuse treatment practitioner;
2. A licensed professional counselor, licensed clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, medical doctor, or registered nurse, and possess either a board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter, or a minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in 18VAC115-30-50 B 1 a through h; or
3. A substance abuse counselor certified by the Virginia Board of Counseling who has:
 - a. Board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter; or
 - b. Two years experience as a Virginia board-certified substance abuse counselor.

D. Supervisory responsibilities.

1. Supervisors shall assume responsibility for the professional activities of the prospective applicants under their supervision.
2. Supervisors shall not provide supervision for activities for which prospective applicants have not had appropriate education.
3. Supervisors shall provide supervision only for those substance abuse counseling services that they are qualified to render.
4. At the time of formal application for certification, the board-approved supervisor shall document the applicant's total hours of supervision, length of work experience, competence in substance abuse counseling and any needs for additional supervision or training.

5. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination:	\$90
Processing and initial certification	
Initial certification by endorsement:	\$90
Processing and initial certification	
Certification renewal	\$55
Duplicate certificate	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time fee reduction for renewal of certification as a rehabilitation provider due on June 30, 2010	\$27

~~B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.~~

~~C. Examination fees shall be determined and made payable as determined by the board.~~

18VAC115-40-25. Application process.

The applicant shall submit to the board:

1. A completed application form;
2. The official transcript or transcripts submitted from the appropriate institutions of higher education;
3. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirement of 18VAC115-40-26. Documentation of supervision obtained outside of Virginia must include verification of the supervisor's out-of-state license or certificate;
4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
4. ~~5.~~ Documentation of the applicant's national or out-of-state license or certificate in good standing where applicable.

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Part III Examinations

18VAC115-40-28. General examination requirements.

~~A.~~ Every applicant for certification as a rehabilitation provider shall take a written examination approved by the board and achieve a passing score as determined by the board.

~~B.~~ The written examination will be given at least once each year. The board may schedule such additional examinations as it deems necessary.

VA.R. Doc. No. R16-4394; Filed November 9, 2015, 8:48 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-30, 18VAC140-20-100, 18VAC140-20-105, 18VAC140-20-106, 18VAC140-20-110, 18VAC140-20-130).**

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

Effective Date: December 30, 2015.

Agency Contact: Jaime Hoyle, Acting Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments (i) increase fees for initial application, renewal, late renewal for licensed social workers and licensed clinical social workers, and reinstatement after disciplinary action; (ii) increase certain administrative fees; (iii) establish a fee for an addition to or change in registration of supervision; and (iv) change the license renewal cycle from biennial to annual.

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.

18VAC140-20-30. Fees.

A. The board has established fees for the following:

1. Registration of supervision	\$25 <u>\$50</u>
<u>2. Addition to or change in registration of supervision</u>	<u>\$25</u>
2. <u>3.</u> Application processing	<u>\$100</u>
<u>a. Licensed clinical social worker</u>	<u>\$165</u>
<u>b. Licensed social worker</u>	<u>\$115</u>
3. <u>Biennial</u> <u>4. Annual</u> license renewal	
a. Registered social worker	\$35 <u>\$25</u>
b. Associate social worker	\$35 <u>\$25</u>
c. Licensed social worker	\$110 <u>\$65</u>

d. Licensed clinical social worker	\$125 <u>\$90</u>
4. <u>5.</u> Penalty for late renewal	<u>\$40</u>
<u>a. Registered social worker</u>	<u>\$10</u>
<u>b. Associate social worker</u>	<u>\$10</u>
<u>c. Licensed social worker</u>	<u>\$20</u>
<u>d. Licensed clinical social worker</u>	<u>\$30</u>
5. <u>6.</u> Verification of license to another jurisdiction	\$40 <u>\$25</u>
6. <u>7.</u> Additional or replacement licenses	\$40 <u>\$15</u>
7. <u>8.</u> Additional or replacement wall certificates	\$15 <u>\$25</u>
8. <u>9.</u> Returned check	<u>\$35</u>
9. <u>10.</u> Reinstatement following disciplinary action	\$200 <u>\$500</u>

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Examination fees shall be paid directly to the examination service according to its requirements.

18VAC140-20-100. Licensure renewal.

A. ~~All~~ Beginning with the [2013 2017] renewal, licensees shall renew their licenses on or before June 30 of each ~~odd-numbered~~ year and pay the renewal fee prescribed by the board.

B. Licensees who wish to maintain an active license shall pay the appropriate fee and document on the renewal form compliance with the continued competency requirements prescribed in 18VAC140-20-105. Newly licensed individuals are not required to document continuing education on the first renewal date following initial licensure.

C. A licensee who wishes to place his license in inactive status may do so upon payment of a fee equal to one-half of the ~~biennial~~ annual license renewal fee as indicated on the renewal form. No person shall practice social work or clinical social work in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC140-20-110.

D. Each licensee shall furnish the board his current address of record. All notices required by law or by this chapter to be mailed by the board to any such licensee shall be validly given when mailed to the latest address of record given by the licensee. Any change in the address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC140-20-105. Continued competency requirements for renewal of an active license.

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education and licensed social workers shall be required to have completed a minimum of 15 contact hours of continuing education ~~for each biennial~~ prior to licensure renewal in even years. Courses or activities shall be directly related to the practice of social work or another behavioral health field. A minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia.

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

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters upon written request from the licensee prior to the renewal date.

B. Hours may be obtained from a combination of board-approved activities in the following two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

- a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.
- b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.
- c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals.
- d. Workshops, seminars, conferences or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

- (1) The Child Welfare League of America and its state and local affiliates.
- (2) The National Association of Social Workers and its state and local affiliates.
- (3) The National Association of Black Social Workers and its state and local affiliates.
- (4) The Family Service Association of America and its state and local affiliates.

(5) The Clinical Social Work Association and its state and local affiliates.

(6) The Association of Social Work Boards.

(7) Any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be earned in this category, which shall include one or more of the following:

- a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)
- b. Publication of a professional social work-related book or initial preparation/presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)
- c. Publication of a professional social work-related article or chapter of a book, or initial preparation/presentation of a social work-related in-service training, seminar, or workshop. (Activity will count for a maximum of five hours.)
- d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)
- e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)
- f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section or as a member of a state social work licensing board. (Activity will count for a maximum of two hours.)
- g. Attendance at formal staffings at federal, state, or local social service agencies, public school systems, or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)
- h. Individual or group study including listening to audio tapes, viewing video tapes, reading, professional books or articles. (Activity will count for a maximum of five hours.)

18VAC140-20-106. Documenting compliance with continuing education requirements.

A. All licensees in active status are required to maintain original documentation for a period of ~~five~~ three years following renewal.

B. ~~After the end of each renewal period, the~~ The board shall may conduct ~~a random~~ an audit of licensees to verify compliance with the requirement for ~~that~~ a renewal period.

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C. Upon request, a licensee shall provide documentation as follows:

1. Documentation of Category I activities by submission of:
 - a. Official transcripts showing credit hours earned; or
 - b. Certificates of participation.
2. Attestation of completion of Category II activities.

D. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. A social worker or clinical social worker whose license has expired may renew that license within ~~four years~~ one year after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.
2. Paying the penalty for late renewal and the ~~biennial license renewal~~ license renewal fee for ~~each biennium~~ as prescribed in 18VAC140-20-30.

B. A social worker or clinical social worker who fails to renew the license ~~for four years or more~~ after one year and who wishes to resume practice shall apply for reinstatement; and pay the reinstatement fee and, which shall consist of the application processing fee and the penalty fee for late renewal, as set forth in 18VAC140-20-30. An applicant for reinstatement shall also provide documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years. An applicant for reinstatement shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;
2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or
3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

C. A social worker or clinical social worker wishing to reactivate an inactive license shall submit the renewal fee for active licensure minus any fee already paid for inactive licensure renewal, and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;
2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

18VAC140-20-130. Renewal of registration for associate social workers and registered social workers.

The registration of every associate social worker and registered social worker with the former Virginia Board of Registration of Social Workers under former § 54-775.4 of the Code of Virginia shall expire on June 30 of each ~~odd-numbered~~ year.

1. Each registrant shall return the completed application before the expiration date, accompanied by the payment of the renewal fee prescribed by the board.
2. Failure to receive the renewal notice shall not relieve the registrant from the renewal requirement.

VA.R. Doc. No. R10-2391; Filed November 9, 2015, 8:56 a.m.

BOARD OF VETERINARY MEDICINE

Proposed Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-70).**

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

Public Hearing Information:

December 2, 2015 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Hearing Room 1, Henrico, VA

Public Comment Deadline: January 29, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Veterinary Medicine, including the responsibility to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.

The specific authority of the board relating to continuing education is in § 54.1-3805.2 of the Code of Virginia, which states that the board shall adopt regulations that provide for continuing education requirements for relicensure and licensure by endorsement of veterinarians and veterinary technicians.

Purpose: Veterinary technicians believe it is essential to elevate their expertise and skill level to keep up with the complexities of veterinary care and more adequately protect the health and safety of companion and herd animals in Virginia.

Substance: The amendment will increase the number of continuing education hours required for renewal of a license as a veterinary technician from six to eight hours per year. The change is in response to a petition for rulemaking.

Issues: The primary advantage to the public is greater assurance for continued competency for veterinary technicians who provide much of the essential care to animals in veterinary care. There are no disadvantages to the public. There are no advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a petition for rulemaking from a veterinary technician, the Board of Veterinary Medicine (Board) proposes to increase the number of continuing education hours that veterinary technicians must complete annually.

Result of Analysis. There is insufficient information to ascertain if benefits will outweigh costs for this regulatory action.

Estimated Economic Impact. Current regulation requires veterinary technicians to complete six hours of continuing education per year. Pursuant to a petition for rulemaking from a veterinary technician, the Board now proposes to increase the continuing education hours required of veterinary technicians to eight per year. Board staff reports that this action is being taken as a response to the petition for rulemaking and not because of any concerns raised by complaints about the general competency of veterinary technicians in the state. Board staff further reports that the Board believes that "additional hours can be obtained at no cost by taking advantage of online hours, those offered by vendors, specialty practices or local veterinary associations." To the extent that additional hours of continuing education may increase the competency of veterinary technicians, veterinary patients and their owners may benefit from this change. Any benefit that may accrue must be weighed against costs that veterinary technicians will likely incur. If additional hours of training can be completed at no costs as the Board believes, veterinary technicians will only incur costs for their time spent in training, possible travel costs if training cannot be completed online and possible loss of salary for those two additional hours if paid time off to complete training is not part of their compensation package. If free training options are not readily available, convenient or varied enough, veterinary technicians may also incur class or seminar fees for the additional hours of training the Board is proposing.

Businesses and Entities Affected. Board staff reports there are currently 1,925 veterinary technicians licensed in the Commonwealth; all of these individuals, as well as any individuals who become licensed veterinary technicians in the future, will be affected by this proposed regulatory change.

Localities Particularly Affected. No locality in the Commonwealth will be particularly affected by this regulatory change.

Projected Impact on Employment. This proposed change is unlikely to impact employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed change will likely have no impact on the use or value of private property.

Real Estate Development Costs. This proposed change will likely not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Small business veterinarians may incur costs only if they pay for their veterinary technicians' continuing education training.

Alternative Method that Minimizes Adverse Impact. Small business veterinarians who pay for their veterinary technicians' annual training would benefit if additional training were only required if it were necessary to insure competency by addressing identified deficiencies.

Adverse Impacts:

Businesses: Veterinarians may incur costs only if they pay for their veterinary technicians' continuing education training.

Localities: This proposed change is unlikely to adversely impact localities.

Other Entities: This proposed change may adversely impact veterinary technicians who will likely incur costs for completing additional continuing education hours even if training options that do not include fees are available.

Agency's Response to the Economic Impact Analysis: The Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendment increases the number of continuing education hours required for renewal of a veterinary technician license to eight hours per year.

18VAC150-20-70. Licensure renewal requirements.

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the licensees to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

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B. Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of ~~six~~ eight hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).

2. An approved continuing education course or program shall be sponsored by one of the following:

- a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;
- b. Colleges of veterinary medicine approved by the AVMA Council on Education;
- c. International, national, or regional conferences of veterinary medicine;
- d. Academies or species specific interest groups of veterinary medicine;
- e. State associations of veterinary technicians;
- f. North American Veterinary Technicians Association;
- g. Community colleges with an approved program in veterinary technology;
- h. State or federal government agencies;
- i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;
- j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or
- k. An organization or entity approved by the Registry of Approved Continuing Education of the American Association of Veterinary State Boards.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

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

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

7. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts that are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has not been active for a maximum of two years.

VA.R. Doc. No. R14-18; Filed November 9, 2015, 9:09 a.m.

Proposed Regulation

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-130; adding 18VAC150-20-173).

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

Public Hearing Information:

December 2, 2015 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Hearing Room 1, Henrico, VA

Public Comment Deadline: January 29, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Veterinary Medicine to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.

The specific authority of the board relating to practical training for students of veterinary medicine is found in § 54.1-3804 of the Code of Virginia, which authorizes the board to establish essential requirements and standards for approval of veterinary programs and to establish and monitor programs for the practical training of qualified students of veterinary medicine or veterinary technology in college or

university programs of veterinary medicine or veterinary technology.

Purpose: The purpose of the regulatory action is to eliminate a burdensome restriction on the preceptorships for veterinary students in which they gain practical experience under the direct supervision of a licensed veterinarian. Currently, students are not allowed to be engaged in a preceptorship until their final year in veterinary college. Therefore, they do not have the opportunity to practice what they are learning in the first three years and believe that they are less skillful and competent as practitioners when they graduate. Since preceptees are restricted to perform only those tasks for which they have been adequately instructed and must practice under the on-premises supervision of a licensed veterinarian, the board believes supervised practical experience through the course of veterinary college will be beneficial to patients and will adequately protect the health and safety of the public. Informed consent for surgery and disclosure about preceptee practice offers further protection and assurances for owners.

Substance: The amendment to 18VAC150-20-130 requested by the petition for rulemaking was as follows: A veterinary student who is duly enrolled and in good standing in a veterinary college or school accredited or approved by the American Veterinary Medical Association and in the final year of his training or after completion of an equivalent number of hours as approved by the board may be engaged in a preceptorship or externship.

In addition to the requested change, the board added provisions to reassure consumers that the veterinarian remains responsible for the animal, that the supervising veterinarian will be in the operatory with the preceptee whenever surgery is being performed, and that owners will be informed about a preceptee practicing in an establishment in order to have the right to specify who may treat the animal.

Also, the board has added a new section on informed consent for surgery, so owners will have information about risks, benefits, and alternatives, regardless of who is performing the surgery.

Issues: The primary advantage to the public is veterinary students will have more hands-on experience with animals when they receive their veterinary degree and a full license to practice. With the additional disclosures and informed consent, the board believes consumers will know whether there is a preceptor working in a veterinary practice and whether that preceptor will be involved with surgery on their animals. Consumers will have the option of refusing to have a preceptor doing any procedure on an animal; consequently, there should be no disadvantages to the public. There are no advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Currently, veterinary students are not permitted to be engaged

in a preceptorship or externship until their final year in veterinary college. A preceptorship is where veterinary students gain practical experience working under the direct supervision of a licensed veterinarian. The Board of Veterinary Medicine (Board) proposes to amend this regulation so that veterinary students may gain practical experience through a preceptorship or externship prior to the final year. Also, the Board proposes to require that: 1) the supervising veterinarian disclose to animal owners that there is a preceptee or extern practicing in the establishment, 2) before surgery is performed, informed consent shall be obtained from the owner and documented in the patient record, and 3) whenever a veterinary preceptee or extern is performing surgery on a patient, the supervising veterinarian must be in the operatory during the procedure.

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

Estimated Economic Impact. The proposal to permit veterinary students to obtain practical training prior to their final year in veterinary college will enable them to learn more and be better prepared to practice independently after graduation. Since preceptees are restricted to perform only those tasks for which they have been adequately instructed and must practice under the on-premises supervision of a licensed veterinarian, the practical experience through the course of veterinary college will be beneficial to patients and will adequately protect the health and safety of the public. The Virginia/Maryland Regional College of Veterinary Medicine strongly supports this change.¹

The proposal to require disclosure to animal owners of there being a veterinary student training at the establishment will enable any owners who potentially may object to veterinarians in-training performing services for their animal to make an informed decision as to whether to use the services of that establishment or go elsewhere. The owner could also request that only the licensed veterinarian treat their animal. Disclosure must be by signage clearly visible to the public or by inclusion on an informed consent form. Since the signage could be paper from an ordinary printer, the required cost would be minimal. The proposed required informed consent for surgery includes informing the owner of the risks, benefits, and alternatives of the recommended surgery that a reasonably prudent practitioner in similar practice in Virginia would tell an owner, and if applicable, that a veterinary student is to perform the surgery. The language is patterned after Board of Medicine regulations. The informed consent may be written or verbal.

The proposed informed consent for surgery will take a small amount of time; but the time cost is likely outweighed by the benefit received from the owner by being better-informed and more able to make well-informed care decisions.

The proposed language includes an exception whereby consent is not required prior to surgery in an emergency situation when a delay in obtaining consent would likely

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result in imminent harm to the patient. The proposed exception is net beneficial in that the benefit of obtaining informed consent for surgery would in most if not all cases be outweighed by the benefit of preventing imminent harm to the patient.

The proposed requirement that the supervising veterinarian be in the operatory whenever a veterinary preceptee or extern is performing surgery would likely reduce the risk of mistakes being made in surgery. Thus this proposed requirement may reduce health risk for some veterinary patients. It would reduce use of time flexibility for supervising veterinarians, but the benefit likely exceeds the cost.

Businesses and Entities Affected. The proposed amendments affect veterinary students, the Virginia/Maryland Regional College of Veterinary Medicine, the 4214 licensed veterinarians and 1089 licensed veterinary establishments in the Commonwealth, and Virginia animal owners.² Most and perhaps all of the veterinary establishments would qualify as small businesses.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses: Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects The proposed amendments do not significantly increase costs for small businesses.

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

Adverse Impacts:

Businesses: The proposed amendments do not significantly adversely affect businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

¹Source: Department of Health Professions

²Source: Department of Health Professions' website accessed on September 17, 2015 (<https://dhp.virginiainteractive.org/Lookup/Index>).

Agency's Response to Economic Impact Analysis: The Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget for the proposed

amendment to 18VAC150-20, Regulations Governing the Practice of Veterinary Medicine.

Summary:

The proposed amendments (i) remove the requirement that a veterinary college student be in the final year of training to engage in a preceptorship or externship; (ii) requires that whenever a veterinary preceptee or extern is performing surgery, the supervising veterinarian shall be in the operatory; and (iii) requires disclosure whenever a veterinary preceptee or extern is practicing in the veterinary establishment.

18VAC150-20-130. Requirements for practical training in a preceptorship or externship.

A. The practical training and employment of qualified students of veterinary medicine or veterinary technology shall be governed and controlled as follows:

1. A veterinary student who is duly enrolled and in good standing in a veterinary college or school accredited or approved by the AVMA ~~and in the final year of his training or after completion of an equivalent number of hours as approved by the board~~ may be engaged in a preceptorship or externship. A veterinary preceptee or extern may perform duties that constitute the practice of veterinary medicine for which he has received adequate instruction by the college or school and only under the on-premises supervision of a licensed veterinarian.

2. A veterinary technician student who is duly enrolled and in good standing in a veterinary technology program accredited or approved by the AVMA may be engaged in a preceptorship or externship. A veterinary technician preceptee or extern may perform duties that constitute the practice of veterinary technology for which he has received adequate instruction by the program and only under the on-premises supervision of a licensed veterinarian or licensed veterinary technician.

B. Whenever a veterinary preceptee or extern is performing surgery on a patient, either assisted or unassisted, the supervising veterinarian shall be in the operatory during the procedure. Prior to allowing a preceptee or extern in veterinary medicine to perform surgery on a patient unassisted by a licensed veterinarian, a licensed veterinarian shall receive written approval from the ~~client~~ owner.

