



VIRGINIA

REGISTER OF REGULATIONS

VOL. 32 ISS. 18

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

MAY 2, 2016

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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**; **Mark J. Vucci**.

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>).

May 2016 through April 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
33:10	December 19, 2016 (Monday)	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Initial Agency Notice

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

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

Name of Petitioner: Mitch Gray.

Nature of Petitioner's Request: The petition for rulemaking requests an amendment to requirements for standards for professional conduct in the practice of medicine. Specifically, it requests the addition of a requirement for physicians to wear gloves when conducting a genital examination to protect both the patient against the perception of sexual conduct and the physician against the transmission of sexually-transmitted disease.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on May 2, 2016, and posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. Comment on the petition will be requested until June 1, 2016, and may be posted on the Town Hall or sent to the board. Following receipt of all comments on the petition to amend regulations, the matter will be considered by the full board at its meeting on June 16, 2016.

Public Comment Deadline: June 1, 2016.

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

VA.R. Doc. No. R16-25; Filed April 5, 2016, 9:55 a.m.

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing.

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

Name of Petitioner: Greg Huber.

Nature of Petitioner's Request: To eliminate the allowance for a person to reactivate or reinstate a license by payment of the required fee within one renewal cycle. The regulation appears to allow a person to let his license lapse and then pay the reinstatement fee without meeting the requirements for continued competency for renewal of licensure.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the regulations has been filed with the Registrar of Regulations for publication on May 2, 2016. It is also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov and will be available for comment online on that date. Comment on the petition from interested parties is requested until June 1, 2016. Following receipt of all comments on the petition, the request to examine requirements for persons reactivating or reinstating a license will be considered by the board at its meeting on July 19, 2016.

Public Comment Deadline: June 1, 2016.

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

VA.R. Doc. No. R16-22; Filed April 13, 2016, 10:34 a.m.

BOARD OF PHARMACY

Agency Decision

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

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

Name of Petitioner: Bill Irvin.

Nature of Petitioner's Request: To allow a pharmacy providing services to a long-term care facility to provide prescription information of Schedule VI drugs to a "back-up" pharmacy located near the facility enabling the "back-up" pharmacy to provide the first dispensing of the prescription without the act constituting a transfer of the prescription.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on March 25, 2016, the board considered the petition and the public comments in support. Following a lengthy discussion, the board concluded it will include the matter in the Notice of Intended Regulatory Action resulting from a periodic review of regulations.

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

VA.R. Doc. No. R16-10; Filed April 7, 2016, 2:03 p.m.

Agency Decision

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

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

Name of Petitioner: Angela Gilley.

Petitions for Rulemaking

Nature of Petitioner's Request: Within a hospital or free-standing emergency department setting, the medical staff may approve guidelines that are clinically accepted as the standard of care, or are approved by the medical staff of the hospital through the typical approval process (such as the pharmacy and therapeutics committee), which allow pharmacists to change, discontinue, adjust, monitor, order pertinent labs, and make subsequent adjustments to medications as applicable to the approved guideline without requiring a physician order to implement the guideline. In addition, a practitioner may write an order for "pharmacy to dose" a medication, which allows the pharmacist to dose, monitor, order pertinent labs, and make subsequent adjustments to any medication specified in the order based on the pharmacist's clinical judgment.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on March 25, 2016, the board considered the petition; there were no public comments received in support or in opposition. Following a lengthy discussion, the board concluded that it needed additional information and research and some legal advice from its board counsel. For that purpose, the petition was denied, but the matter was referred to the Regulation Committee of the board for further consideration. While the board does not intend to initiate rulemaking at this time, the committee will further review the issue, which will include a discussion of the statute relating to collaborative practice.

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

VA.R. Doc. No. R16-11; Filed April 7, 2016, 2:01 p.m.

Agency Decision

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

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

Name of Petitioner: David Merryfield.