C. When there is a preceptee or extern practicing in the establishment, the supervising veterinarian shall disclose such practice to owners. The disclosure shall be by signage clearly visible to the public or by inclusion on an informed consent form.

D. A veterinarian or veterinary technician who supervises a preceptee or extern remains responsible for the care and treatment of the patient.

18VAC150-20-173. Informed consent for surgery.

A. Before surgery is performed, informed consent shall be obtained from the owner and documented in the patient

record. Veterinarians shall inform an owner of the risks, benefits, and alternatives of the recommended surgery that a reasonably prudent practitioner in similar practice in Virginia would tell an owner.

B. An exception to the requirement for consent prior to performance of surgery may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

C. If a veterinary student is to perform the surgery, the informed consent shall include that information.

V.A.R. Doc. No. R14-14; Filed November 9, 2015, 9:09 a.m.

Proposed Regulation

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-10, 18VAC150-20-140).

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

Public Hearing Information:

December 2, 2015 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Hearing Room 1, Henrico, VA

Public Comment Deadline: January 29, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Subdivision 6 of § 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the Board of Veterinary Medicine, and includes the responsibility to promulgate regulations. Subdivision 5 of § 54.1-3807 of the Code of Virginia grants the board authority to take disciplinary action based on a finding of unprofessional conduct as defined by regulation.

Purpose: This proposed regulatory action is in response to a petition for rulemaking. The purpose of the amendments is to prevent misrepresentation to the public in the use of the term "specialist" or "specialty" for an individual licensee or in the name of an establishment. The proposed action will protect consumers who may choose veterinary care based on a claim by the veterinarian or the establishment of being a "specialist" or having a "specialty" when in fact there is no justification for such a claim. By defining the term "specialist," the board can assure that those who advertise or represent themselves as such have met the requirements of the American Board of Veterinary Specialties of the American Veterinary Medical Association for board certification. Misrepresentation or fraudulent advertising is already a cause for a finding of unprofessional conduct; this proposed regulation expands on the intent of the current regulation, which is to protect the health, welfare, and safety of animals that come under the care of a veterinarian or veterinary establishment.

Substance: The amendments (i) define a specialist as a veterinarian who has completed the requirements to become a

diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board, and (ii) provide that representing oneself as a "specialist" without meeting that definition or representing a practice as a "specialty" practice without having a "specialist" on staff is unprofessional conduct.

Issues: The primary advantage to the public is assurance that specialty care by a veterinarian is being provided by someone who has obtained such designation by a recognized specialty board or organization. This is public protection for the consumer. There are no disadvantages to the public. 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 Veterinary Medicine (Board) proposes to: 1) define "specialist" as "a veterinarian who has completed the requirements to become a diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board," and 2) add to the list of acts constituting unprofessional conduct: "representing oneself as a 'specialist' without meeting the above definition, or using the words 'specialist' or 'specialty' in the name of a veterinary establishment without a veterinarian on staff who meets the above definition."

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

Estimated Economic Impact. The Board's proposal to restrict the use of the term "specialist" is similar to the existing rules for human medicine and dentistry. The proposal does not alter the work that may be performed by veterinarians. It helps inform the public as to which veterinarians have obtained expertise in the specialty in question as judged by the American Board of Veterinary Specialties of the American Veterinary Medical Association.¹ Thus the proposal would produce a net benefit in that animal owners would be able to objectively make better-informed decisions concerning choosing specific veterinarians and veterinary practices for specific veterinary services, while not changing what services veterinarians may offer.

Businesses and Entities Affected. The proposed amendments apply to and potentially affect the 4214 licensed veterinarians and 1089 licensed veterinary establishments in the Commonwealth.² Most and perhaps all of the veterinary establishments would qualify as small businesses.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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Effects on the Use and Value of Private Property. The proposed amendments may affect which veterinary practices some owners choose for their animals. In that respect, the quantity of business and consequently practice value may rise for some veterinary establishments with specialty diplomates and may decline for some veterinary establishments without specialty diplomates.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed amendments do not increase costs for small businesses.

Alternative Method that Minimizes Adverse Impact. In aggregate, the proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses: In aggregate, the proposed amendments do not adversely affect businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Companion animal" means any dog, cat, horse, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"CVMA" means the Canadian Veterinary Medical Association.

"Full-service establishment" means a stationary or ambulatory facility that provides surgery and encompasses all aspects of health care for small or large animals, or both.

"Immediate and direct supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician or assistant, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 36 hours.

"Owner" means any person who (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

"Pound" means a facility operated by the state or a locality for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with a locality or an incorporated society for the prevention of cruelty to animals.

"Preceptorship or externship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee. A preceptorship or externship shall be overseen by faculty of the college or program.

¹Or by an equivalent organization as determined by the Board of Veterinary Medicine

²Source: Department of Health Professions' website accessed on September 17, 2015 (<https://dhp.virginiainteractive.org/Lookup/Index>)

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

Summary:

The proposed amendments (i) define a specialist as a veterinarian who has completed the requirements to become a diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board, and (ii) provide that representing oneself as a specialist without meeting that definition or representing a practice as a specialty practice without having a specialist on staff is unprofessional conduct.

Part I General Provisions

18VAC150-20-10. Definitions.

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

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Restricted service establishment" means a stationary or ambulatory facility which does not meet the requirements of a full-service establishment.

"Specialist" means a veterinarian who has completed the requirements to become a diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include dental extractions of single-rooted teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian in charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" means any fixed or mobile practice, veterinary hospital, animal hospital or premises wherein or out of which veterinary medicine is being conducted.

Part III
Unprofessional Conduct

18VAC150-20-140. Unprofessional conduct.

Unprofessional conduct as referenced in subdivision 5 of § 54.1-3807~~(5)~~ of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.
2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.
3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.
4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety or welfare of other persons or animals.
5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.

6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine, veterinary technology or equine dentistry.

7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.

8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment permit or with accepted standards of practice.

9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.

10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine, veterinary technology or an equine dental technician including any invasive procedure on a patient or delegation of tasks to persons who are not properly trained or authorized to perform such tasks.

11. Failing to provide immediate and direct supervision to a licensed veterinary technician or an assistant in his employ.

12. Refusing to release a copy of a valid prescription upon request from a client.

13. Misrepresenting or falsifying information on an application or renewal form.

14. Failing to report suspected animal cruelty to the appropriate authorities.

15. Failing to release patient records when requested by the owner; a law-enforcement entity; or a federal, state, or local health regulatory agency.

16. Committing an act constituting fraud, deceit, or misrepresentation in dealing with the board or in the veterinarian-client-patient relationship.

17. Representing oneself as a "specialist" without meeting the definition set forth in 18VAC150-20-10 or using the words "specialist" or "specialty" in the name of a veterinary establishment unless there is a veterinarian on staff who meets the definition of a "specialist."

V.A.R. Doc. No. R15-16; Filed November 9, 2015, 9:09 a.m.



TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Proposed Regulation

Title of Regulation: 22VAC30-50. Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund (amending 22VAC30-50-10, 22VAC30-50-20, 22VAC30-50-30, 22VAC30-50-50 through 22VAC30-50-120).

Statutory Authority: §§ 51.5-131 and 51.5-181 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2016.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Basis: Section 51.5-181 of the Code of Virginia states (i) "The Commissioner shall promulgate regulations establishing procedures and policies for soliciting and receiving grant applications and criteria for reviewing and ranking such applications, including, but not limited to, goals, timelines, forms, eligibility, and mechanisms to ensure avoidance of any conflicts of interest or appearances thereof" and (ii) "The Commissioner shall receive the recommendations of the Commonwealth Neurotrauma Initiative Advisory Board prior to promulgating or revising any such regulations."

Purpose: The purpose of the proposed amendment to the Commonwealth Neurotrauma Initiative (CNI) trust fund regulation is to conserve moneys in the fund and distribute the moneys equitably for their intended purpose. The proposed amendment emphasizes that requests for applications for moneys from the fund shall be issued by the advisory board only when the board determines that funds are available. The proposed amendment allows grantees to use the fund for evaluating existing programs as well as expanding, developing, and improving programs. This proposed amendment emphasizes original Code of Virginia language that grant funds are to be used for initiating research projects or community-based rehabilitative programs. They are not to be used for long-term funding of projects. To ensure that applicants understand and plan for this, applications must contain a plan for sustaining the project upon termination of grant funds. In an effort to conserve funds, applicants are required to demonstrate that the proposed project does not duplicate existing programs. In the event of a decline in moneys in the fund, the board shall attempt to distribute moneys in a manner as fair and equitable as possible. These regulations are necessary to administer the CNI Trust Fund, which protects the public health, safety, and

welfare by providing funding for research and improving the treatment and care of neurotrauma.

Substance: The changes provide clarification to the existing regulation in the following ways: (i) a statement is added that requests for applications for grant moneys from the CNI Trust Fund shall be issued at the discretion of the advisory board and shall depend upon the availability of funds to clarify the conditions under which requests for applications will be made and inform the public that requests are not made on a regularly scheduled basis; (ii) a statement that applicants can now apply for grants to evaluate systems of services for people with traumatic brain injuries or traumatic spinal cord injuries is added, which allows applicants to apply for funding to conduct targeted evaluations of service systems or to determine the need for the development, expansion, or improvement of services; (iii) text is reworded to stress to applicants that grants are to be used to initiate research and programs but not to be used to maintain long-term funding; this is also emphasized by the addition of a statement that the advisory board shall accept applications that provide a plan for sustaining the proposed project following termination of a grant award, and that applicants for grant funds must (a) include a description of efforts taken to ensure that the proposed project does not duplicate existing programs or services for persons with neurotrauma already available in the community and (b) demonstrate a commitment to community planning with consumer groups, service providers, employers, relevant state and local agencies, and other funding sources which may be available; and (iv) in the event of a decline in moneys in the CNI Trust Fund, the advisory board shall attempt to distribute moneys in a manner that is fair and equitable as possible to all projects, which in the past, only applied to projects with an anticipated duration greater than one year.

Issues: The proposed regulatory action poses no disadvantages to the public or the Commonwealth. The action's primary advantage is that it clarifies the existing regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will 1) require the Commonwealth Neurotrauma Initiative Trust Fund Advisory Board to distribute moneys in a manner that is as fair and equitable as possible to all projects in the event of a decline in moneys in the fund and 2) clarify existing language, policy, and procedures followed in practice.

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

Estimated Economic Impact. These regulations establish policies and procedures for administering the Commonwealth Neurotrauma Initiative Trust Fund (the fund). The purpose of the fund is to promote medical research into traumatic brain and spinal cord injuries and to improve treatment and care through

the provision of community-based services for individuals who have sustained such injuries. Although the fund accepts grants, donations, and bequests from public or private sources, the main source of revenue is the \$25 reinstatement fee collected by the Department of Motor Vehicles to restore the driving privileges of a person whose license has been revoked or suspended for specific driving offenses (e.g., DUI-related offenses, hit-and-run, reckless driving, habitual offender, etc.). In the last three years, the revenues were about \$1 million per year.¹

Once the fund accumulates enough revenues, the fund's Advisory Board disburses moneys through a grant application process for research studies and community-based rehabilitation services. The fund issued 7 grants totaling \$1.6 million in 2012, 5 grants totaling \$931,000 in 2013, and 2 grants totaling \$214,657 in 2014.² All of the grant recipients were affiliated with medical colleges in Virginia.

One of the proposed changes will require the Advisory Board to distribute moneys in a manner that is as fair and equitable as possible to all projects in the event of a decline in moneys in the fund. Currently, the regulation requires that long-term projects be funded first in the event of a decline in the moneys. The proposed change will allow distribution of moneys when there is a decline in the fund, among all projects regardless of their duration. Thus, short-term projects will not lose all funding when the moneys in the fund decline. This proposed change is not likely to have an economic impact in the foreseeable future since the fund currently has a healthy balance.

The remaining proposed changes are clarifications of existing language, policy, and procedures followed in practice and are not anticipated to have any significant economic impact other than improving the clarity of the regulations.

Businesses and Entities Affected. The proposed amendments will affect grant recipients when and if the moneys in the fund decline. The fund issued 7 grants in 2012, 5 grants in 2013, and 2 grants in 2014. Currently, there are only two active grants.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

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 not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not have an adverse impact on small businesses.

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

¹ Source: The fund's triennial report for fiscal years 2012, 2013, and 2014 to the Governor and the General Assembly.

² Ibid

Agency's Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services agrees that the information provided by the Department of Planning and Budget (DPB) in the February 3, 2015, economic impact analysis of the proposed amendments to 22VAC30-50, Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund, was correct at the time of completion. There is a statement in the DPB analysis that all grant recipients were affiliated with medical colleges in Virginia. This is now inaccurate as some grants have gone to programs that are not affiliated with medical colleges in Virginia. However, this should not have a substantial impact on the economic impact analysis

Summary:

The proposed amendments (i) clarify that requests for proposals shall be issued at the discretion of the Commonwealth Neurotrauma Initiative Advisory Board and shall depend upon the availability of funds; (ii) emphasize that grants provided by the fund are not to be used for long-term funding of research or community based rehabilitative programs; (iii) require that applicants for grants under this fund provide a plan for sustaining the proposed project following the termination of the grant award; and (iv) make technical corrections, update statutory references, and make other necessary changes.

Part I

Definitions and General Information

22VAC30-50-10. Definitions.

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

"Advisory board" means the Commonwealth Neurotrauma Initiative Advisory Board.

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Department" means the Department for Aging and Rehabilitative Services.

"Fund" means the Commonwealth Neurotrauma Initiative Trust Fund.

"Neurotrauma" means an injury to the central nervous system, ~~i.e. (i.e., a traumatic spinal cord or brain injury, which injury) that~~ results in loss of physical functions, cognitive functions, or both.

"RFP" ~~or "request"~~ means a request for proposals issued by the advisory board seeking applications for grant moneys in the fund.

22VAC30-50-20. Statement of general policy.

The Commonwealth of Virginia has recognized the need to prevent traumatic spinal cord and brain injuries and is committed to improving the treatment and care of Virginians with traumatic spinal cord and brain injuries. By creating the fund and authorizing the advisory board to administer the

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fund, the Commonwealth of Virginia makes grant funds available to Virginia-based organizations, institutions, and researchers to address these needs. The advisory board administers the fund to carry out the intent of the law in accordance with its authority.

22VAC30-50-30. Disbursement of funds.

A. This chapter serves to (i) establish policies and procedures for soliciting and receiving applications for grants from the fund, (ii) establish criteria for reviewing and ranking such applications, and (iii) establish procedures for distributing moneys in the fund, which shall be used solely to provide grants to Virginia-based organizations, institutions, and researchers.

B. Forty-seven and one-half percent of the moneys in the fund distributed under this chapter shall be allocated for research on the mechanisms and treatment of neurotrauma; 47-1/2% of the moneys shall be allocated for rehabilitative services, ~~i.e.~~ (i.e., the development of innovative, model community-based rehabilitative programs and services for individuals with neurotrauma); and 5.0% of the moneys shall be allocated for the ~~Department for Aging and Rehabilitative Services' department's~~ costs for administering and staffing the ~~Commonwealth Neurotrauma Initiative Trust Fund~~ fund and advisory board.

22VAC30-50-50. Application of exemption to the Virginia Freedom of Information Act.

Pursuant to ~~a provision~~ subdivision 12 of § 2.2-3705.5 of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, records submitted to the advisory board as a grant application, or accompanying a grant application, pursuant to ~~the law~~ Chapter 14 (§ 51.5-178 et seq.) of Title 51.5 of the Code of Virginia and this chapter are excluded from the requirement of open inspection to the extent that they contain medical or mental health records or other data identifying individual patients, or proprietary business or research-related information produced or collected by an applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues. This exemption shall apply when ~~such~~ the information has not been publicly released, published, copyrighted, or patented, if the disclosure of ~~such~~ the information would be harmful to the competitive position of the applicant. The advisory board intends to rely upon this exemption in order to encourage the submission of applications.

Part II

Soliciting and Reviewing Applications

22VAC30-50-60. Requests for proposals.

The advisory board ~~will~~ shall solicit applications for grants of moneys from the fund by issuing ~~requests for proposals~~ RFPs from time to time. These RFPs shall be issued at the discretion of the advisory board and shall depend upon the availability of moneys in the fund. Each application for a

grant must be ~~received~~ submitted in response to an actual ~~request for a proposal~~ RFP and received by a deadline specified in the ~~request~~ RFP.

22VAC30-50-70. Grant reviewers and technical advisors.

The advisory board may choose, at any time, to appoint grant reviewers or other technical advisors, or both, to assist in reviewing and ranking applications. Such reviewers and advisors may represent medical researchers, medical practitioners, community-based service providers, consumers, advocates for consumers, or others deemed appropriate by the advisory board for this purpose. Reviewers and advisors shall be appointed so as to provide equal representation from Virginia's three medical schools. Reviewers and advisors shall be selected so as to avoid any conflict of interests or the appearance thereof, and the advisory board may choose reviewers and advisors residing or working outside Virginia to ensure impartiality. Whenever reviewers or advisors sit as a committee, the ~~chairman~~ chair of the advisory board or his designee shall serve as ~~chairman~~ chair of the committee but shall not vote on individual applications.

22VAC30-50-80. Specification of Option A or B.

Each application shall clearly state a purpose to seek funds for projects to conduct research on the mechanisms and treatment of neurotrauma, which shall be referred to as "Option A," or to develop innovative, model community-based rehabilitative programs and services for individuals with neurotrauma, which shall be referred to as "Option B." Option A applications shall state and demonstrate a clear intention of researching the mechanisms of neurotrauma or the treatment of neurotrauma, or both. Option B applications shall state and demonstrate a clear intention to provide innovative, model community-based rehabilitative services by developing, expanding, evaluating, or improving community-based programs and services for people with traumatic brain injury or traumatic spinal cord injury, or both, and expanding opportunities for ~~such~~ these individuals to become as independent and physically and functionally capable as possible. Neither Option A nor Option B grants ~~are intended~~ shall be used for long-term funding of research projects or service community-based rehabilitative programs and services.

22VAC30-50-90. Submission of applications.

In reviewing applications submitted for grant awards, whether Option A or Option B, the advisory board ~~will~~ shall accept applications that:

1. Present a clear and convincing ~~and persuasive~~ discussion of how the proposed project ~~will~~ shall carry out its intention as specified in accordance with 22VAC30-50-80, and describe in as much detail as possible its anticipated effectiveness in carrying out its intention;
2. Comply fully with informational and administrative requirements stated in the specific RFP to which applicants are responding; and

3. In the case of an Option A application:
 - a. Discuss the relevance of the proposed project to an identified field of medical or rehabilitative inquiry;
 - b. Demonstrate the anticipated benefit of the proposed project in terms of expanding knowledge and understanding of neurotrauma;
 - c. Discuss any innovation or breakthrough the project seeks to promote, specifying outcome measures where possible for each of the preceding enumerated items in this subdivision; ~~and~~
 - d. Describe efforts to ensure that the proposed project does not duplicate previous or ongoing research; ~~or and~~
 - e. Provide a plan for sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project; or

4. In the case of an Option B application:
 - a. Discuss the relevance of the proposed project to an identified need for innovative, model community-based rehabilitative programs and services in terms of the absence of alternative ~~programs, services, and~~ resources available to the intended individuals and community;
 - b. Describe efforts to ensure that the proposed project does not duplicate existing programs, services, or resources already available to targeted individuals and communities; and
 - c. ~~State and emphasize~~ Demonstrate a commitment to collaborative community planning involving consumer groups, service providers, employers, relevant state and local agencies, and other funding sources, as available ~~or anticipated to become available. and appropriate; and~~
 - d. Provide a plan for sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project.

Part III

Specific Project Consideration and Application Criteria,
Selection of Successful Applications and Amount and
Announcement of Awards

22VAC30-50-100. Reviewing and ranking grant applications.

A. The advisory board ~~will~~ shall distinguish the class of Option A applications from the class of Option B applications when soliciting, reviewing, and ranking grant applications. Applications ~~will~~ shall be considered and ranked only among other applications submitted under the same stated option, either Option A or Option B. Applications initially deemed ~~effective in meeting to meet~~ the purpose of a solicitation and to have substantially addressed the general considerations stated in ~~Part II (22VAC30-50-60 et seq.) of this chapter 22VAC30-50-60 through 22VAC30-50-90,~~ as applicable, ~~will~~ shall be subsequently reviewed and ranked according to the following criteria:

1. The purpose and significance of the project;

2. The objectives and expected benefits of the project;
3. The design of the project to include (i) methods, activities, and a timeline for achieving project goals and objectives, and (ii) a system for measuring outcomes and documenting project impact, effectiveness, and any anticipated long-term effects;
4. A detailed budget that is reasonable and appropriate for the scope of the project;
5. The identification of potential sources of funds and fundraising strategies to be used in sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project;
6. Demonstrated or anticipated capability of the existing or planned organizational structure;
7. The means for consumer involvement in the design, implementation, and evaluation of the project as feasible and relevant to the intention of the proposed project; and
8. A commitment to include the participation of small, women-owned and minority businesses, as such are available and capable of participation.

B. When initially reviewing applications or subsequently reviewing and ranking applications, the advisory board may ask ~~applicants~~ an applicant to provide required information that is missing from the application or additional clarifying information relating to ~~their applications~~ the application and proposed ~~projects~~ project. Failure to provide missing information or failure to provide additional information that is material and relevant may result in the rejection or lowered ranking of an application.

22VAC30-50-110. Amount of grant awards; duration and availability of funding.

A. After reviewing all applications, duly ~~received~~ accepted, for either Option A or Option B, the advisory board ~~will~~ shall determine ~~which the~~ that shall be offered funding. The selection of successful applications ~~will~~ shall be made based on (i) availability of moneys in the fund, (ii) the review and ranking of the applications according to the criteria listed in ~~this chapter 22VAC30-50-100 A,~~ (iii) information from grant reviewers or technical advisors ~~who~~ appointed by the board ~~may appoint~~ to assist in evaluating applications, and (iv) the advisory board's assessment of ~~those~~ the applications, as to which further the intentions and the purpose of the fund. Discussions and negotiations may be conducted between the advisory board and grant applicants in order to clarify any remaining issues relating to the proposed project.

B. In ~~considering and~~ determining the amount of a grant award and the duration of funding for a particular project, the advisory board ~~will~~ shall consider the requested amount, the project design, and justification. ~~Actual grant~~ Grant awards ~~will be made in amounts ranging~~ shall range in amount from \$5,000 to \$150,000 per year for an anticipated funding period of one to three years as described in the ~~proposal~~ RFP. The

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award and duration of funding of a project anticipated to exceed one year ~~will~~ shall be contingent upon (i) the availability of moneys in the fund, whether so stated at the time of the award or not, and (ii) the grantee's successful completion of timelines and of interim objectives and milestones as proposed and approved in the grant application, grant award, and contract documents.

C. In the event any timelines and interim objectives and milestones pertaining to a project are not completed to the satisfaction of the advisory board, the advisory board may act to withhold moneys not yet disbursed for ~~such a the~~ project. In the event of a ~~substantial~~ decline in moneys in the fund, the advisory board ~~will~~ shall attempt to distribute moneys ~~to projects of an anticipated duration greater than one year~~ in a manner as fair and equitable as possible.

D. The award of grants to successful applicants ~~will~~ shall be made public within 60 days of the advisory board's decision regarding all applications submitted in response to ~~a request for proposals an RFP.~~

22VAC30-50-120. Unexpended funds.

Notwithstanding any other law to the contrary, the ~~Commissioner of the Department for Aging and Rehabilitative Services~~ commissioner may reallocate up to \$500,000 from unexpended balances in the ~~Commonwealth Neurotrauma Initiative Trust Fund~~ to fund for new grant awards for research on traumatic brain and spinal cord injuries.

VA.R. Doc. No. R14-3419; Filed November 5, 2015, 4:16 p.m.

Proposed Regulation

Title of Regulation: **22VAC30-70. The Virginia Public Guardian and Conservator Program (amending 22VAC30-70-30).**

Statutory Authority: §§ 51.5-131 and 51.5-150 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2016.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Basis: This regulatory action of the Department for Aging and Rehabilitative Services (DARS) will conform regulations to changes to the Code of Virginia due to Chapter 322 of the 2012 Acts of Assembly. The Commissioner of DARS has authority to promulgate regulations pursuant to § 51.5-131 of the Code of Virginia.

Purpose: The 2011 General Assembly passed Senate Joint Resolution 397, which requested the Secretary of Health and Human Resources and human services agencies to adopt and implement person-centered practices in providing services to

citizens. This resolution noted that every individual is unique and no two individuals have the exact same preferences and needs. Person-centered planning supports individuals in making choices and decisions about the supports that best meet their preferences and needs. DARS adopts these statutorily mandated person-centered regulations for its Public Guardian and Conservator Program to implement person-centered planning procedures for the public guardian program serving the Commonwealth's most vulnerable citizens, protecting their safety and welfare.

Substance: The regulation requires, to the maximum extent feasible, the person-centered planning process to (i) include people chosen by the individual; (ii) provide necessary information and support to enable the individual to direct the process and to make informed choices and decisions; (iii) be timely and occur at times and locations convenient for the individual; (iv) reflect the individual's cultural values; (v) offer choices to the individual regarding the services the individual receives and from whom the individual receives them; (vi) include documentation of the processes employed in and the outcome of person-centered planning.

Issues: The regulation demonstrates that DARS and the Commonwealth are committed to building a strong community infrastructure of person-centered long-term community supports and services. The local and regional public guardian programs, public and private service providers, and community stakeholders, including the Public Guardian and Conservator Advisory Board, likewise share the commitment to person-centered planning. The amended regulations pose no known disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. As mandated by Chapter 322 of the 2012 Acts of the Assembly, the Department for Aging and Rehabilitative Services (DARS) proposes to amend regulations that govern the Virginia Guardianship and Conservator Program to allow individuals served under this program more input into how and by whom services are provided.

Result of Analysis. Benefits likely exceed costs for all proposed regulatory changes.

Estimated Economic Impact. In 2011, the General Assembly passed a joint resolution that requested human services agencies to adopt and implement "person-centered practices" that supported individuals receiving services in expressing preferences and making choices about who provided their services and how those services are provided. In 2012, the General Assembly passed a law mandating such person-centered practices. DARS now proposes to conform these regulations to that mandate by adding language requiring guardians and conservators, to the extent feasible, to be guided by principles that: 1) focus on the expressed preferences, personal values and needs of individuals that are

under guardianship, 2) allow individuals to have a say in the planning of their lives and 3) provide individuals with information and support to help them in making plans.

No guardian program in the Commonwealth is likely to incur costs on account of these proposed regulations because they do not mandate any additional actions or paperwork; instead they just require that guardians consider, and when possible support, the preferences of their clients. Individuals who are subject to guardianship will likely benefit from policies that allow them more control over how decisions affecting them are made.

Businesses and Entities Affected. DARS staff reports that there are 14 public programs that hold guardianship of approximately 600 individuals in the Commonwealth. All of these programs and individuals will be affected by these proposed changes.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulations.

Projected Impact on Employment. These proposed regulations are unlikely to have any impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulations are unlikely to have any effect on the use and value of any private property.

Small Businesses: Costs and Other Effects. No small businesses will be affected by these proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will be affected by these proposed regulations.

Agency's Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services agrees that the information provided by the Department of Planning and Budget in the December 18, 2013, economic impact analysis of the proposed amendments to 22VAC30-70, The Virginia Guardianship and Conservator Program was accurate at the time the analysis was completed. Businesses and entities affected have fluctuated slightly on an annual basis since this analysis was initially submitted; however, this should not have a substantial impact on the economic impact analysis.

Summary:

As mandated by Chapter 322 of the 2012 Acts of the Assembly, the proposed amendments to the Virginia Guardianship and Conservator Program require person-centered planning, which (i) focuses on the preferences, personal values, and needs of the individual receiving public guardianship services and (ii) directs public guardianship services to empower and support the individual receiving services in defining the direction for his life and promoting self-determination and community involvement.

22VAC30-70-30. Public guardian programs.

A. Designation. The department shall select public guardian programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with the department ~~will~~ shall be designated as public guardian programs. Funding for public guardian programs is provided by the appropriation of general funds.

B. Authority. A public guardian program appointed as a guardian, a conservator, or both as a guardian and conservator, shall have all the powers and duties specified in ~~Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2~~ Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia, except as otherwise specifically limited by a court.

C. Structure.

1. Each public guardian program shall have a program director who supervises and is responsible for providing guardianship services to any incapacitated persons assigned by the court and to provide overall administration for the public guardian program. The program director ~~must~~ shall be a full-time employee of the program and have experience as a service provider or administrator in one or more of the following areas: social work, case management, mental health, nursing or other human service programs. The program director ~~must~~ shall also demonstrate, by objective criteria, a knowledge and understanding of Virginia's guardianship laws, alternatives to guardianship, and surrogate decision making activities. The program director shall attend all training and activities required by the department.

2. Each public guardian program shall establish a multidisciplinary panel to (i) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person. This screening shall include a duty to recommend the most appropriate limitations on the power of the guardian or conservator, if any, to ensure that the powers and duties assigned are the least restrictive, and (ii) annually review cases being handled by the program to ensure that a guardian or conservator appointment remains appropriate. Composition of a multidisciplinary panel should include representatives from various human services agencies serving the city, county, or region where the public guardian program accepts referrals. If serving a region, the multidisciplinary panel shall have at least one representative from each local jurisdiction within the region. To the extent appropriate disciplines are available, this panel should include but is not limited to representation from:

- a. Local departments of social services, adult protective services;
- b. Community services boards or behavioral health authorities;

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- c. ~~An attorney~~ Attorneys licensed by the Virginia State Bar;
- d. Area agencies on aging;
- e. Local health departments;
- f. Nursing home, assisted living, and group home administrators; and
- g. Physicians and community representatives.

D. Client ratio to paid staff.

1. Each public guardian program shall maintain a direct service ratio of clients to paid staff that does not exceed the department's established ideal ratio of 20 incapacitated persons to every one paid full-time staff person 20:1.
2. Each public guardian program shall have in place a plan to immediately provide notice to the circuit ~~court(s)~~ court or courts in its jurisdiction and to the department when the program determines that it may exceed its ideal ratio of clients to paid staff.
3. In an emergency or unusual circumstance, each program, in its discretion, may exceed the department's established ideal ratio by no more than five additional incapacitated persons. Each program shall have in place a policy to immediately provide notice to the department when such an emergency or unusual circumstance occurs and when the emergency or unusual circumstance ends and the ideal ratio has returned to 20:1. The notice to the department shall comply with policy established by the department. Other than an emergency or unusual circumstance as described in the preceding sentence, a waiver must be requested to exceed the department's established ideal ratio. The department, in consultation with the advisory board, shall establish written procedures for public guardian programs to obtain appropriate waivers regarding deviations in the ideal ratio of clients to paid staff. Procedures shall comply with §§ 51.5-150 and 51.5-151 of the Code of Virginia. The department shall report waiver requests and status of granted waivers to the advisory board at its regularly scheduled meetings. The department shall review such waivers every six months to ensure that there is no immediate threat to the person or property of any incapacitated person nor that exceeding the department's established ideal ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

E. Appointments.

1. Prior to the public guardian program accepting an individual for services, the multidisciplinary panel described in ~~22VAC30-70-30~~ subdivision C 2 of this section shall screen referrals to ensure that:
 - a. The public guardian program is appointed as guardian, or conservator, or both only in those cases where guardianship or conservatorship is the least restrictive alternative available to assist the individual;

- b. The appointment is consistent with serving the type of client identified by the established priorities of the public guardian program;
- c. The individual cannot adequately care for himself;
- d. The individual is indigent; and
- e. There is no other proper or suitable person or entity to serve as guardian.
- f. In the case of an individual who receives case management services from a community services board (CSB) or behavioral health authority (BHA), the multidisciplinary panel may also request the results of the "determination of capacity" as authorized by 12VAC35-115-145 (Determination of capacity to give consent or authorization) and verification that no other person is available or willing to serve as guardian pursuant to 12VAC35-115-146 E (Authorized representatives).

2. Appointments by a circuit court shall name the public guardian program, rather than an individual person, as the guardian, the conservator or both guardian and conservator.

3. A public guardian program shall only accept appointments as guardian, conservator, or both guardian and conservator that generate no fee or that generate a minimal fee.

F. Services.

1. A public guardian program shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian, conservator, or both guardian and conservator for the incapacitated person.
2. The guardian or conservator shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage his personal affairs to the extent feasible.

3. The guardian or conservator shall be guided by person-centered planning that:

- a. Focuses on the expressed preferences, personal values, and needs of the individual receiving public guardian program services; and
- b. Empowers and supports the individual receiving public guardian program services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. To the maximum extent feasible, the person-centered planning process shall:

- a. Include people chosen by the individual;
- b. Provide necessary information and support to enable the individual to direct the process and to make informed choices and decisions;
- c. Be timely and occur at times and locations convenient for the individual;
- d. Reflect the individual's cultural values;

e. Offer choices to the individual regarding the services the individual receives and from whom the individual receives those services; and

f. Include documentation of processes employed in and the outcomes of person-centered planning.

~~3.~~ 5. The multidisciplinary panel described in ~~22VAC30-70-30~~ subdivision C 2 of this section shall review active cases at least once every 12 months to determine that:

- a. The client continues to be incapacitated;
- b. The client continues to be indigent; and
- c. There is no other proper or suitable person or entity to serve as guardian, conservator, or both guardian and conservator.

~~4.~~ 6. Each public guardian program shall set priorities with regard to services to be provided to incapacitated persons in accordance with its contract with the department.

~~5.~~ 7. Each public guardian program shall develop written procedures and standards to make end-of-life decisions or other health-related interventions in accordance with the expressed desires and personal values of the incapacitated person to the extent known. If expressed desires or personal values are unknown, then written procedures, including an ethical decision-making process, shall be used to ensure that the guardian or conservator acts in the incapacitated person's best interest and exercises reasonable care, diligence and prudence on behalf of the client.

~~6.~~ 8. The public guardian program shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the incapacitated person. Impropriety or conflict of interest arises where the public guardian program has some personal or agency interest that might be perceived as self-serving or adverse to the position or the best interest of the incapacitated person. Examples include, but are not limited to, situations where the public guardian program provides services such as housing, hospice or medical care directly to the client. The department reserves the right to monitor all administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between the department and the public guardian program.

~~7.~~ 9. Each public guardian program and its employees are required to report any suspected abuse, neglect, or exploitation in accordance with § 63.2-1606 of the Code of Virginia, ~~that~~ which provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.

~~8.~~ 10. Each public guardian program shall submit data and reports as required by the department and maintain compliance with the department's program guidelines. The department shall periodically monitor administrative, programmatic, and financial activities related to the public

guardian program, including person-centered planning utilization and documentation, to ensure compliance with the terms of the contract between the public guardian program and the department.

VA.R. Doc. No. R13-3565; Filed November 5, 2015, 2:10 p.m.

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-10, 22VAC40-72-60, 22VAC40-72-390).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2016.

Agency Contact: Judith McGreal, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7157, or email judith.mcgreal@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides the board the general authority for the development of regulations to carry out the purposes of Title 63.2 of the Code of Virginia. Section 63.2-1732 of the Code of Virginia gives the board the authority to adopt regulations to carry out provisions related to licensed assisted living facilities (ALFs) and to protect the health, safety, and welfare of residents. This regulatory action will implement amendments made by the 2013 Acts of Assembly related to liability insurance disclosure in §§ 63.2-1805 and 63.2-1808 of the Code of Virginia.

Purpose: The purpose of this action is to implement Chapter 320 of the 2013 Acts of Assembly, which amended §§ 63.2-1805 and 63.2-1808 of the Code of Virginia relating to ALF liability insurance disclosure. The regulatory action establishes the minimum amount of liability insurance coverage to be maintained by an ALF for purposes of disclosure. The action also includes changes to the regulations to require an ALF to disclose to any resident, prospective resident, and his legal representative, if any, whether it maintains the minimum amount of liability insurance coverage. Knowing whether a facility maintains at least the minimum amount of coverage will allow potential residents and residents to make more informed decisions regarding residence in assisted living facilities and possible compensation for injuries and losses from negligent acts of a facility.

Substance: Proposed changes to the regulations add an item to the disclosure statement and the resident agreement that requires an ALF to state whether it maintains at least the minimum amount of liability insurance coverage established by the State Board of Social Services to compensate residents or others for injuries and losses from negligent acts of the

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facility. The proposed minimum amount is \$500,000 per occurrence and \$500,000 aggregate. An additional change ensures that the information regarding liability insurance coverage is kept current.

Issues: The advantage of the proposed regulatory action to the public and to the agency is that it makes the requirements of the regulation consistent with the requirements of state law and establishes a minimum amount of liability insurance coverage for purposes of disclosure. Disclosure of the information to a prospective resident of an ALF allows the person to make a more informed decision regarding residence in the facility. Disclosure of the information to ALF residents or appropriate legal representatives helps keep them aware of whether or not the facility has insurance in case possible compensation for injury or losses becomes a matter of concern. There are no disadvantages to the public, the agency, or the Commonwealth.

An issue that has been identified in the past by some people in the insurance industry and others is that the minimum amount of liability insurance for disclosure purposes in this proposal is inadequate. These people vary in the amounts recommended to compensate for injuries and losses from negligent acts of an ALF, but the least amount recommended for disclosure purposes is \$1 million per occurrence and \$2 million aggregate. The \$500,000 amount is supported by several ALF provider associations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. As mandated by Chapter 320 of the 2013 Acts of the Assembly, the State Board of Social Services (Board) proposes to amend its Standards for Assisted living Facilities to stipulate insurance amounts for which assisted living facilities will be required to provide disclosure.

Result of Analysis. Benefits likely exceed costs for all proposed regulatory changes.

Estimated Economic Impact. In 2013, the General Assembly passed legislation that directed the Board to promulgate regulations, "9. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and upon request, that discloses whether the assisted living facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility, provided that no facility shall state that liability insurance is in place unless such insurance provides a minimum amount of coverage as established by the Board; and 10. Establishing the minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in accordance with subdivision 9."

The Board now proposes to amend its regulation for assisted living facilities to implement these requirements. Specifically

the Board proposes to disclose to prospective residents whether they have insurance that will pay up to \$500,000 per occurrence and \$500,000 aggregate to compensate residents or other individuals for injuries or losses suffered due to the negligence of the facility. The Board also proposes to require that the same insurance disclosure be contained in resident agreements signed by residents (or their legal representative) at the time of, or prior to, admission. The Department of Planning and Budget suggested that the board create a separate section of the regulatory text that specifically lists the required liability amounts, rather than just including it in the text of the disclosure section and in the section describing the resident agreement with the facility. The Department of Social Services agreed to consider presenting this idea to the Board at the final stage for this proposed regulation.

Assisted living facilities are not required by the Standards for Assisted Living Facilities to actually have liability insurance. Disclosure requirements likely will, however, encourage facilities to have at least \$500,000 in insurance since not having such insurance, and having to disclose that fact to potential residents, would put them at a competitive disadvantage to similarly priced assisted living facilities that do have such insurance. Board staff reports that the cost for insurance with \$500,000 per occurrence/\$500,000 aggregate coverage would likely average \$125-\$250 per facility bed. Facilities with poorer quality of care, more regulatory complaints, an older physical plant or residents who are generally in poorer health (amongst other risk factors) may pay the higher side of that average; facilities that rate as better risks would likely pay on the lower side of that average. Residents and their families will benefit from these proposed regulatory changes as they will allow a more informed choice of facilities where residents will be compensated for any losses incurred on account of negligence on the part or facility owners or staff.

Businesses and Entities Affected. Board staff reports that the Board regulates 544 assisted living facilities in the Commonwealth. All of these facilities will be affected by the proposed regulatory changes. Board staff further reports that most of these facilities would qualify as small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulation.