Nature of Petitioner's Request: To allow bar code and RFID scanning to extend the pharmacist check, once the bar code or RFID scan has been verified once for each product by a pharmacist.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on March 25, 2016, the board considered the petition; there were no public comments received in support or in opposition. Following a lengthy discussion, the board denied the request in the petition since there is a mechanism through the consideration of an innovative (pilot) program for use of this technology in lieu of pharmacist verification. In order to accomplish the recommended change, the petitioner could consider submitting an application for the pilot process with

specificity for the practice proposed. Additionally, the petitioner was reminded that one may currently use bar code and RFID technology to assist staff in the dispensing process; however it cannot replace the required pharmacist verification of accuracy. While the board does not intend to initiate rulemaking at this time, the board will continue to test out efficiencies and innovation in pharmacy practice through pilots for which the results can inform policy decisions.

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

VA.R. Doc. No. R16-12; Filed April 7, 2016, 2:05 p.m.

BOARD OF SOCIAL WORK

Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Anjaulyeke Bryant-Covert.

Nature of Petitioner's Request: To amend section 18VAC140-20-70 to allow persons who have failed the licensing examination to count their supervision hours beyond the two years currently prescribed. The amendment would grandfather those applicants who do not meet current requirements for registration of supervision.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on March 25, 2016, the board considered the petition; there were two public comments received in support. Following a lengthy discussion, the board concluded that the petitioner's supervised experience was approved prior to initially sitting for the licensure examination. While a person is required to re-apply if he does not pass the licensure examination within two years, 18VAC140-20-70 specifies a timeframe within which supervised experience that was not pre-registered and approved could be accepted. Therefore, the board does not believe an amendment to regulation is necessary to accomplish the request and has declined to initiate rulemaking.

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

VA.R. Doc. No. R16-08; Filed April 7, 2016, 1:59 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 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Fast-Track Regulation

Title of Regulation: **8VAC40-50. Virginia Work-Study Program Regulations (repealing 8VAC40-50-10 through 8VAC40-50-250).**

Statutory Authority: § 23-38.70 of the Code of Virginia (Repealed).

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 1, 2016.

Effective Date: June 30, 2016.

Agency Contact: Lee Ann Rung, Manager, Executive and Council Affairs, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, or email leeannrung@schev.edu.

Basis: Section 23-9.6:1 of the Code of Virginia authorizes the State Council of Higher Education for Virginia to adopt regulations it believes necessary to implement all of the council's duties and responsibilities as set forth in the Code of Virginia. Section 23-38.70 of the Code of Virginia, which provided for the regulations to implement the Virginia Work-Study Program, was repealed by Chapter 51 of the 2006 Acts of Assembly.

Purpose: The Virginia Work-Study Program has not existed for at least 10 years, and the statutory authority for the program has been repealed by the General Assembly, therefore it is necessary to repeal the regulations. Repealing the regulations should not impact public health, safety, or welfare.

Rationale for Using the Fast-Track Rulemaking Process: Repealing regulations for a program that is no longer funded or authorized by the General Assembly is not expected to be controversial.

Substance: The Virginia Work-Study Program Regulations (8VAC40-50) are being repealed.

Issues: Repealing the regulations should eliminate any confusion about the existence of the program. There are no other known advantages or disadvantages to the agency or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Council of Higher Education for Virginia proposes to repeal this regulation.

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

Estimated Economic Impact. The statutory authority for the Virginia Work-Study Program was revoked by Chapter 51, Acts of Assembly of 2006. The program is no longer functional and has not received appropriations since prior to 2006. Repealing this regulation would have no impact beyond a small benefit from reducing the chance that someone would be misled concerning the existence of the program by seeing the regulation.

Businesses and Entities Affected. The program has not existed for at least ten years. Repealing the regulation will not significantly affect any businesses or entities.

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

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

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

Real Estate Development Costs. The proposed repeal of the regulation does 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 repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Regulations

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The State Council of Higher Education for Virginia concurs.

Summary:

Chapter 51 of the 2006 Acts of Assembly repealed Chapter 4.7 (§ 23-38.70 et seq.) of Title 23 of the Code of Virginia, relating to the Virginia Work-Study Program. Given the repeal of the statutory basis for the regulations implementing the program, this action repeals the Virginia Work-Study Program Regulations.