Projected Impact on Employment. This proposed regulation is unlikely to have any impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. Assisted living facilities are not required by the Standards for Assisted Living Facilities to actually have liability insurance. Disclosure requirements likely will, however, encourage facilities to have at least \$500,000 in insurance since not having such insurance, and having to disclose that fact to potential residents, would put them at a competitive disadvantage to similarly priced assisted living facilities that do have such insurance. To the extent that purchasing

insurance lowers the profits of assisted living facilities, the value of those facilities will also be lowered.

Small Businesses: Costs and Other Effects. This regulatory action does not directly impose any costs but the likely very minimal staff cost for revising disclosure documents.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods of regulation that would both meet the aims of the legislature and the Board and be less costly.

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

Summary:

Pursuant to Chapter 320 of the 2013 Acts of Assembly, the proposed amendments establish for purposes of disclosure a minimum amount of liability insurance coverage of \$500,000 per occurrence and \$500,000 aggregate to be maintained by an assisted living facility (ALF). It does not require an ALF to maintain coverage, but rather to disclose to residents, prospective residents, and legal representatives, if any, whether the facility has the minimum required amount as established by the State Board of Social Services. The amendments also include changes to the disclosure statement and the resident agreement to include whether the ALF maintains at least \$500,000 per occurrence and \$500,000 aggregate of liability insurance coverage.

Part I

General Provisions

22VAC40-72-10. Definitions.

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

"Activities of daily living—(ADLs)" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a

witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

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Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, mental retardation, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation-~~(CPR)~~" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or mental retardation, that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Community services board" or "CSB" means a citizens' board established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging and Rehabilitative Services as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse.

Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the State Department of Social Services.

"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ~~ingredient(s)~~ ingredient or ingredients, (i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of another person and take medication without requiring the assistance of another person.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan—~~(ISP)~~ or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living—~~(IADLs)~~ or IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.

A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.

For any given standard, the term legal representative applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist.

Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-72-220 and 22VAC40-72-230.

"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:

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1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the State Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and
7. Any law-enforcement officer.

This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide as provided in 22VAC40-72-660.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

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

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the ~~United States~~ U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" below.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of

care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (viii) any other person deemed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal

assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed

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condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope and practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Staff or staff person also includes those individuals hired through a contract to provide services for the facility.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Uniform assessment instrument (~~UAI~~) or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

22VAC40-72-60. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;
2. Be provided to the prospective resident and his legal representative at least five days in advance of the planned admission date, and prior to signing an admission agreement or contract;

EXCEPTION: If circumstances are such that resident admission to a facility prevents disclosure of the

information at least five days in advance, then the information shall be disclosed at the earliest possible time prior to signing an admission agreement or contract. The circumstances causing the delay shall be documented.

3. Be provided to a resident or his legal representative upon request; and

4. Disclose the following information, which shall be kept current:

- a. Name of the facility;
- b. Name of the licensee;
- c. Names of any other assisted living facilities for which the licensee has a current license issued by the Commonwealth of Virginia;
- d. Ownership structure of the facility; (i.e., individual, partnership, corporation, limited liability company, unincorporated association or public agency);
- e. Name of management company that operates the facility, if other than the licensee;
- f. Licensed capacity of the facility and description of the characteristics of the resident population;
- g. Description of all accommodations, services, and care that the facility offers;
- h. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and any fees for additional accommodations, services, and care;
- i. Policy regarding increases in charges and length of time for advance notice of intent to increase charges;
- j. Amount of an advance or deposit payment and refund policy for such payment;
- k. Criteria for admission to the facility and any restrictions on admission;
- l. Criteria for transfer to a different living area within the same facility, including transfer to another level, gradation, or type of care within the same facility or complex;
- m. Criteria for discharge, including the actions, circumstances, or conditions that would result or may result in the resident's discharge from the facility;
- n. Requirements or rules regarding resident conduct and other restrictions and special conditions;
- o. Range, categories, frequency, and number of activities provided for residents;
- p. General number, functions, and qualifications of staff on each shift;
- q. Whether the facility maintains liability insurance that provides at least a minimum amount of coverage established by the board, for disclosure purposes, of \$500,000 per occurrence and \$500,000 aggregate to compensate residents or other individuals for injuries and losses from negligent acts of the facility;

~~¶~~ r. Notification that names of contractors providing essential services to residents are available upon request; and

~~¶~~ s. Address of the website of the department, with a note that additional information about the facility may be obtained from the website, including type of license, special services, and compliance history that includes information after July 1, 2003.

B. If a prospective resident is admitted to the facility, written ~~acknowledgement~~ acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in his record.

C. The information required in this section shall also be available to the general public.

22VAC40-72-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care that specifies:
 - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;
 - b. Description of all accommodations, services, and care that the facility offers and any related charges;
 - c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;
 - d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
 - e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and
 - f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Statement that specifies whether the facility maintains liability insurance that provides at least a minimum amount of coverage established by the board, for disclosure purposes, of \$500,000 per occurrence and \$500,000 aggregate to compensate residents or other individuals for injuries and losses from negligent acts of the facility.

~~2.~~ 3. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his legal representative.

~~3.~~ 4. Acknowledgment that the resident or his legal representative has been informed of the policy regarding

the amount of notice required when a resident wishes to move from the facility.

~~4.~~ 5. Acknowledgment that the resident has been informed of the policy required by 22VAC40-72-840 J regarding weapons.

~~5.~~ 6. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

~~6.~~ 7. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed a copy of § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.

~~7.~~ 8. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

~~8.~~ 9. Acknowledgment that the resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council. (See 22VAC40-72-810.)

~~9.~~ 10. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy.

~~10.~~ 11. Acknowledgment that the resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-72-800.

~~11.~~ 12. Acknowledgment that the resident has been informed of the policy regarding the administration and storage of medications and dietary supplements.

~~12.~~ 13. Acknowledgment that the resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-72-340 D.

B. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement shall be updated whenever there are changes in financial arrangements, accommodations, services, care provided by the facility, ~~or~~ requirements governing the resident's conduct, or liability insurance statement, and signed by the licensee or administrator and the resident or his legal representative. If the original agreement

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provides for specific changes in any of these items, this standard does not apply to those changes.

V.A.R. Doc. No. R14-3906; Filed November 2, 2015, 11:15 a.m.

Fast-Track Regulation

Title of Regulation: 22VAC40-100. Minimum Standards for Licensed Child Caring Institutions (amending 22VAC40-100-10, 22VAC40-100-340).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2015.

Effective Date: January 15, 2016.

Agency Contact: Sharon Lindsay, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7167, FAX (804) 726-7132, or email sharon.lindsay@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides the State Board of Social Services the general authority for the development of regulations to carry out the purposes of Title 63.2 of the Code of Virginia. Sections 63.2-1701, 63.2-1817, 63.2-1734, 16.1-278.2, 16.1-278.4, and 16.1-278.8 of the Code of Virginia mandate licensure of child welfare agencies, except those that meet the exemptions contained in §§ 63.2-1715 through 63.2-1718. Child caring institutions are defined as children's residential facilities, and children's residential facilities fall under the definition of child welfare agencies. Those child caring institutions established prior to January 1, 1987, that receive no public funds are licensed under the Minimum Standards for Licensed Child Caring Institutions. Child caring institutions established on or after January 1, 1987, are licensed under the regulation established for children's residential facilities.

Purpose: The amendments are necessary to remove references to repealed Code of Virginia sections and add the correct citations in the regulation. This regulatory action protects the health, welfare, and safety of children in care in child caring institutions by clarifying the Code of Virginia references used in the regulation.

Rationale for Using Fast-Track Process: Executive Order 17 (2014) allows state agencies to use a fast-track rulemaking process to expedite regulatory changes that are expected to be noncontroversial. As part of the periodic review process, the Office of the Attorney General advised the use of the fast-track rulemaking process to make minor amendments to Code of Virginia references, as these actions are not expected to be controversial.

Substance: The regulation is amended to remove references to repealed Code of Virginia sections in the regulation and replace them with the correct references.

Issues: The primary advantage of this regulatory action to the agency and to the public is that it clarifies Code of Virginia

citations for easier reference. There are no disadvantages to the public or the Commonwealth.

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 Social Services (Board) proposes to amend its regulations that govern licensed child caring institutions so that it is clear the statutory authority for this licensure program emanates from § 63.1 of the Code of Virginia as it existed on January 1, 1987.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Current regulations list the Code of Virginia Title which defined child caring institutions and gave the Board authority to license them. Since this Code section has since been repealed, and is no longer in the Code of Virginia, the current regulations can be confusing for individuals that use the code citations listed to try and find the authorizing legislation. To make these regulations more clear, the Board proposes to specify the version of the Code of Virginia that is being referenced. Although this addition will not make it any easier for interested individuals to find the statutory authorization for this licensure program in the Code of Virginia, it will make it clearer why that Code section is so hard to track down.

Businesses and Entities Affected. Board staff reports there are currently seven licensed child caring institutions in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect 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 any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

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

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

The amendments remove references to repealed Code of Virginia sections in the regulation and add the correct references.

Part I
General

22VAC40-100-10. Definitions.

A. A child caring institution, ~~as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia as provided for in subsection C of § 63.2-1737 of the Code of Virginia,~~ is any facility, other than an institution operated by the ~~State~~ state, a county, or a city, and maintained for the purpose of receiving children for full-time care, maintenance, protection, and guidance separated from their parents or guardians except:

1. A bona fide educational institution ~~(or or boarding school)~~ school whose pupils, in the ordinary course of events, return annually to the home of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp; and
3. A bona fide hospital legally maintained as such.

B. A group home is a child caring institution operated by an individual other than in his private family home or by a corporation which does not exceed 12 children, including the group parents' own children.

C. An independent foster home is a private individual foster home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and legitimate children of personal friends of such person and (ii) a home in which are received a child or children committed under the provisions of ~~subdivisions A 3, C 5 or E 9 of § 16.1-279 of the Code of Virginia, subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8 of the Code of Virginia.~~

Any facility caring for more than 12 such children shall not be deemed an independent foster home.

An independent foster home is subject to a different set of standards.

22VAC40-100-340. Confidentiality.

The child caring institution shall share only that information relative to the needs of others working with the child or to those having a legal right to that information in conformity

with ~~§ 63.1-209, Code of Virginia, which provides the following:~~

~~(a) "1. Confidential records. The records of all child welfare agencies and representatives of the Commissioner commissioner regarding licensing and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives shall be confidential information, provided that the Commissioner commissioner, the State Board board, and their agents shall have access to such information, that it shall be disclosed upon proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person. It shall be unlawful for any officer, agent, or employee of any child welfare agency, for the Commissioner commissioner, the State Board board, or their agents or employees, and for any person who has held any such position, and for any other person to whom any such information is disclosed as herein above provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a misdemeanor and be punishable as such.~~

~~(b) 2. Any person who has attained his majority, and who has not been legally adopted in accordance with the provisions of former Chapter 11 (§ 63.1-220 et seq.) of this title Title 63.1 of the Code of Virginia, and who believes that he has been placed out by a child placing agency, shall have the right to demand and receive from the Commissioner commissioner, the State Board board, or any such agency, such information as any of them may have concerning his own parents or relatives."~~

VA.R. Doc. No. R16-3582; Filed November 3, 2015, 10:17 a.m.

Proposed Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10 through 22VAC40-201-150, 22VAC40-201-170, 22VAC40-201-200; adding 22VAC40-201-35, 22VAC40-201-161; repealing 22VAC40-201-160).**

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-900 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2016.

Agency Contact: Em Parente, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7538, FAX (804) 726-7895, or email em.parente@dss.virginia.gov.

Basis: The legal basis for this action is § 63.2-217 of the Code of Virginia, which provides the authority for the State Board of Social Services to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Throughout Title 63.2, there

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are requirements for regulations to be developed to implement permanency services. This regulatory action will provide a comprehensive and accurate structure for the provision of these services.

Purpose: 22VAC40-201 encompasses the full range of services for prevention, foster care, adoption, and independent living services. The regulation provides local departments of social services with rules for the provision of child welfare services consistent with the Code of Virginia and federal law. The regulation is necessary for protecting the welfare of children in foster care because it addresses issues such as service planning, notification of relatives, factors to consider in placement, adoption assistance, and many other provisions intended to ensure the well-being of the child. The goal of the proposed amendments are to make the regulation consistent with the Code of Virginia and federal laws and to make other changes deemed necessary to ensure the accuracy and clarity of the regulation.

Substance: Substantive provisions and amendments to this regulation include adding language in both the definitions section and the independent living section making youth older than 18 years, released from the Department of Juvenile Justice (DJJ) and in foster care immediately prior to their commitment to DJJ, eligible to receive independent living services. The regulation also requires, consistent with the Code of Virginia, that local department of social services (LDSS) "shall" provide independent living services to youth between the ages of 14 to 18 years and for youth 18 to 21 years who are eligible. A provision is added to limit when a foster child in a kinship foster placement can be removed from the relative. Language is added on the timing of medical and dental visits for youth in foster care, language listing independent living as a goal for all except a specific group of youth is removed, and language requiring the service plan for a child be approved by the court within 60 days from the child's entry into foster care is added. In addition, language reflecting recent Code of Virginia changes that will allow, under specific circumstances, the restoration of the parental rights of a youth in foster care is added. Language was added to clarify that adult relatives of a child "likely to be removed" be notified, in addition to the requirement that adult relatives be notified after removal. The process for collaborating with the foster care child's school to determine whether the child should continue at the home school or be moved to a new school, consistent with federal requirements, is provided. Changes are made in 22VAC40-201-70 clarifying the responsibility for the LDSS relative to establishing permanency for a child in foster care include the clarification that the LDSS shall continue to search for relatives and to try to establish permanency for a child until such time as it is achieved or not in the child's best interest even when the goal of permanent foster care, another planned permanent living arrangement, or independent living has been established. Changes to the regulation also require that the LDSS engage in concurrent permanency planning in order to achieve timely

permanence for the child. Throughout the regulation, language regarding "resource families" has been changed to "foster" and "adoptive" families because the Code of Virginia does not address "resource families." The approval standards for adoptive parents differ from those for foster parents only in the parent having a desire to adopt. Use of the term "resource parent" to mean a family who is approved both to foster and adopt in the regulation goes beyond what is contained in the Code of Virginia.

22VAC40-201-160, addressing adoption assistance, is repealed and replaced with 22VAC40-201-161 because changes and necessary reorganization would render this section of the proposed regulation very difficult to read. Language is added to that section about the use of department staff for the negotiation of adoption assistance agreements and addendums. Clarification is provided referencing the submission of the annual affidavit. Language is added regarding the responsibility of the LDSS to notify adoptive families of their right to appeal. Also included are conditions for continuation of adoption assistance beyond the youth's 18th birthday and termination of adoption assistance prior to the youth's 18th birthday. 22VAC40-201-161 also includes language that provides clarity regarding eligibility for adoption assistance after finalization. Finally, in the section addressing nonagency adoptions, an incomplete list of exceptions to the prohibition against the exchange of money or other things of value in the placement or adoption of a child was deleted and reference was made to the Code of Virginia for more detailed information.

Issues: This action poses no disadvantages to the public or the Commonwealth. This regulatory action amends the permanency regulation, which provides for the safety of children who come into the child welfare system and for children in the Commonwealth who are adopted. In particular this action addresses recent changes to the Code of Virginia to improve service delivery for older youth and medical and dental services for foster care youth and clarifies the process for determining adoption assistance eligibility and payment.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation: The State Board of Social Services (Board) proposes to make several substantive changes, and many clarifying changes, to its permanency regulation. Substantively, the Board proposes to: 1) As required by state and federal law, allow independent living services to be extended to youths over the age of 18 who are being released from Department of Juvenile Justice (DJJ) custody, so long as those youths were in foster care before they were incarcerated; and remove the permanency goal of independent living except for juvenile refugees, youths leaving foster care who are at least 18 years old and or youths at least 18 years of age who are leaving Juvenile Correctional Center custody, 2) Limit when a foster child can be removed from kinship foster care without the consent of

the relative foster parent, 3) Pursuant to 2014 legislative changes, allow the restoration of parental rights for the parents of older foster care children whose rights had been terminated, 4) Mandate that the state Department of Social Services negotiate adoption assistance subsidies, 5) Set the process by which named parties will decide which school district a foster child will attend school in, and 6) Reduce the time frame for submitting a foster care plan to the courts and the time frame for the courts to approve that plan.

Result of Analysis: Benefits will likely outweigh costs for most proposed changes. For several proposed changes, there is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact: Most of the changes that the Board is proposing for this regulation either make explicit existing rules that local Departments of Social Services (LDSS) currently follow or modify language to eliminate confusion about what the rules are. For instance, LDSS staff are currently responsible for verifying that foster children placed through private placing agencies are in approved placements. The Board proposes to add language to this regulation that explicitly lays out LDSS responsibility on this matter but does not propose to change the parameters of responsibility for verifying home approval in any substantive way. Affected entities are very unlikely to incur extra costs on account of changes such as these, but will benefit from the increased clarity of the regulatory text. Currently, this regulation allows a permanency goal of independent living even though federal law does not. The Board proposes to amend this regulation so that no children under the age of 18 except refugees are allowed this goal. The Board also proposes to conform this regulation to state law changes that allow independent living services to be extended to young adults who are being released from Department of Juvenile Justice (DJJ) custody so long as those young adults were in foster care before they were incarcerated. Board staff reports that LDSSs will likely incur some costs on account of extending independent living services to young adults leaving DJJ but that a member amendment to last year's budget allocated \$19,000 to cover those costs. Removing independent living as a permanency goal for older teenagers will require DSS staff to continue trying to find a biological family member or an adoptive placement for those youths but may also limit the youth's ability to affect their own living arrangements. That is, older teens who may not want to form ties with biological family members that DSS may find or who may prefer to focus on living independently as part of their own life goals rather than being adopted may have their preferences minimized or ignored because LDSSs are now mandated to continue trying to place these teenagers in a home that meets the criteria for permanency goals. Current regulation allows kinship foster care but does not give that foster care placement precedence over approved permanency goals, like adoption, that are theoretically considered to be more beneficial to the child in care. Because of a legislative

change, the Board now proposes to specify that children who have been under the care of a relative in kinship foster care for six months continuously may not be removed from that placement without the consent of the relative caregiver unless a court orders removal. This change may benefit the children in such care as they will be allowed to stay in a placement that provides both safety and continuing family ties. Parents of children in foster care may not benefit, however, from this proposed change as they would need either the consent of the family member who has care of their child or children or would need court intervention to be reunited if it takes longer than six months for them to complete all actions that a reunion is conditioned upon. Current regulation does not have provision for parental rights to be restored once they are severed because reuniting the family is no longer a realistic goal for a child who has been taken into foster care. Pursuant to a 2014 change in state law, the Board proposes to allow restoration of parental rights of parents who have had their rights severed at least two years previous to the restoration petition and whose children are either over the age of 14, or are younger siblings of a child over the age of 14 who is the subject to a restoration petition if the child's permanency goal was not achieved or sustained. This change will benefit children who are not thriving in foster care and whose parents may have belatedly gotten their lives together enough to finally care for those children. Until recently, LDSS staff had the responsibility for both placing children into adoptive homes and negotiating the size of adoption assistance subsidies with adoptive parents (and sometimes adoptive parents' lawyers). To minimize this conflict of interest, the Board has moved the responsibility of negotiating these subsidies using standardized criteria to the state Department of Social Services. Board staff reports that this change will likely save the state some money although the magnitude of cost savings is not yet known. Some adoptive parents who will negotiate subsidies in the future may not benefit from this change as their adoption subsidies will be lower under new rules than they would have been under local negotiation rules. Current regulation requires LDSS staff to collaborate with local educational agencies to decide if a child entering foster care will stay in the school district their family lives in or be moved to the school district that contains their foster care home (if the two are different). The Board proposes going forward to require LDSSs to consult not only with the involved school divisions but also the child's prior custodians (likely their parent or parents), foster care providers, and other involved adults before deciding where the child in foster care will go to school. This change may increase transportation costs incurred by LDSSs if more decisions are made that keep children in schools that do not provide bus service to those children's foster homes. Currently, LDSSs have 60 days after a child is taken into foster care to submit a foster care plan to the court, and the court has 75 days after a child is taken into foster care to approve that plan (15 days beyond the LDSSs window). Pursuant to a 2013 legislative change, the Board now proposes to change these timelines so

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that LDSSs have 45 days to submit a foster care plan to the court and the court has only 15 days beyond that 45-day window to approve that plan. This change will benefit foster children as they will have a plan in place to guide their care at least 15 days sooner than they currently do. Board staff reports that LDSSs will not incur any additional costs for complying with these shortened timelines.

Businesses and Entities Affected: This proposed regulation will affect all LDSSs, the children in their care or placed through them, and the parents and other involved relatives.

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

Projected Impact on Employment: This proposed regulation will likely not affect employment in the Commonwealth.

Effects on the Use and Value of Private Property: This proposed regulation will likely not affect the use or value of private property in the Commonwealth.

Real Estate Development Costs: The proposed changes will likely not affect real estate development costs.

Small Businesses. Definition: Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects: No small businesses will incur costs on account of these proposed regulatory changes. All affected entities are either public governmental agencies or private individuals.

Alternative Method that Minimizes Adverse Impact: No small businesses will incur costs on account of these proposed regulatory changes. All affected entities are either public governmental agencies or private individuals.

Adverse Impacts. Businesses: The proposed changes are unlikely to adversely impact any business in the Commonwealth.

Localities: LDSSs will likely incur some additional court related costs on account of with rule changes that allow restoration of parental rights for parents of foster kids at least 14 years old and rule changes that make it harder to remove children from a kinship foster care placement after six months. LDSSs may also incur additional costs for funding independent living services for youths over the age of 18 who were in foster care before being committed to DJJ and for additional transportation costs associated with transporting foster children to school.

Other Entities: The proposed change to kinship foster care rules may adversely affect parents whose children are in long-term kinship foster care as it may decrease the chance they will be reunited with their children if the relative the children live with objects. The proposed change that limits older teenage foster kids from having a permanency goal of independent living may decrease the control that those

teenagers have over where, and with whom, they end up living.

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

Summary:

The proposed amendments (i) as required by state and federal law, allow independent living services to be extended to youths older than 18 years of age who are being released from Department of Juvenile Justice custody, so long as those youths were in foster care before they were incarcerated and remove the permanency goal of independent living except for juvenile refugees, youths leaving foster care who are at least 18 years old, and youths at least 18 years of age who are leaving Juvenile Correctional Center custody; (ii) limit when a foster child can be removed from kinship foster care without the consent of the relative foster parent; (iii) allow the restoration of parental rights for the parents, whose rights had been terminated, of older foster care children; (iv) mandate that the state Department of Social Services negotiate adoption assistance subsidies; (v) set the process by which named parties will decide which school district a foster child will attend; and (vi) reduce the timeframe for submitting a foster care plan to the courts and the timeframe for the courts to approve that plan.

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis, ~~and that is open to the participation of the birth parents or prior custodians and other individuals significant to the child and family, pursuant to § 63.2-907 of the Code of Virginia~~ to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family, as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment ~~or services~~ provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the ~~child placing agency local board~~ and the adoptive parents of a child with special needs, ~~to provide for~~

~~the unmet financial and service needs of or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payments and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.~~

~~"Adoption Manual" means Volume VII, Section III, Chapter C—Adoption/Agency Placement of the Service Program Manual of the Virginia Department of Social Services dated October 2009/March 2010.~~

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

~~"Adoption search" means interviews and written or telephone inquiries made by a local department to locate and advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.~~

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. ~~The adoptive home study is included in the dual approval process.~~

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 and 63.2-1301 ~~B~~ of the Code of Virginia.

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

~~"Community Policy and Management Team—(CPMT)" or "CPMT"~~ means a team appointed by the local governing body ~~to receive funds~~ pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

~~"Comprehensive Services Act for At-Risk Youth and Families—(CSA)" or "CSA"~~ means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

~~"Concurrent permanency planning" means a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually reunification with the family, simultaneously with an established alternative permanent plan for the child.~~

~~"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.~~

"Department" means the ~~State~~ state Department of Social Services.

~~"Dual approval process" "Dually approved" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval have met the required standards to be approved as a resource, foster or and adoptive family home provider.~~

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"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for care of the child.

"Family Assessment and Planning Team—(FAPT)" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement. Foster care also includes children under the placement and care of the local board who have not been removed from their home.

"Foster care maintenance payments" means payments to cover federally allowable those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel for the child to visit relatives to the child's home for visitation, and reasonable travel to remain in his previous in the school in which the child is enrolled at the time of the placement, and other allowable expenses in accordance with guidance developed by the department. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster Care Manual" means Chapter E—Foster Care of the Child and Family Services Manual of the Virginia Department of Social Services dated July 2011.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of prevention, placement casework, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child meeting the

requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual Family Service Plan—(IFSP)" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children—(ICPC)" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-

placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the ~~local department~~ child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs ~~including, but not limited to, attorney or other fees directly related to the finalization of the adoption; transportation; court costs; and reasonable and necessary fees of licensed child-placing agencies as set out in § 63.2-1301 D of the Code of Virginia.~~

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

~~"Permanency planning indicator (PPI)" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.~~

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

~~"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.~~

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

~~"Service plan" means a written document that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia,~~

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"State pool ~~fund~~ funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse; of a birth or adoptive parent or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visitation visits conducted pursuant to § 63.2-1212 of the Code of Virginia ~~subsequent to the entry of an interlocutory order of adoption~~ and the written report compiling of the findings made in the course of the visitation which. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services

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pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-20. Foster care prevention services.

A. The local department shall first make reasonable efforts to keep the child in his home.

B. The local department shall make diligent efforts to locate and assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.

C. ~~Foster care services,~~ The local department shall provide services pursuant to § 63.2-905 of the Code of Virginia, shall be available to the child and birth parents or custodians to prevent the need for foster care placement when the child is abused and neglected as defined in § 63.2-100 of the Code of Virginia or has been found to be a child in need of services as defined in § 16.1-228 of the Code of Virginia or as determined by the family assessment and planning team.

D. Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.

E. ~~Any service~~ Appropriate services shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is documented in the local department's service written plan or in the IFSP used in conjunction with accessing CSA funds.

F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal ~~and state~~ guidelines regulations, 45 CFR 1356.60(c).

G. The local department shall ~~consider a~~ develop a written plan for the implementation of wrap around plan of care services prior to removing a child from his home ~~and~~. As long as the risk of removal from the home continues, services shall be provided to address identified needs. In the event that the child can no longer be safely maintained in the home, the local department shall document why the support and services considered and the reasons such support and services provided were not sufficient to maintain the child in his home.

H. ~~Within 30 days after~~ Prior to removing the child from the custody of his parents, the local department shall make diligent efforts, in accordance with the Foster Care Manual to notify in writing all adult relatives that the child is being removed or has been removed or is likely to be removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

22VAC40-201-30. Entering foster care.

A. A child enters foster care through a court commitment, entrustment agreement, or noncustodial foster care agreement. ~~Foster care children who have been committed to the Department of Juvenile Justice (DJJ) shall re-enter foster care at the completion of the DJJ commitment if under the age of 18.~~

B. The entrustment agreement shall specify the rights and obligations of the child, the birth parent or custodian, and the ~~child placing agency~~ local department. Entrustments shall not be used for educational purposes, to make the child eligible for Medicaid, or to obtain mental health treatment.

1. ~~Temporary entrustment~~ Entrustment agreements that are not for the termination of parental rights may be revoked by the birth parent or custodian or ~~child placing agency~~ local board prior to the court's approval of the agreement.

2. ~~Permanent entrustment~~ Entrustment agreements that terminate parental rights shall only be entered into when the birth parent and the ~~child placing agency~~ local board, after counseling about alternatives to permanent relinquishment, agree that voluntary relinquishment of parental rights and placement of the child for adoption are in the child's best interests. When a ~~child placing agency~~ local board enters into a permanent entrustment agreement, the child-placing agency shall make diligent efforts to ensure the timely finalization of the adoption.

3. ~~Local departments shall submit~~ Submission of a petition for approval of the entrustment agreement to the juvenile and domestic relations court ~~pursuant to § 63.2-903~~ shall be in accordance with § 16.1-277.01 of the Code of Virginia.

C. A child may be placed in foster care by a birth parent or custodian entering into a noncustodial foster care agreement with the local department where the birth parent or custodian retains legal custody and the local department assumes placement and care of the child.

1. A noncustodial foster care agreement shall be signed by the local department and the birth parent or custodian and shall address (i) the conditions for care and control of the child; and (ii) the rights and obligations of the child, birth parent or custodian, and the local department. Local departments shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian when such an agreement is in the best interest of the child. When a noncustodial foster care agreement is executed, the permanency goal shall be reunification and continuation of the agreement is subject to the cooperation of the birth parent or custodian and child.

2. The plan for foster care placement through a noncustodial foster care agreement shall be submitted to the court for approval within ~~60~~ 45 days of the child's entry into foster care. Submission of a petition for approval of a noncustodial agreement to the juvenile and domestic

relations court shall be made in accordance with § 16.1-281 of the Code of Virginia.

3. When a child is placed in foster care through a noncustodial foster care agreement, all foster care requirements shall be met.

22VAC40-201-35. Reentry into foster care from commitment.

A. In the event the youth was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice (DJJ) and has not attained the age of 18 years, the local board shall resume custody upon the youth's release from commitment, unless an alternative arrangement for the custody of the youth has been made and communicated in writing to DJJ. At least 90 days prior to the youth's release from commitment on parole supervision the local department shall consult with the court service unit on the youth's return to the locality and collaborate to develop a foster care plan that prepares the youth for successful transition back to the custody of the local department or to an alternative custody arrangement, if applicable. The plan shall identify services necessary for the transition and how the services are to be provided.

B. The foster care plan shall be submitted to the court for approval within 45 days of the youth's reentry into foster care. Submission of a petition for approval of the foster care plan to the juvenile and domestic relations district court shall be made in accordance with § 16.1-281 of the Code of Virginia.

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to notify in writing all adult relatives that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

B. The local department shall ensure a child in foster care is placed in a licensed or an approved home or licensed facility that complies with all applicable federal and state requirements for safety. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in a licensed or an approved home or licensed facility:

1. The local department shall ~~make diligent efforts~~ exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.
2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.
3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity

of connections, and provide educational stability for the child.

4. The local department shall ~~make diligent efforts~~ take reasonable steps to place the child with siblings unless such a joint placement would be contrary to the safety or well-being of the child or siblings.

5. The local department shall, when appropriate, consider placement ~~with a resource parent in a dually approved home~~ so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.

6. The local department shall not delay or deny placement of a child into a foster family placement on the basis of race, color, or national origin of the foster or resource parent or child.

7. When a child being placed in foster care is of native American, Alaskan Eskimo, or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of a ~~the~~ child of native American heritage. The local department may contact the ~~Virginia Council on Indians~~ Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

~~B. C.~~ A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

~~C. D.~~ Foster, or adoptive, or resource family homes shall meet standards established by the board and shall be approved by child-placing agencies. ~~Group homes and residential facilities shall be licensed by the appropriate licensing agency. Local departments shall verify the licensure status of the facility prior to placement of the child~~ Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a children's residential facility, the local department

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shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

~~D. E.~~ Local departments shall receive notice of the approval by the receiving state from the department's office of the ICPC prior to placing a child out of state.

~~E. F.~~ When ~~a child is to be placed in a home in the local department is considering placement of a child in a foster or adoptive home approved by another local department's jurisdiction department~~ within Virginia, the local department intending to place the child shall ~~notify the local department that approved the home that the home is being considered for the child's placement.~~ The local department shall also verify that the home is still approved and shall ~~consult with the approving local department about placement of the child.~~

~~F. G.~~ When a child is moving with a foster, or adoptive, or resource family is moving from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster, or adoptive, or resource family is moving.

~~G. H.~~ When a child moves with a foster, or adoptive, or resource family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

~~H. I.~~ A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

~~I. J.~~ In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. ~~The birth parent or prior custodian shall be involved in the decision-making process regarding the placement change prior to a final decision being made.~~ ~~1.~~ The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

~~2.~~ ~~K.~~ In the case ~~of an~~ where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The ~~child placing agency~~ local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-50. Initial foster care placement activities.

A. Information on every child in foster care shall be entered into the department's automated child welfare system ~~in accordance with guidance in the initial placement activities section of the Foster Care Manual.~~

B. The local department shall assess the child for Title IV-E eligibility. The local department shall also refer the child for all financial benefits to which the child may be eligible, including but not limited to Child Support, ~~Title IV-E,~~ SSI, other governmental benefits, and private resources.

C. The service worker shall ensure that the child receives a medical examination no later than 30 days after initial placement. The child shall be provided a medical evaluation within 72 hours of initial placement if conditions indicate such an evaluation is necessary. Dental appointments shall be scheduled every six months as age appropriate, and physicals shall be scheduled at regular intervals.

~~D. The~~ In accordance with § 22.1-3.4 of the Code of Virginia, the local department shall collaborate with the appropriate local educational agencies school division to ensure that the child remains in his previous school placement when it is a joint determination that it is in the best interests of the child. If remaining in the same school is not in the best interests of the child, the service worker shall enroll the child in an appropriate new school as soon as possible but no more than 72 hours after placement.

1. The child's desire to remain in his previous school setting shall be considered in making the decision about which school the child shall attend.

2. The service worker, in cooperation with the birth parents or prior custodians, foster care providers, and other involved adults, shall coordinate the school placement.

3. If remaining in the same school is jointly determined to be in the best interests of the child, the local department shall arrange for transportation for the child to remain in that school unless the child requires specialized transportation documented in the Individualized Education Program (IEP) for the child, which is funded by the responsible school division.

4. The local department shall document in writing the joint determination with the local school division of the child's best interest for school placement.

5. If the joint determination process cannot be completed prior to the placement in the new residence, the child will remain in the same school until the best interest determination is completed.

E. Within 72 hours of placing a school age child in a foster care placement, the local department making the placement shall give written notification to the principal of the school in which the child is to be enrolled and the superintendent of the relevant school division of the placement and notify the principal of the status of parental rights.

22VAC40-201-60. Assessment.

A. Assessments shall be conducted in a manner that respectfully involves children and birth parents or prior custodians to give them a say in what happens to them an opportunity for shared decision making. Decision making shall include input from children, youth, birth parents or prior

custodians, and other interested individuals. Assessments shall be used both in the establishment of foster care goals and also to inform service plans.

~~B. The initial foster care assessment shall result in the selection of a specific permanency goal. In accordance with guidance in the assessment section of the Foster Care Manual, the local department shall complete the PPI during the initial foster care assessment to assist in determining if a concurrent goal should be selected.~~

~~C. B. The initial foster care assessment shall be completed within time frames developed by the department but shall not exceed 30 calendar days after acceptance of the child in a foster care placement.~~

~~4. C. When a child has been removed from his home as a result of abuse or neglect, the initial foster care assessment shall include a summary of the Child Protective Services' safety and risk assessments.~~

~~2. D. The history and circumstances of the child, the birth parents or prior custodians, or other interested individuals shall be assessed at the time of the initial foster care assessment to determine their service needs. The initial foster care assessment shall:~~

- ~~a. 1. Include a comprehensive social history;~~
- ~~b. 2. Utilize assessment tools designated by the department;~~
- ~~c. 3. Be entered into the department's automated child welfare system; and~~
- ~~d. 4. Include a description of how the child, youth, birth parents or prior custodians, and other interested individuals were involved in the decision making process.~~

~~D. The service worker shall refer the child; birth parents or prior custodians; and foster, adoptive or resource parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.~~

~~E. Assessments of Assessment shall be ongoing and evaluate the effectiveness of services to the child; birth parents or prior custodians; and foster, or adoptive, or resource parents and the need for additional services shall occur at least every three months as long as the goal is to return home. For all other goals, assessments of the effectiveness and need for additional services shall occur at least every six months after placement for as long as the child remains in foster care. ~~The assessments shall be completed in accordance with guidance in the assessment section of the Foster Care Manual.~~~~

~~F. The service worker shall refer the child, birth parents or prior custodians, and foster or adoptive parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.~~

22VAC40-201-70. Foster care goals.

A. Foster care goals are established to assure permanency planning is achieved for the child. ~~Priority shall be given to~~

~~the goals listed in subdivisions 1, 2, and 3 of this subsection, which are recognized in federal legislation as providing children with permanency. The selection of goals other than those in subdivisions 1, 2, and 3 of this subsection must include documentation as to why each of these first three goals were not selected. Foster Permissible foster care goals are:~~

- ~~1. Return Transfer custody to a parent or a prior custodian;~~
- ~~2. Transfer of custody of the child to a relative other than his prior family;~~
- ~~3. Adoption. Finalize adoption;~~
- ~~4. Permanent Place the child in permanent foster care;~~
- ~~5. Independent Transition to independent living, if the child is admitted to the United States as a refugee or asylee; or~~
- ~~6. Another Place the child in another planned permanent living arrangement in accordance with § 16.1-282.1 A 2 of the Code of Virginia.~~

~~B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:~~

- ~~1. Approve the foster care service plan seeking to change the permanency goal to adoption; and~~
- ~~2. Terminate parental rights.~~

~~Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.~~

~~C. The goal of permanent foster care shall only be considered for children age 14 and older in accordance with guidance in the section on choosing a goal in the Foster Care Manual. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.~~

~~D. When the goal for the youth is to transition to independent living, the local department shall provide services pursuant to guidance in the section on choosing a goal in the Foster Care Manual.~~

~~E. D. The goal of another planned permanent living arrangement may be chosen when the court has found that none of the alternative permanency goals are appropriate and the court has found the child to:~~

- ~~1. Have The child has a severe and chronic emotional, physical, or neurological disabling condition; ~~and~~~~
- ~~2. Require The child requires long-term residential care for the condition; and~~
- ~~3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in another planned~~

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permanent living arrangement is approved as the permanent goal for the child.

~~F. These permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated. Although one goal may appear to be the primary goal, other goals shall be continuously explored and planned for as appropriate.~~

E. If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall continue to evaluate the best interest of the child and the changing circumstances of the child and extended family.

F. The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee or those youth age 18 years leaving foster care and meeting the requirements to receive independent living services. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.

22VAC40-201-80. Service Foster care plans.

A. Every child in foster care longer than 45 days shall have a current service written foster care plan approved by the court within 60 days of entry into foster care. The service foster care plan shall specify the assessed permanency goal and when appropriate the concurrent permanency goal, and shall meet all requirements set forth in federal or state law. The In the development of the service foster care plan, the local department shall occur through shared decision making between the local department, consider input from the child, the birth parents or prior custodians, the foster, or adoptive, or resource parents, and any other interested individuals, who may include service providers. All of these partners persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

B. ~~A service~~ The foster care plan shall be written after the completion of a thorough the assessment. Service Foster care plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians, and siblings, grandparents, or other interested individuals for all children in foster care shall be developed and presented to the court as part of the service foster care plan in accordance with § 63.2-900.2 of the Code of Virginia. ~~A plan shall not be required if such visitation is not in the best interest of the child.~~

22VAC40-201-90. Service delivery.

A. ~~Permanency planning services~~ Services shall be provided to support the safety and well-being of the child. Services to children and birth parents or prior custodians shall be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested individuals continue until evidence indicates the services are either not effective to reach the child's goal or no longer necessary because the goal has been achieved, or the birth parent or prior custodian has refused services.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing ~~timely notifications and~~ full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal ~~when indicated~~ and the implications of concurrent permanency planning for the child and birth parents or prior custodians. ~~Child placing agencies~~ Local departments shall also make timely notifications notify the birth parents or prior custodians concerning placement changes, hearings and meetings regarding the child, and assessments of needs and case progress, and responsiveness shall be responsive to the requests of the child and birth parents or prior custodians.