VA.R. Doc. No. R16-4480; Filed April 4, 2016, 9:17 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. In addition, the State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-20. General Provisions (Rev. B16) (amending 9VAC5-20-180).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the federal Clean Air Act; 40 CFR Part 51.

Effective Date: June 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:

On June 12, 2015 (80 FR 33840), the U.S. Environmental Protection Agency (EPA) issued a final State Implementation Plan (SIP) call concerning treatment of excess emissions in state rules by sources during periods of startup, shutdown, or malfunction (SSM), including Virginia's SSM rules at 9VAC5-20-180 G. The U.S. Court of Appeals for the District of Columbia Circuit in 2014 held that such provisions are illegal, and state plans must be amended accordingly. Essentially, EPA finds that

9VAC5-20-180 G as currently drafted creates an impermissible affirmative defense for violations of emission limits, therefore the amendments to this section remove the provisions allowing an affirmative defense.

9VAC5-20-180. Facility and control equipment maintenance or malfunction.

A. The provisions of this section apply to periods of excess emissions resulting from (i) the shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance and (ii) malfunctions or other equipment failures of any affected facility or related air pollution control equipment.

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and
4. Measures that will be taken to minimize the length of the shutdown and to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, ~~as soon as practicable but~~ (i) no later than four daytime business hours after the malfunction is discovered, notify the board ~~by facsimile transmission, telephone or telegraph~~ of such failure or malfunction and shall (ii) ~~within two weeks~~ 14 days provide a written statement giving all pertinent facts, including the estimated duration of the breakdown and the demonstrations in subsection G of this section. Owners subject to the requirements of 9VAC5-40-50 C and 9VAC5-50-50 C are not required to provide the written statement prescribed in this subsection for facilities subject to the monitoring requirements of 9VAC5-40-40 and 9VAC5-50-40. When the condition causing the failure or malfunction has been corrected and the facility or control equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, as expeditiously as possible but no later than 30 days after the failure or malfunction and semi-monthly thereafter until the failure or malfunction is

corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period;
4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period;
5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the Regulations for the Control and Abatement of Air Pollution within 30 days of the malfunction or failure;
6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the Regulations for the Control and Abatement of Air Pollution; and
7. Any other pertinent information as may be requested by the board.

E. The provisions of subsection D of this section shall not apply beyond three months of the date of the malfunction or failure. Should the breakdown period exist past the three-month period, the owner may apply for a variance in accordance with 9VAC5-20-50 A.

F. The following special provisions govern facilities which are subject to the provisions of Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-Chapter 50, 9VAC5-50 or Article 1 (9VAC5-60-60 et seq.) of 9VAC5-Chapter 60, or Article 2 (9VAC5-60-90 et seq.) of 9VAC5-Chapter 60 Part II of 9VAC5-60:

1. For sources subject to the applicable subparts listed in 9VAC5-50-410, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.
2. For sources subject to the applicable subparts listed in 9VAC5-60-70, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.
3. For sources subject to the applicable subparts listed in 9VAC5-60-100, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

G. ~~No violation of applicable emission standards or monitoring requirements shall be judged to have taken place~~

In accordance with subsection C of this section, if the excess emissions or cessation of monitoring activities is due to a malfunction, provided that the owner may demonstrate the following:

1. The cause of the excess emissions or cessation of monitoring activities meets the definition of malfunction provided in 9VAC5-10-20;

~~4.~~ 2. The procedural requirements of this section were met or the owner has submitted an acceptable application for a variance, which is subsequently granted;

~~2.~~ 3. The owner has taken expeditious and reasonable measures to minimize emissions during the breakdown period;

~~3.~~ 4. The owner has taken expeditious and reasonable measures to correct the malfunction and return the facility to a normal operation; and

~~4.~~ 5. The source is in compliance with related applicable emission standards or monitoring requirements at least 90% of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in the Regulations for the Control and Abatement of Air Pollution.