~~C. Services to children and birth parents or prior custodians shall continue until an assessment indicates the services are no longer necessary. Services to achieve concurrent permanency goals shall be provided to support achievement of both permanency goals.~~

~~D. C.~~ In order to meet the child's permanency goals ensure that permanency is achieved for the child, services may be provided to extended family relatives or other interested individuals who are assessed to be potential permanency options for the child and may continue until an assessment indicates the services are no longer necessary.

D. Developmental and medical examinations shall be provided for the child in foster care in accordance with the Virginia Department of Medical Assistance Services' Early Periodic Screening Diagnosis and Treatment (EPSDT) schedule in the Virginia EPSDT Periodicity Chart. Dental examinations shall be provided for the child in accordance with the American Academy of Pediatric Dentistry's Periodicity and Anticipatory Guidance Recommendations (Dental Health Guidelines-Ages 0-18 Years, Recommendations for Preventive Pediatric Dental Care (AAPD Reference Manual 2002-2003)) as determined by the Virginia Department of Medical Assistance Services. As indicated through assessment, appropriate health care services shall include trauma, developmental, mental health, psychosocial, and substance abuse services and treatments. Local departments shall follow the protocols for appropriate and effective use of psychotropic medications for children in foster care disseminated by the department.

E. All children in foster care shall have a face-to-face contact with an approved ~~case~~ service worker at least once per calendar month regardless of the child's permanency goal or placement ~~and in accordance with guidance in the service delivery section of the Foster Care Manual and the Adoption Manual. The majority~~ More than 50% of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

~~F. Supportive services to foster, adoptive, and resource parents shall be provided.~~ 1. The local department shall enter into a placement agreement developed by the department with the foster, or adoptive, or resource parents. The As required by § 63.2-900 of the Code of Virginia, the placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement as required by § 63.2-900 of the Code of Virginia.

1. Services to prevent placement disruptions shall be provided to the foster and adoptive parents.

2. Foster, and adoptive, ~~and resource~~ parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with ~~22VAC241-400~~ 22VAC40-211-100 to assess service needs and progress.

3. Foster, and adoptive, ~~and resource~~ parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal, and complete educational, medical, and behavioral information. All information shall be kept confidential by the foster and adoptive parents.

4. Foster, and adoptive, ~~and resource~~ parents shall be given ~~appropriate sections of the foster care service plan.~~ Information in the service plan that is prohibited from being released shall not be provided to the foster parent, in accordance with § 16.1-281 B and C of the Code of Virginia.

~~5. If needed, services to stabilize the placement shall be provided.~~

6. 5. Respite care for foster, and adoptive, ~~and resource~~ parents may be provided on an emergency or planned basis ~~in accordance with criteria developed by the department.~~

7. 6. The department shall make ~~a contingency fund~~ funds available to provide reimbursement to local departments' foster ~~and resource~~ parents for damages ~~pursuant to § 63.2-911 of the Code of Virginia and according to department guidance~~ to property caused by children placed in the home. Provision of reimbursement is contingent upon the availability of funds.

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster, or adoptive ~~or resource~~ family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services ~~may~~ shall be provided to all youth ages 14 to 18 years and ~~may~~ shall be ~~provided until the youth reaches age 21~~ offered to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency.

C. The ~~child placing agency~~ local department may offer a program of independent living services that meets the youth's needs such as education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. ~~Child placing agencies~~ Local departments shall assess the youth's independent living skills and needs ~~in accordance with guidance in the service delivery section of the Foster Care Manual~~ and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 years may continue to receive independent living services from the ~~child placing agency~~ local department between the ages of 18 and 21 years if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 years and older is eligible to live in an independent living arrangement provided the ~~child placing agency~~ local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a ~~child placing agency~~ local department and chooses to discontinue receiving independent living services after age 18 ~~but prior to his 21st birthday~~ years may request a resumption of independent living services ~~in accordance with § 63.2-905.1~~

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~~of the Code of Virginia provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the person's transition plan.~~

~~H. Child placing agencies~~ Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;
2. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and
3. Provides written notice of his intent to receive independent living services and enters into a written agreement which sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.

~~I. J.~~ Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. File petitions in accordance with the requirements for the type of hearing.
2. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the ~~child placing agency~~ service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.
3. Inform the court of reasonable efforts made to achieve concurrent permanency goals ~~in those cases where a concurrent goal has been identified.~~

B. An administrative panel review shall be held six months after a permanency planning hearing when the ~~goals goal of adoption, permanent foster care, or independent living have~~ has been approved by the court ~~unless the court requires more frequent hearings. A foster care review hearing will be held annually.~~ The child will continue to have Administrative Panel Reviews ~~administrative panel reviews~~ or review

hearings every six months until ~~a final order of adoption is issued or~~ the child reaches age 18 years.

C. The local department shall invite the child; the birth parents or prior custodians when appropriate; and the child's foster; or adoptive, ~~or resource~~ parents; placement providers; guardian ad litem; court appointed special advocate (CASA); relatives; and ~~other interested individuals~~ service providers to participate in the administrative panel reviews.

D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. ~~All interested individuals~~ Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. A supervisory review is required every six months for youth ages 18 to 21.

F. ~~When~~ In accordance with § 16.1-242.1 of the Code of Virginia, ~~when~~ a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

G. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

H. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

22VAC40-201-120. Funding.

A. The local department is responsible for establishing a foster child's eligibility for federal, state, or other funding sources and making required payments from such sources. ~~State pool funds shall be used~~ Local departments shall seek state pool funds for a child's maintenance and service needs when other funding sources are not available.

B. The assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source.

C. ~~Local departments shall reimburse foster or resource parents for expenses paid by them on behalf of the foster child when the expenses are preauthorized or for expenses paid without preauthorization when the local department deems the expenses are appropriate.~~

~~D. C.~~ The child's eligibility for Title IV-E funding shall be redetermined upon a change in situation and in accordance with federal Title IV-E eligibility requirements, ~~the Title IV-E Eligibility Manual, October 2005, and the Adoption Manual.~~

E. The service worker is responsible for providing the eligibility worker information required for the annual redetermination of Medicaid eligibility and information related to changes in the child's situation.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age;
2. When the court releases the child from the local department's custody prior to the age of 18 years;
3. When a ~~voluntary placement agreement~~ temporary entrustment or noncustodial agreement has expired, been revoked, or been terminated by the court;
4. When the foster care child is committed to ~~DJJ~~ the Department of Juvenile Justice; or
5. When the final order of adoption is issued.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules ~~of~~ established by the Library of Virginia.

C. Any foster care youth who has reached age 18 years has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

A. The director of a local department or his designee may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.

B. Pursuant to § 63.2-908 of the Code of Virginia, a foster ~~or resource~~ parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement ~~which~~ that has been approved by the court.

C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or ~~resource~~ licensed child-placing agency parent for a child in the custody of that local department. ~~The employee can be a foster, adoptive, or resource parent for another local department or licensed child-placing agency or~~ In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for ~~service~~ foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the ~~service~~ foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments, ~~services,~~ in accordance with 42 USC § 675(4)(B) and Medicaid, ~~and child support services based on federal law and in accordance with guidance in the Foster Care Manual and the Adoption Manual~~ in accordance with 42 USC § 672(h).

E. When a child in foster care is committed to the Department of Juvenile Justice (~~DJJ~~), the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18 years, the local department shall maintain a connection with the child ~~in accordance with guidance developed by the department.~~

F. At least 90 days prior to a youth's release from commitment to the Department of Juvenile Justice, the local department shall:

1. Consult with the court services unit concerning the youth's return to the locality; and
2. Work collaboratively with the court services unit to develop a plan for the youth's successful transition back to the community, which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

22VAC40-201-150. Adoption Resource Exchange of Virginia.

A. The Adoption Resource Exchange of Virginia (AREVA) is a service offered by the department that connects families with children who are available for adoption within the Commonwealth of Virginia. AREVA is one tool used to help local departments reach the federal goal of permanency within 24 months specified in § 471 of the Title IV-E of the Social Security Act (42 USC § 671) and the requirement of § 16.1-283 F of the Code of Virginia to file reports to the court on progress towards adoption. The purpose of AREVA is to increase opportunities for children waiting to be adopted by providing services to child-placing agencies having custody of these children. The services provided by AREVA include, but are not limited to:

1. Maintaining a registry of children awaiting adoption and a registry of approved parents waiting to adopt;
2. Preparing and posting an electronic photo-listing of children ~~with special needs~~ awaiting adoption and a photo-listing of parents awaiting placement of a child ~~with special needs~~;
3. Providing information and referral services for children who have special needs to link child-placing agencies with other adoption resources;
4. Providing ongoing targeted and child-specific recruitment efforts for waiting children;
5. Providing consultation and technical assistance on child-specific recruitment to child-placing agencies for waiting children; and

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6. Monitoring local departments' compliance with legal requirements, guidance, and policy on registering children and parents.

B. For a child in foster care that has the foster care plan goal of adoption as specified in § 63.2-906 of the Code of Virginia and whose parental rights have been terminated, the child-placing agency shall register the child with AREVA within 60 days of termination of parental rights.

C. Child-placing agencies shall comply with all of the AREVA requirements according to guidance in the Adoption Manual.

22VAC40-201-160. Adoption assistance. (Repealed.)

A. An adoption assistance agreement shall be executed by the child placing agency for a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs as defined in 22VAC40-201-10 and meet the following criteria:

1. Be under 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or

2. Be under 18 years of age and in the placement and care of a child placing agency at the time the petition for adoption is filed and be placed by the child placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. The types of adoption assistance for which a child may be eligible are:

1. Title IV-E adoption assistance if the child meets federal eligibility requirements.

2. State adoption assistance when the child's foster care expenses were paid from state pool funds or when the child has a conditional agreement and payments are not needed at the time of placement into an adoptive home but may be needed later and the child's foster care expenses were paid from state pool funds. A conditional adoption assistance agreement allows the adoptive parents to apply for state adoption assistance after the final order of adoption. A conditional adoption assistance agreement shall not require annual certification.

D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance

E. Three types of payments may be made on behalf of a child who is eligible for adoption assistance:

1. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include:

(1) Attorney fees directly related to the finalization of the adoption;

(2) Transportation and other expenses incurred by adoptive parents related to the placement of the child. Expenses may be paid for more than one visit;

(3) Court costs related to filing an adoption petition;

(4) Reasonable and necessary fees related to adoption charged by licensed child placing agencies; and

(5) Other expenses directly related to the finalization of the adoption.

2. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. In these cases a conditional adoption assistance agreement may be entered into. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.

a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.

c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate and:

(1) The child reaches a higher age grouping, as specified in guidance for foster care maintenance rates; or

(2) Statewide increases are approved for foster care maintenance rates.

3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs. Special service payments shall be time limited based on the needs of the child.

a. Types of expenses that are appropriate to be paid are included in the Adoption Manual.

b. A special service payment may be used for a child eligible for Medicaid to supplement expenses not covered by Medicaid.

c. Payments for special services are negotiated with the adoptive parents taking into consideration:

- (1) The special needs of the child;
- (2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and
- (3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

d. The rate of payment shall not exceed the prevailing community rate.

e. The special services adoption assistance agreement shall be separate and distinct from the adoption assistance agreement for maintenance payments and nonrecurring expenses.

F. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:

1. Shall be executed within 90 days of receipt of the application for adoption assistance;
2. Shall be signed before entry of the final order of adoption;
3. Shall specify the amount of payment and the services to be provided, including Medicaid; and
4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.

G. Procedures for the child whose eligibility for adoption assistance is established after finalization shall be the same as for the child whose eligibility is established before finalization except the application shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs and the child otherwise meets the eligibility requirements of subsection B of this section for adoption assistance payments. Application for adoption assistance after finalization shall be for state adoption assistance.

H. The adoptive parents shall annually submit an adoption assistance affidavit to the local department in accordance with guidance in the Adoption Manual.

I. The local department is responsible for:

1. Payments and services identified in the adoption assistance agreement, regardless of where the family resides; and
2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due.

J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental

disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions the adoption assistance may continue until the child reaches the age of 21.

K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving financial support from the adoptive parents; or
2. The adoptive parents are no longer legally responsible for the child.

L. Child placing agencies are responsible for informing adoptive parents in writing that they have the right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. Applicants for adoption assistance shall have the right to appeal adoption assistance decisions related to:

1. Failure of the child placing agency to provide full factual information known by the child placing agency regarding the child prior to adoption finalization;
2. Failure of the child placing agency to inform the adoptive parents of the child's eligibility for adoption assistance; and
3. Decisions made by the child placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services, and changing or terminating adoption assistance.

22VAC40-201-161. Adoption assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs in accordance with §§ 63.2-1300 and 63.2-1301 of the Code of Virginia and meet the following criteria:

1. Be younger than 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or
2. Be younger than 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the foster parents have filed a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. Adoption assistance may include the following payments or services where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.
2. State-funded maintenance payments when the local department determines that (i) the child does not meet the

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requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673); (ii) the child is a child with special needs; (iii) the child's foster care expenses were paid from state pool funds or Title IV-E; and (iv) an adoption assistance payment is necessary to facilitate an adoption.

3. A state-funded special service payment is used to help meet the child's physical, mental, emotional, or dental needs. Special service payments when the child is in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, when the child meets the criteria of a child with special needs set out in § 63.2-1300 of the Code of Virginia, and when the adoptive parents are capable of providing permanent family relationships needed by the child in all respects except financial.

4. Nonrecurring expense payments when an adoption assistance agreement is entered into prior to the finalization of the adoption.

D. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) or who is receiving state-funded maintenance payments and has a special medical need as specified in § 32.1-325 of the Code of Virginia and in the Virginia DSS Medicaid Eligibility manual, M0310.102 2b, the adoption assistance agreement shall include a statement indicating the child's Medicaid eligibility status.

E. Additional criteria for the payments and services specified in subsection C of this section are as follows:

1. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates, or it is determined through negotiation, that the payment is not needed. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.

a. The amount of the payment shall be negotiated by a representative of the department with the adoptive parents, taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.

c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate and (i) the child reaches a higher age grouping, as specified in guidance for foster care maintenance rates or (ii) statewide increases are approved for foster care maintenance rates.

2. The special service payment shall be directly related to the child's special needs listed on the adoption assistance agreement. Special service payments shall be time limited

based on the needs of the child and can be modified beyond the original provision of the agreement when the local department and the adoptive parents agree to the modification in a signed and dated addendum. Subsection K of this section addresses addendums to an existing agreement.

a. Types of payments that are appropriate are included in the Chapter F, Section 2 of the VDSS Child and Family Services Manual.

b. A special service payment may be used for a child eligible for Medicaid to supplement payments not covered by Medicaid.

c. Payments for special services are negotiated by a representative of the department with the adoptive parents, taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

d. The rate of payment shall not exceed the prevailing community rate.

e. The special services adoption assistance payments shall be separate and distinct from the maintenance payments and nonrecurring expenses on the adoption assistance form.

3. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include those items set out in § 63.2-1301 D of the Code of Virginia.

4. When the adoptive parents decline a specific payment or agree to a reduced payment amount and their family circumstances or the child's needs change, the adoptive parents may request a change to the agreement and an addendum to the adoption assistance agreement can be negotiated. The requirements for addendums to an existing adoption assistance agreement are in subsection K of this section.

F. All adoption assistance payments, services, and agreements shall be negotiated with the adoptive parents by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, and E of this section. Documentation supporting the requests for payments

and services shall be provided by the adoptive parents and for consideration in the negotiation of the adoption assistance agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the adoption assistance payment.

G. An adoption assistance agreement shall be executed by the local board for a child who has been determined eligible for adoption assistance and when an adoption assistance agreement is necessary to facilitate the adoption. Local departments shall use the adoption assistance agreement form developed by the department. The agreement shall be entered into by the local board and the adoptive parents, or in cases in which the child is in the custody of a licensed child-placing agency, the agreement shall be entered into by the local board, the licensed child-placing agency, and the adoptive parents.

H. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement shall:

1. Be executed within 90 days of receipt of the application for adoption assistance;
2. Be signed before entry of the final order of adoption;
3. Specify the payment types, monthly amounts, special services to be provided; and
4. Remain in effect regardless of the state to which the adoptive parents may relocate.

I. Application for adoption assistance after finalization of the adoption shall be for state adoption assistance as set out in § 63.2-1301 B of the Code of Virginia. The application for adoption assistance shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs.

J. The adoptive parents shall annually submit a signed adoption assistance affidavit to the local department by the end of the month in which the adoption assistance agreement was effective.

K. Adoption assistance agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the adoptive parents agree in writing to the extension, new special services or provisions in an addendum signed and dated by the local department and the adoptive parents. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department. The provisions of the special services and payments specified on the addendum shall still meet the requirements specified in subsections C and D of this section.

L. The local department is responsible for:

1. Maintaining payments and services identified in the adoption assistance agreement and any addendum in effect, regardless of where the family resides;

2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due;

3. Discussing with the adoptive parents the child's unique needs and their ability to manage the needs of the child;

4. Assisting the adoptive parents in coordinating services to meet the child's special needs related to adoption assistance upon request;

5. Providing services to prevent disruption of the placement and strengthen family well-being, when requested by the adoptive parents; and

6. Providing training, when requested, to the adoptive parents as part of an already established local department curriculum. If the local department does not provide the necessary training when requested, the local department shall identify potential training sources and assist the adoptive parent in accessing the training.

M. Adoption assistance shall be terminated when the child reaches the age of 18 years unless the child has a physical or mental disability or an educational delay resulting from the child's disability that warrants continuation of the adoption assistance. If a child has a physical or mental disability that warrants continuation of the adoption assistance, the adoption assistance payments may continue until the child reaches the age of 21 years if the local department and adoptive parents sign an addendum to the agreement to extend the agreement to the specified age. If the sole reason for continuing the agreement beyond the age of 18 years is educational delay, then state-funded adoption assistance may continue until the youth graduates from high school or until the youth's 21st birthday, whichever is earlier, if the local department and the adoptive parents sign an addendum to the agreement to extend the agreement to the end of the month of high school graduation or until the youth's 21st birthday, whichever is earlier.

N. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving financial support from the adoptive parents; or
2. The adoptive parents are no longer legally responsible for the support of the child.

O. Local boards of social services are responsible for informing adoptive parents in writing of their right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. In accordance with § 63.2-1304 of the Code of Virginia applicants for, and recipients of, adoption assistance shall have the right to appeal adoption assistance decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing adoption assistance.

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22VAC40-201-170. Child placing agency's responsibilities for consent in non-agency nonagency adoptive placements.

A. At the request of the juvenile court, the child-placing agency shall:

1. Conduct a home study of the prospective adoptive home ~~that shall include the elements in §§ 63.2-1231 and 63.2-1205.1 of the Code of Virginia and department guidance in Volume VII, Section III, Chapter D—Adoption/Non-Agency Placement and Other Court Services of the Service Program Manual of the Virginia Department of Social Services, October 2009~~ taking into consideration that the manner in which a family receives a child for adoption shall have no bearing on how the family is to be assessed for purposes of adoptive placement; and
2. Provide the court with a written report of the home study.

B. The child-placing agency shall make a recommendation to the court regarding the suitability of the individual to adopt.

C. ~~If As provided in §§ 63.2-1218 and 63.2-1219 of the Code of Virginia, if the child-placing agency suspects an exchange of property, money, services, or any other thing of value has occurred in violation of law in the placement or adoption of the child, it shall report such findings to the commissioner for investigation. The following exceptions apply:~~

1. ~~Reasonable and customary services provided by a licensed or duly authorized child placing agency, and fees paid for such services;~~
2. ~~Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings and for expenses incurred for medical care for the child;~~
3. ~~Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;~~
4. ~~Usual and customary fees for legal services in adoption proceedings; and~~
5. ~~Payment or reimbursement of reasonable expenses incurred by the adoptive parents for transportation in inter-country placements and as necessary for compliance with state and federal law in such placements.~~

22VAC40-201-200. Training.

A. Local department ~~foster care and adoption service~~ workers and supervisory staff shall attend and complete initial in-service training in accordance with ~~guidance in the Foster Care Manual and the Adoption Manual §§ 63.2-913 and 63.2-1200.1 of the Code of Virginia.~~

~~B. Local department foster care and adoption workers and supervisory staff shall complete an individual training needs assessment using a method developed by the department.~~

~~C. B. Local department foster care and adoption service~~ workers and supervisory staff shall attend and complete annual in-service training in accordance with guidance developed by the department.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name 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 (22VAC40-201)

[Virginia Application for Adoption Assistance, 032-04-0093-00-eng \(eff. 3/2012\)](#)

[Virginia Adoption Assistance Agreement, 032-04-0090-00-eng \(eff. 7/2014\)](#)

[Addendum to Adoption Assistance Agreement, 032-04-0086-00-eng \(eff. 3/2012\)](#)

[Adoptee Application for Disclosure \(and Guidelines Regarding the Application\), 032-02-0018-03-eng \(eff. 8/2013\)](#)

DOCUMENTS INCORPORATED BY REFERENCE

~~Child & Family Services Manual, Chapter E—Foster Care, July 2011, Virginia Department of Social Services~~

~~Service Program Manual, Volume VII, Section III, Chapter C—Adoption/Agency Placement, October 2009/March 2010, Virginia Department of Social Services~~

~~Service Program Manual, Volume VII, Section III, Chapter D—Adoption/Agency Placement, October 2009, Virginia Department of Social Services~~

~~Title IV E Eligibility Manual (E. Foster Care), January 2012, Virginia Department of Social Services~~

[Medicaid Eligibility Manual, M0310, Non-IV-E Adoption Assistance, Virginia Department of Social Services](#)

[Virginia EPSDT Periodicity Chart, Virginia Department of Medical Assistance Services](#)

[Periodicity and Anticipatory Guidance Recommendations, AAPD/ADA/AAP Guidelines, Dental Health Guidelines - Ages 0 - 18 Years, Recommendations for Preventive Pediatric Dental Care \(AAPD Reference Manual 2002-2003\)](#)

[Child and Family Services Manual, Chapter E Foster Care, Section 17.1.3 Rates, July 2014, Virginia Department of Social Services](#)

[Child and Family Services Manual, Chapter F Adoption, July 2014, Virginia Department of Social Services](#)

VA.R. Doc. No. R13-3751; Filed November 2, 2015, 4:27 p.m.

Final Regulation

Title of Regulation: 22VAC40-661. Child Care Program (amending 22VAC40-661-10, 22VAC40-661-30 through 22VAC40-661-80; adding 22VAC40-661-100).

Statutory Authority: § 63.2-217 of the Code of Virginia; 45 CFR 98.11.

Effective Date: February 1, 2016.

Agency Contact: Mary Ward, Subsidy Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, or email mary.ward@dss.virginia.gov.

Summary:

The amendments modify the current child care subsidy program to facilitate the development and implementation of a statewide child care automation system and to expedite the automation process by ensuring uniform statewide child care guidance.

The amendments include (i) new requirements for vendors; (ii) a limitation on fees and rates paid by the program; (iii) a requirement for applicants to be at least 18 years of age; (iv) a requirement for both applicants and recipients to cooperate with the Division of Child Support Enforcement as a condition of eligibility; (v) a requirement that appellants refund the cost of services paid during the appeals process when the local department's decision is upheld; (vi) a decrease in the time allowed for processing applications; (vii) the use of the administrative disqualification hearing process to hear certain cases of alleged recipient fraud; (viii) the establishment of a time limitation for receipt of benefits in the fee program; and (ix) a change to require that overpayments caused as a result of a local department error be repaid to the state Department of Social Services with local funds.

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.

22VAC40-661-10. Definitions.

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

"ADH" means an administrative disqualification hearing, an impartial review by a state hearing officer of [~~an individual's~~ a recipient's] actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the

Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check, and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, ~~or~~ collect, and disburse child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, [~~mental retardation~~ intellectual disability], emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cooperate with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services must provide the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless a basis for good cause for noncooperation is determined by the program.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support, or child and spousal support.

"Department" means the State Department of Social Services.

"Family" means any individual, adult, or adults and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the federal Department of Health

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and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fee program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive [benefits or] services one is not entitled to receive.

~~"FSET" means Virginia's Food Stamp Employment and Training Program, a multi component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.~~

"Good cause" means a valid reason why a parent in a two-parent household, ~~or any other person under Virginia law responsible for the support of the children~~ cannot provide the needed child care, or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

~~["In loco parentis" means an adult with whom the child is living who has assumed responsibility for the day to day care and supervision of the child.]~~

"Intentional program violation" means fraudulent action by a [~~client~~ recipient] for the purpose of establishing or maintaining the family's eligibility for child care subsidy, increasing or preventing a reduction in the amount of the subsidy, or causing an improper payment to be made by intentionally giving false or misleading information.

["Level one provider" means a child care provider that is unlicensed or unregulated.]

"Level two provider" means a child care provider [~~who~~ that] is licensed by the Department of Social Services, [approved by the Department of Education,] approved by a licensed family day system, approved under local ordinance according to § 15.2-914 of the Code of Virginia, or federally approved.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the [~~state~~] Child Care and Development Fund [~~plan~~ Plan for Virginia, FFY 2014-2015, effective October 1, 2013,] filed with the ~~United States~~ U.S. Department of Health and Human Services.

"Noncooperation with DCSE" means failure of an applicant or recipient to provide the local department or the Division of Child Support Enforcement with information required to establish paternity or an order for child support, without good cause.

"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the [primary] adult [or emancipated minor (as defined in § 16.1-334 of the Code of Virginia who acts as the primary) caretaker or guardian of a child.

"Provider" means a person, entity, or organization providing child care services.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"SNAP" means the Supplemental Nutrition Assistance Program, a program administered by the [~~United States~~ U.S.] Department of Agriculture to reduce hunger and increase food security.

"SNAPET" means Supplemental Nutrition Assistance Program Employment and Training, which provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

~~"Subsidy programs" program" means the department programs program that assist assists low income eligible families with the cost of child care, including the TANF child care program and the income eligible child care programs.~~

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

22VAC40-661-30. Child care programs.

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. TANF Child Care Program. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:
 - a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or
 - b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.
2. Income eligible child care programs.
 - a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.
 - b. Head Start child care. Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.
 - c. Fee child care. Fee child care subsidy and services are made available to children in eligible low income families who are not receiving TANF, not in the Head Start Program, and who meet the eligibility criteria for child care, to the extent of available funding is available.
3. ~~Food Stamp~~ SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's ~~FSET~~ SNAPET program to allow participation in an approved activity.

22VAC40-661-40. State income eligible scale and copayments.

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty guidelines for their locality not to exceed 85% of the state median income. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except certain disregarded income [: Supplemental Security Income; TANF benefits, including TANF match payments; transitional payments of \$50 per month to former VIEW participants; diversionary assistance payments; general relief; ~~food stamp benefits; SNAP benefits; value of USDA donated food; benefits received under Title VII, Nutrition Program for the~~

Elderly of the Older Americans Act of 1965; value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; ~~and, scholarships, loans, or grants for education except any portion specified for child care; basic allowance for housing for military personnel living on base; clothing maintenance allowance for military personnel; payment to AmeriCorps volunteers; tax refunds; lump sum insurance payments; monetary gifts for one-time occasions or normal annual occasions; payments made by nonfinancially responsible third parties for household obligations, unless payment is made in lieu of wages; loans or money borrowed; money received from sale of property, earnings less than \$25 a month; capital gains; withdrawals of bank deposits; GI Bill benefits; reimbursement, such as for mileage; foreign government restitution payments to Holocaust survivors; payments from the Agent Orange Settlement Fund or any other fund established for settlement of agent orange product liability litigation; and monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c)].~~

[~~Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.]~~

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility ranging from 5.0% to 10% of the family's income, taking family size and income into account, except that families whose gross monthly income is at or below the federal poverty guidelines who are recipients of TANF, participants in the ~~FSET~~ SNAPET program, or families in the Head Start program will have no copayment. The family's copayment will be calculated using the following chart:

EDITOR'S NOTE: The Monthly Income Levels by Percent of Poverty and Household Size table in this subsection is not amended in this regulatory action; therefore, the table is not set out.

~~C. Five-year limit. Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.~~

~~D. Waiting list. Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.~~

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22VAC40-661-57. Provider requirements.

A. Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. Providers and other individuals required to have background checks according to § 63.2-1725 of the Code of Virginia who are not otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B. Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

C. Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is available through the department at for a cost of less than \$20 per participant nominal fee.

D. All providers who participate in the subsidy program must sign a department-approved agreement that will be based on the level of regulation of the provider. The provider's signature confirms his agreement to comply with the terms of the agreement, including payment processes, absences, and attendance tracking.

E. All providers who participate in the subsidy program must have a working telephone at each site at which child care is provided, as required by the department-approved agreement.

[F. Disputes between the provider and the department regarding the payment for services rendered, including decisions made pursuant to the department-approved agreement, or the finding of fraud committed by the provider, may be appealed by the provider pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). This shall be the sole remedy for such disputes.]

22VAC40-661-60. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.

2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is

appropriate as determined by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the reimbursable rate for care of children who do not have special needs.

3. Providers will be paid for the amount of care approved up to the maximum reimbursable rate of the jurisdiction in which the provider is located. ~~Local departments must~~ The department will pay the rates and fees providers charge the general public, up to the maximum reimbursable rate, or a negotiated rate that is lower. [Level two providers will be paid a higher maximum reimbursable rate established by the department.]

4. For out-of-state providers, the ~~local department~~ maximum reimbursable rate of the locality in which the local department is located is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-home care. For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration fee. A single annual registration fee, if charged, will be paid to level two providers [only]. The registration fee may not exceed \$100. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, ~~but including special programs, other fees and transportation,~~ must not exceed the maximum reimbursable rate and must be identified as one child care cost.

[D. Up to 10 holidays identified in subsection 7.6 of the department-approved provider agreement will be paid to level two providers. Level one certified preschools, religious exempt, and voluntary registered providers may be paid for holidays, according to provisions in the department-approved vendor agreement. All other level one providers will not receive payment for holidays unless services are provided on that day.]

22VAC40-661-70. Case management.

A. Application and assessment. Parents who are not receiving TANF and who are at least 18 years of age and who wish to request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers. As a condition of eligibility, all applicants and recipients must cooperate with the Division of Child Support Enforcement unless the subsidy program determines that good cause exists for their failure to do so.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of any action deciding or affecting his eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a [~~client~~ recipient] requests an appeal within 10 days of the effective date of the notice of action, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the [~~client~~ recipient] must repay the amount of services paid during the appeal process.

D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within ~~45~~ 30 days.
2. If the determination is made more than ~~45~~ 30 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.
3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the ~~45~~ 30 days due to circumstances beyond their control.
4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.
2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination. Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the fee program is limited to a total of 72 months per family.

Receipt of assistance in any other category does not count toward the 72-month limitation.

H. Waiting list. When sufficient funds are not available [~~in the fee program~~], local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list if the family chooses.

22VAC40-661-80. Fraud.

A. Fraud.

1. When it is suspected that there has been a deliberate misrepresentation of facts in order to receive [benefits,] services [, or payments], the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. Suspected instances of child care fraud shall be referred to the fraud staff for investigation. If there is clear and convincing evidence that fraud has occurred [with either the provider or the household], the case will be referred to the attorney for the Commonwealth to determine if the case will be prosecuted. If the [household's] case does not meet the criteria for prosecution as established by the attorney for the Commonwealth, the case will be referred for an administrative disqualification hearing.

2. Disqualification.

- a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud or an intentional program violation, 12 months upon the second finding, and permanently upon the third finding.
- b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.

B. Repayment. In addition to any criminal punishment, anyone who causes the local department to make an improper ~~vendor~~ provider payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

~~C. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program, as long as a repayment schedule is entered into with the local department and payments are made according to that schedule. If an overpayment was made as result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider.~~

22VAC40-661-100. Administration.

A. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

Regulations

~~B. [Local department error. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider. Any overpayments made as a result of a local department error must be refunded to the Department of Social Services with local only funds. Overpayments. Any overpayment must be refunded to the department by the locality.]~~

[FORMS (22VAC40-661)

~~[60 Month Lifetime Limit Letter \(undated\)](#)~~

~~[Absent Parent/Paternity Information \(undated\)](#)~~

~~[Attesting to the Lack of Information Form \(undated\)](#)~~

~~[Good Cause Communication Form, Child Care Subsidy Program \(undated\)](#)~~

~~[Notice of Cooperation and Good Cause \(undated\)](#)~~

~~[Administrative Disqualification Hearing Decision \(undated\)](#)~~

~~[Notice of Disqualification for Intentional Program Violation \(undated\)](#)~~

~~[Notice of Intentional Program Violation and Penalties \]](#)~~

DOCUMENTS INCORPORATED BY REFERENCE
(22VAC40-661)

~~[Child Care and Development Fund Plan for FFY 2004-2005, Department of Social Services, effective October 1, 2003.](#)~~

[Child Care and Development Fund Plan for FFY 2014-2015, Department of Social Services, effective October 1, 2013](#)

VA.R. Doc. No. R11-2776; Filed November 10, 2015, 10:26 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 22, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency determined this regulation continues to be necessary as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. The agency has not received any comments or complaints regarding this regulation. The regulation is not complex and is easily understood. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was promulgated in 2008 using the model public participation guidelines issued by the Department of Planning and Budget. This periodic review is the first evaluation of this regulation subsequent to its adoption in 2008. No factors have changed since 2008 that necessitate amending this regulation. This regulation places no economic burden on any small business.

Contact Information: Erin Williams, Senior Policy Analyst, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-7157, FAX (804) 371-7679, or email erin.williams@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-80, Requirements Governing the Branding of Cattle in Virginia**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 19, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continued need for this regulation. Many farms that have cattle are small businesses, and this regulation facilitates the tracing and identification of cattle and protects farmers against theft and unlawful dealing in cattle. There have been no comments or complaints received from the public for this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated during a periodic review conducted in 2011. In the period since this regulation was last evaluated,

there have been no significant changes in technology, economic conditions, or other factors.

Contact Information: Dr. Charles Broaddus, Program Manager, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email charles.broaddus@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-190, Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 19, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continued need for this regulation in order to protect the poultry industry in Virginia. Many farms that have poultry are small businesses, and this regulation decreases the potential for the spread of disease among poultry populations. There have been no comments or complaints received from the public for this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated during a periodic review in 2009. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors.

Contact Information: Dr. Charles Broaddus, Program Manager, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email charles.broaddus@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-240, Rules and Regulations for Enforcement of the Grain Handlers Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated September 1, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that this regulation is effective in achieving its goals of protecting Virginia buyers and sellers of grain. Because the selling of grain in Virginia is tremendously important to its economy, there is a continued need for this regulation. The agency has not received any complaints or comments concerning this regulation. This regulation is not complex and is easily understood by industry. The regulation does not overlap, duplicate, or

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conflict with state or federal law. The regulation was last evaluated during a periodic review conducted in 2011. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors that would necessitate a change to this regulation. This regulation assists in ensuring the fair marketing of grain, and the agency does not believe the regulation places any undue burden on small businesses in the grain industry.

Contact Information: Randy Sanford, Grain Law Supervisor; P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3939, FAX (804) 371-7785, or email randy.sanford@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-270, Virginia Grade Standards for Breeder Swine**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 22, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation continues to be needed to provide a fair and equitable grading standard for evaluation of breeder swine. With the ongoing trend of small farms (i.e., small businesses) providing local food, having a regulation in place to evaluate breeding stock for these entities is very beneficial. There have been no comments or complaints received from the public regarding this regulation. This regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The last periodic review of the regulation was in 2011. There have been no changes to technology, economic conditions, or other factors that necessitate amending this regulation.

Contact Information: Michael Carpenter, Program Manager, Livestock Marketing Services; P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0577, FAX (804) 371-0247, or email mike.carpenter@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-350, Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 19, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continued need for this regulation. Tobacco auction warehouses that serve as agents for tobacco farmers on the basis of a fee or commission are required to obtain a license under the Commission Merchant Law (§ 3.2-4709 et seq. of the Code of Virginia). Many farms that grow tobacco are small businesses and the licensing and bonding of commission merchants and the requirements of this regulation, by which commission merchants must abide, provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. There have been no complaints or comments received from the public regarding this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred since the previous periodic review of this regulation in 2011 that would necessitate modifications to this regulation. The agency recommends that the regulation stay in effect without change.

Contact Information: Larry Nichols, Director, Division of Consumer Protection; P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3523, FAX (804) 371-7479, or email larry.nichols@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-360, Regulations for the Enforcement of the Virginia Commercial Feed Act**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 22, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation establishes labeling requirements with which commercial feed manufacturers must comply. Many commercial feed purchasers are farmers who operate small businesses, and this regulation ensures that commercial feed available for purchase is properly formulated and labeled. The labeling requirements established in this regulation also assist commercial feed purchasers in determining whether a given feed will satisfy the nutritional needs of their animals. There have been no complaints or comments received from the public for this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate modifications to this regulation since the previous periodic review of this

regulation in 2011. The agency recommends that the regulation stay in effect without change.

Contact Information: Larry Nichols, Director, Division of Consumer Protection; P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3523, FAX (804) 371-7479, or email larry.nichols@vdacs.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 6, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the Board for Barbers and Cosmetology solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing public participation guidelines, which promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to effectively regulate the occupation or profession. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or contravene federal or state law or regulation. This is the first periodic review of the regulation since becoming effective in 2008. On November 2, 2015, the board reviewed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-20, Barbering and Cosmetology Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 6, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a barber, cosmetology, or nail technician, instructor, salon, or school license, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

The sole comment received during the public comment period supported the regulations and suggested a fee reduction. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. There is an ongoing general review of these regulations, started in response to the 2011 periodic review, currently in the proposed stage. On November 2, 2015, the board reviewed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-40, Wax Technician Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 6, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a wax technician, instructor, salon, or school license, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Since no complaints or comments were received during the public comment period, there does not appear to be a reason

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to amend or repeal the regulation. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. There is an ongoing general review of these regulations currently in the proposed stage. On November 2, 2015, the board reviewed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-50, Tattooing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 6, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooer, instructor, salon, or school license, or apprentice permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Comments received during the public comment period revolved around a select few points, mainly the perceived lack of enforcement of unlicensed practice of tattooing and the differentiation of permanent cosmetic tattooing from tattooing. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2011. On November 2, 2015, the board reviewed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-60, Body-Piercing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 5, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a body-piercing and salon license or an apprenticeship permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2011. On November 2, 2015, the board reviewed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-70, Esthetics Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated November 6, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth

by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an esthetics, master esthetics, instructor, spa, or school license, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

The sole comment received during the public comment period supported the regulations and suggested a fee reduction. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. There is an ongoing general review of these regulations currently in the proposed stage. On November 2, 2015, the board reviewed the regulation and for the reasons determined that the regulation should not be amended or repealed but should be retained in its current form.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Renewal of Existing Variances to Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115)

Nature of Action: The Department of Behavioral Health and Developmental Services sought comment on the applications submitted by five private providers for renewal of existing variances to the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115).

Agency Decision: The State Human Rights Committee voted on October 23, 2015, to approve the applications for variances from certain requirements of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), as listed below.

Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8:

In order to maintain the safety and security of residents (youth) the programs restrict communication via telephone and visitation to only those placed on a list generated at admission by the parent/legal guardian and the resident.

1. Newport News Behavioral Health Center: The visitation list is generated by the Admissions Coordinator.

2. James Barry Robinson Center.

3. Kempsville Center for Behavioral Health: The Clinical Treatment Team is also involved in the creation of the list.

12VAC35-115-50 C 7 and C 8:

4. Virginia Beach Department of Human Services Residential Crisis Stabilization Program - The Recovery Center: Through the first phase of the program, individuals are limited from visits with family and friends, and phone calls are limited to five minutes per shift. There is no limitation on private communication with attorneys, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the inspector general, or employees of the protection and advocacy agency.

Variance to Procedures for Restrictions on Freedoms of Everyday Life:

12VAC35-115-100 A 1 a and A 1 g: In order to utilize a point level system (Behavior Management Model) affecting movement of an individual within the service setting (grounds, community, purchases in program store).

1. Harbor Point Behavioral Health Center.
2. Kempsville Center for Behavioral Health: Requiring an individual earn points through a level system in order to access the store.

Variance to Procedures for Use of Seclusion, Restraint, and Time Out

12VAC35-115-110 C 16: In order to utilize Time Out as part of the Unit Restriction policy.

1. Kempsville Center for Behavioral Health: At times deemed necessary due to unsafe behaviors, to provide additional safety and security measures by preventing movement by an individual from their assigned unit for periods longer than 30 minutes.

Variances to these regulations by the providers listed above are reviewed by the State Human Rights Committee (SHRC) at least annually, with reports to the SHRC regarding the variances as requested.

Contact Information: Deborah Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, or email deb.lochart@dbhds.virginia.gov.

General Notices/Errata

Proposed Renewal of Variances to Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115)

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220 et seq.), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers of Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on the applications for proposed renewal of existing variances to the Human Rights Regulations. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, DBHDS intends to submit a written decision deferring, disapproving, modifying, or approving each variance renewal application. All variances shall be approved for a specific time period. The decision and reasons for variance will be published in a later issue of the Virginia Register of Regulations.

Purpose of notice: DBHDS is seeking comment on the application for proposed new variances to the Human Rights Regulations for the maximum security forensic unit at DBHDS' Central State Hospital (CSH). Rather than the Local Human Rights Committee (LHRC), the formal complaint resolution process would be the responsibility of the Maximum Security Appeals Committee. The population in the maximum security unit typically has a shorter length of stay, and most of them are admitted from and discharged to the criminal justice system. The individuals are better protected by a complaint process that moves at a more rapid pace than the process provided in the Human Rights Regulations. The procedures for addressing patient complaints within the unit would be maintained in CSH Policy RTS-01C. For these reasons, variances are proposed to the regulations listed below would not be applicable to the hospital maximum security forensic unit.

Variance to Procedures to Ensure Dignity:

12VAC35-115-50 D 3 e (5): Abuse, Neglect, and Exploitation

"If the individual affected by the alleged abuse, neglect, or exploitation or his authorized representative is not satisfied with the director's actions, he or his authorized representative, or anyone acting on his behalf, may file an appeal to the Central State Hospital Maximum Security Appeals Committee."

Explanation: This proposed language would direct the individual or authorized representative to the Maximum Security Appeals Committee rather than the Local Human Rights Committee. The individuals are better protected by a complaint process that moves at a more rapid pace than the process provided in the Human Rights Regulations.

Variance to Procedures to Ensure Access to Appropriate Services:

12VAC35-115-60 B 1 d:

"If the individual or his authorized representative is not satisfied with the director's decision or action, he may file an appeal to the Central State Hospital Maximum Security Appeals Committee."

Explanation: This proposed language would direct the individual or authorized representative to the Maximum Security Appeals Committee rather than the Local Human Rights Committee.

Variance to Procedures to Ensure a Fair Hearing of Complaints:

12VAC35-115-140 A 2 and A 4:

"2. Have a timely and fair review of any complaint according to the procedures in CSH Policy RTS-01C Patient and Family Complaint Resolution."

"4. Use this and other complaint procedures; and"

Explanation: This proposed language would direct patients, treatment teams, and authorized representatives to CSH policy describing the Maximum Security Appeals Committee, as opposed to the LHRC as outlined in the state human rights regulations.

Variances to Procedures for Complaint Resolution, Hearing, and Appeals

12VAC35-115-150: General Provisions

"A resident who has followed the procedures of CSH RTS-01C Patient and Family Complaint Resolution, and is not satisfied with the CSH Director's response may appeal the decision to the CSH Maximum Security Appeals Committee. The CSH Maximum Security Appeals Committee shall review the appeal and provide a written response within 21 days. If the complaint is determined by the Appeals Committee to be a founded complaint, the response, which includes recommendations outlining how the complaint should be resolved, shall be forwarded to the director for

resolution. A copy shall be sent to the human rights advocate. This is the final level of appeal."

Explanation: This proposed language explains the function of the Maximum Security Appeals Committee and the time for turnaround of responses. It also makes clear there is no additional level of appeal.

12VAC35-115-170: Formal Complaint Process

"A. Anyone who believes that the provider has violated an individual's rights under these regulations may report it to the director or the human rights advocate for resolution.

1. If the report is made only to the director, the director or his designee shall immediately notify the human rights advocate. If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.

2. If the report is made to the human rights advocate, the human rights advocate shall immediately notify the director. If the report is made on a weekend or holiday, the human rights advocate shall notify the director on the next business day.

3. The human rights advocate or the director or his designee shall discuss the report with the individual and notify the individual of his right to pursue a complaint through the process established for individuals. The steps established shall be thoroughly explained to the individual. The human rights advocate or the director or his designee shall ask the individual if he understands the complaint process and the choice that he has before asking the individual how he wishes to pursue the complaint. The individual shall then be given the choice of pursuing the complaint through the established complaint process.

4. The procedures outlined in CSH Policy RTS-01C, Patient and Family Complaint Resolution, shall be followed if a complaint is pursued.

B. If at any time during the complaint process the human rights advocate concludes there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director and the CSH Maximum Security Appeals Committee by informing the director and the DBHDS Director of Human Rights. The CSH Maximum Security Appeals Committee shall review the issue within 72 hours of receiving this information."

Explanation: These proposed language changes are necessary to direct the reader to CSH policy rather than the human rights regulations as regards the complaint process for individuals in maximum security. They also make clear the amount of time the Maximum Security Appeals Committee has to review the information.

12VAC35-115-180: Local Human Rights Committee Hearing and Review Procedures

"A. Any individual or his authorized representative who does not accept the relief offered by the director or disagrees with (i) a director's final decision and action plan resulting from the complaint resolution; (ii) a director's final action following a report of abuse, neglect, or exploitation; or (iii) a director's final decision following a complaint of discrimination in the provision of services may request a review by the CSH Maximum Security Appeals Committee.

B. The individual or his authorized representative must file the request for review by the CSH Maximum Security Appeals Committee within ten days of the director's action or final decision on the complaint.

1. The appeal request must be in writing on the form designated by CSH Policy RTS-01C Patient and Family Complaint Resolution. It should contain all facts and arguments surrounding the complaint and reference any section of the regulations that the individual believes the provider violated.

2. The human rights advocate and any individual other than another resident of CSH may help the individual in filing the appeal. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's assistance in filing the appeal.

C. The CSH Maximum Security Appeals Committee shall review the appeal and provide a written response within 21 days. If the complaint is determined by the Appeals Committee to be a founded complaint, the response, which includes recommendations outlining how the complaint should be resolved, shall be forwarded to the director for resolution. A copy shall be sent to the human rights advocate. This is the final level of appeal."

Explanation: These proposed changes outline the exact procedures an individual in maximum security would follow to appeal a director's decision, and the timeline on which it must happen.

12VAC35-115-190: Special Procedures for Emergency Hearing by LHRC

"A. If the human rights advocate informs the CSH Maximum Security Appeals Committee of a substantial risk that serious and irreparable harm will result if a complaint is not resolved immediately, the CSH Maximum Security Appeals Committee shall review the issue within 72 hours of receiving the information.

1. The director or his designee and the human rights advocate shall be available to discuss the issue with the CSH Maximum Security Appeals Committee.

2. The review shall be concluded on an expedited basis.

General Notices/Errata

B. At the end of the review, the CSH Maximum Security Appeals Committee shall make preliminary findings, and if a violation is found, shall make preliminary recommendations to the director.

C. The director shall formulate and carry out an action plan within 24 hours of receiving the CSH Maximum Security Appeal Committee's recommendations. A copy of the plan shall be sent to the human rights advocate, the individual, and his authorized representative."

Explanation: These proposed changes make available an avenue for emergency consideration by the Maximum Security Appeals Committee in the event a human rights advocate has cause to believe there is risk of serious and irreparable harm if a complaint is not resolved immediately.

12VAC35-115-200: Involving Consent and Authorization

"A. The individual, his authorized representative, or anyone acting on the individual's behalf may request in writing that the CSH Maximum Security Appeals Committee review the following situations and issue a decision:

1. If an individual or his authorized representative objects at any time to the appointment of a specific person as authorized representative or any decision for which consent or authorization is required and has been given by his authorized representative, other than a legal guardian, he may ask the Appeals Committee to decide whether his capacity was properly evaluated, the authorized representative was properly appointed, or his authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, and if unknown or unclear in the individual's best interests.

i. The provider shall take no action for which consent or authorization is required if the individual objects, except in an emergency or as otherwise permitted by law, pending the Appeals Committee review.

ii. If the Appeals Committee determines that the individual's capacity was properly evaluated, the authorized representative is properly designated, or the authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, or if unknown or unclear in the individual's best interests, then the provider may proceed according to the decision of the authorized representative.

iii. If the Appeals Committee determines that the individual's capacity was not properly evaluated or the authorized representative was not properly designated, then the provider shall take no action for which consent is required except in an emergency or as

otherwise required or permitted by law, until the capacity review and authorized representative designation is properly done.

iv. If the Appeals Committee determines that the authorized representative's decision was not made based on the individual's basic values and any preferences previously expressed by the individual to the extent known, and if unknown or unclear, in the individual's best interests, then the provider shall take steps to remove the authorized representative pursuant to 12VAC35-115-146.

2. If an individual or his family member has obtained an independent evaluation of the individual's capacity to consent to treatment or services or to participate in human research under 12VAC35-115-70, or authorize the disclosure of information under 12VAC35-115-90, and the opinion of that evaluator conflicts with the opinion of the provider's evaluator, the Appeals Committee may be requested to decide which evaluation will control.

i. If the Appeals Committee agrees that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director may begin or continue treatment or research or disclose information, but only with the appropriate consent or authorization of the authorized representative.

ii. If the Appeals Committee does not agree that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director shall not begin any treatment or research, or disclose information without the individual's consent or authorization, or shall take immediate steps to discontinue any actions begun without the consent or authorization of the individual.

3. If the director makes a decision that affects an individual and the individual believes that the decision requires his personal consent or authorization or that of his authorized representative, he may object and ask the Appeals Committee to decide whether consent or authorization is required. Regardless of the individual's capacity to consent to treatment or services or authorize disclosure of information, if the Appeals Committee determines that a decision made by a director requires consent or authorization that was not obtained, the director shall immediately rescind the action unless and until such consent or authorization is obtained.

B. Before making such a decision, the Appeals Committee shall review the action proposed by the director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's or his authorized representative's reasons for objecting to that determination. To facilitate its review, the Appeals Committee may ask that a physician or licensed clinical

psychologist not employed by the provider evaluate the individual at the provider's expense and give an opinion about his capacity to consent to treatment or authorize information. The Appeals Committee shall notify all parties and the human rights advocate of the decision within 10 working days of the initial request."

Explanation: These proposed changes substitute the Maximum Security Appeals Committee for the Local Human Rights Committee as the review body regarding issues of informed consent and substitute decision-making.

12VAC35-115-210: State Human Rights Committee Appeals Procedure

"Decisions of the CSH Maximum Security Appeals Committee may not be appealed."

Explanation: The CSH Maximum Security Appeals Committee is the full deciding body.

Variances to these regulations by the providers listed above are reviewed by the SHRC at least annually, with reports to the SHRC regarding the variances as requested.

Public comment period: November 30, 2015, through December 30, 2015.

Description of proposal: The proposed variance applications for renewal must comply with the general requirements of Part VI, Variances (12VAC35-115-220 et seq.), of the Human Rights Regulations.

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

To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative named below.

Contact Information: Deborah Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, or email deb.lochart@dbhds.virginia.gov.

CHARITABLE GAMING BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Charitable Gaming Board conducted a small business impact review of **11VAC15-13, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Charitable Gaming Board is publishing its report of findings dated October 19, 2015, to support this

decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation is necessary in order to execute the purpose of the Charitable Gaming Regulations (11VAC15-40). The board routinely reviews its regulations and adopts amendments as necessary. The public, including small businesses, needs to be informed of the various stages of the regulatory process and their statutory right to participate. There have been no complaints or comments received from the public concerning this regulation. The regulation is not particularly complex, and it does not overlap, duplicate, or conflict with federal or state law or regulation. Since this regulation's adoption in 2008, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending this regulation.

Contact Information: Michael Menefee, Program Manager, Office of Charitable and Regulatory Programs, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

BOARD OF PHARMACY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy is conducting a periodic review and small business impact review of **18VAC110-20, Regulations Governing the Practice of Pharmacy**, and **18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen**.

The review of each regulation will be guided by the principles in Executive Order 17 (2014). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 30, 2015, and ends December 30, 2015.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

General Notices/Errata

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 Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

REAL ESTATE BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC135-11, Public Participation Guidelines

18VAC135-20, Virginia Real Estate Board Licensing Regulations

18VAC135-50, Fair Housing Regulations

The comment period begins November 30, 2015, and ends December 21, 2015.

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 Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@dpor.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors**, and

determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated October 30, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

In its review of this regulation, the agency has determined that there is a continued need for the regulation because it ensures a minimum level of indemnification in cases involving bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. The regulatory language is clear and avoids complexity. This regulation, which became effective in 2007, does not overlap, duplicate, or conflict with federal or state law or regulation. The current review follows the first periodic review of regulation, which was conducted four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law and is the most effective way to minimize the economic impact of regulations on small businesses.

Contact Information: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, or email occonnor.reba@dol.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-73, Regulation Applicable to Tree Trimming Operations**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated October 30, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

In its review of this regulation, the agency has determined that there is a continued need for the regulation because it is an enforcement tool that has been designed specifically for the tree trimming operations that are conducted by the arborist industry and because spokespersons within that industry specifically requested that the department promulgate a regulation to specifically cover tree trimming operations. No comments or complaints were received from the public during the public comment period. The regulatory language is clear and avoids complexity. This regulation, which became effective in 2011, does not overlap, duplicate, or conflict with federal or state law or regulation. The current review is the first periodic review to evaluate the regulation. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment

is consistent with the stated objectives of applicable law and is the most effective way to minimize the economic impact of regulations on small businesses.

Contact Information: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, or email oconnor.reba@dol.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-75, General Industry Standard for Telecommunications, General, Approach Distances**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated October 30, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation because the establishment of less stringent compliance requirements in the past directly resulted in fatal electrocution hazards for employees. The regulation is not unnecessarily complex. It ensures uniformity of the regulations for general industry, construction, and telecommunication workers performing the same type of electrical transmission work. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The current review follows the first periodic review of the regulation, which occurred four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law and is the most effective way to minimize the economic impact of regulations on small businesses.

Prior to the promulgation of this regulation, employers were already required to train telecommunication electrical transmission workers on methods of de-energizing, isolating, or insulating themselves from live electrical parts by using blankets or other protective measures listed in 16VAC25-90-1910.268. This regulation simplified compliance by making telecommunications requirements identical to 16VAC25-90-1910.269(1)(2)(i), General Industry Standard for Electric Power Generation Transmission and Distribution, and by providing safety protections for telecommunications workers equal to those afforded general industry electrical transmission workers and construction industry workers (see 16VAC25-155). In compliance with federal law, the regulation does not exempt small businesses from all or any part of these requirements. However, the language of the regulation was drafted in such a way as to minimize costs for regulated employers while still ensuring equivalent safety levels of electrical shock protection for telecommunications workers.

Contact Information: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, or email oconnor.reba@dol.gov.

STATE MILK COMMISSION

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Milk Commission conducted a small business impact review of **2VAC15-12, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The State Milk Commission is publishing its report of findings dated October 28, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency determined this regulation continues to be necessary as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. The agency has not received any comments or complaints regarding this regulation. The regulation is not complex and is easily understood. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was promulgated in 2008 using the model public participation guidelines issued by the Department of Planning and Budget. This periodic review is the first evaluation of this regulation subsequent to its adoption in 2008. No factors have changed since 2008 that necessitate amending this regulation. This regulation places no economic burden on any small business.

Contact Information: Crafton Wilkes, Administrator, State Milk Commission, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 371-8700, or email crafton.wilkes@vdacs.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Buchanan County PSA

An enforcement action has been proposed for the Buchanan County PSA for violations of the State Water Control Law at the Conaway Wastewater Treatment Plant in Buchanan County. 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 at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from December 1, 2015, to December 31, 2015.

General Notices/Errata

Proposed Enforcement Action for Town of Pound

An enforcement action has been proposed for the Town of Pound for violations of the State Water Control Law at the Pound Wastewater Treatment Plant in Wise County. 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 at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from December 1, 2015, to December 31, 2015.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC160-11, Public Participation Guidelines

18VAC160-20, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations

The comment period begins November 30, 2015, and ends December 21, 2015.

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 Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Trisha Henshaw, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.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; *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.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: 14VAC5-270. Rules Governing Annual Financial Reporting.

Publication: 32:4 VA.R. 479-485 October 19, 2015.

Correction to Proposed Regulation:

Beginning on page 480, column 1, replace the Order to Take Notice with the following order:

AT RICHMOND, SEPTEMBER 21, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2015-00141

Ex Parte: In the matter of
Amending the Rules Governing
Annual Financial Reporting

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall

have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 270 of Title 14 of the Virginia Administrative Code entitled Rules Governing Annual Financial Reporting ("Rules"), which amend the Rules at 14 VAC 5-270-40, 14 VAC 5-270-100, 14 VAC 5-270-110, 14 VAC 5-270-120, 14 VAC 5-270-144, and 14 VAC 5-270-174, and adds a new Rule at 14 VAC 5-270-145.

The amendments to the Rules are being proposed due to the National Association of Insurance Commissioners' adoption of the revisions to the Annual Financial Reporting Model Regulation. The proposed amendments provide the Commission with the authority to require all insurers with annual premiums exceeding \$500 million and insurance groups with annual premiums exceeding \$1 billion to maintain an internal audit function that provides independent, objective, and reasonable assurance to the audit committee and management regarding the insurer's governance, risk management, and internal controls. The internal audit function is required to be organizationally independent from management and to report at least annually to the audit committee on the results of internal audit activities.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-270-40, 14 VAC 5-270-100, 14 VAC 5-270-110, 14 VAC 5-270-120, 14 VAC 5-270-144, and 14 VAC 5-270-174, and add a new Rule at 14 VAC 5-270-145 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Annual Financial Reporting, which amend the Rules at 14 VAC 5-270-40, 14 VAC 5-270-100, 14 VAC 5-270-110, 14 VAC 5-270-120, 14 VAC 5-270-144, and 14 VAC 5-270-174, and add a new Rule at 14 VAC 5-270-145 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending Chapter 270 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before November 18, 2015, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do

so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case/PublicComments.aspx>. All comments shall refer to Case No. INS-2015-00141.

(3) If no written request for a hearing on the proposal to amend Chapter 270 of Title 14 of the Virginia Administrative Code is received on or before November 18, 2015, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(4) The Bureau forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to all licensed insurers, burial societies, fraternal benefit societies, health service plans, health maintenance organizations, legal services plans, dental or optometric services plans, and dental plan organizations authorized by the Commission pursuant to the provisions of Title 38.2 of the Code, as well as to all interested parties. To be made part of this list, call (804) 371-9826.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva Bland Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte.

VA.R. Doc. No.R16-4479; Filed October 30, 2015, 10:25 a.m.

BOARD OF DENTISTRY

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry.

Publication: 32:5 VA.R. 706-742 November 2, 2015.

Correction to Final Regulation:

Page 533, 18VAC60-21-190 A 1, line 2, delete ". dental hygiene degree or certificate."

VA.R. Doc. No. R10-2362; Filed November 9, 2015, 2:39 p.m.