I. Regardless of any other provision of this section, the owner of any facility subject to the Regulations for the Control and Abatement of Air Pollution shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the board may order that the owner shut down the facility; if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years (unless a longer period is specified in the applicable emission standard) following the date of the occurrence.

VA.R. Doc. No. R16-4598; Filed March 31, 2016, 11:04 a.m.

Regulations

Final Regulation

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

Titles of Regulations: **9VAC5-20. General Provisions (Rev. A16) (amending 9VAC5-20-21).**

9VAC5-30. Ambient Air Quality Standards (Rev. A16) (adding 9VAC5-30-57).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 108, 109, and 302 of the federal Clean Air Act; 40 CFR Parts 50, 53, and 58.

Effective Date: June 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, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

On October 26, 2015 (80 FR 65292), the U.S. Environmental Protection Agency (EPA) revised the ozone national ambient air quality standard (NAAQS) by adding an 8-hour standard at a level of 0.070 parts per million (ppm). The existing 8-hour standard of 0.075 ppm was not revoked. The new primary standard became effective on December 28, 2015. 9VAC5-30 contains the ambient air quality standards for the specific criteria pollutant standards set out in 40 CFR Part 50 and is being amended to implement this EPA requirement. In addition, a new Appendix U has been added. Appendix U explains the data handling conventions and computations necessary for determining whether the NAAQS for ozone are met at an ambient air quality monitoring site; this appendix is incorporated by reference in 9VAC5-20-21. These regulations are amended accordingly to properly implement new source permitting review and various ozone implementation and planning programs.

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 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).
- (v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.
- (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 Stationary 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.

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(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~~ Pennsylvania PA 15250-7954; ~~phone~~ telephone (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 section, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this section, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, ~~Virginia~~ VA 22161; ~~phone~~ telephone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this 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 section are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.

3. ~~U.S.~~ United States government.

a. The following document from the ~~U.S.~~ United States 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~~ Pennsylvania PA 15250-7954; ~~phone~~ telephone (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).

(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~~ PA 19428-2959; ~~phone~~ telephone (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.~~ DC 20005; ~~phone~~ telephone (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~~ OH 45240; ~~phone~~ telephone (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~~ MA 02269-9101; ~~phone~~ telephone (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~~ NY 10016; ~~phone~~ telephone (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~~ telephone (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~~ telephone (415) 771-6000.

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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~~ telephone (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~~ telephone (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~~ telephone (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~~ telephone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from: Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. 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 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-~~ telephone (847) 303-5774.

9VAC5-30-57. Ozone (8-hour, 0.070 ppm).

A. The primary and secondary ambient air quality standard is 0.070 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by a reference method based on Appendix D to 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or an equivalent method designated in accordance with 40 CFR Part 53.

C. The primary and secondary ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.070 ppm, as determined in accordance with Appendix U to 40 CFR Part 50.

VA.R. Doc. No. R16-4594; Filed March 31, 2016, 11:08 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: 12VAC5-412. Regulations for Licensure of Abortion Facilities (amending 12VAC5-412-10, 12VAC5-412-130, 12VAC5-412-230, 12VAC5-412-240, 12VAC5-412-250, 12VAC5-412-290, 12VAC5-412-370; repealing 12VAC5-412-30).

Statutory Authority: §§ 32.1-12, 32.1-127, and 32.1-127.001 of the Code of Virginia.

Public Hearing Information:

June 13, 2016 - 10 a.m. - Perimeter Center, Board Room 2, 2nd Floor, 9960 Mayland Drive, Henrico, VA 23233

Public Comment Deadline: July 1, 2016.

Agency Contact: Erik Bodin, Director, Office of Licensure and Certification, Department of Health, 9960 Mayland

Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email erik.bodin@vdh.virginia.gov.

Basis: The regulation is promulgated under the authority of § 32.1-127 of the Code of Virginia. Section 32.1-127 of the Code of Virginia requires the board to promulgate regulations including minimum standards for (i) the construction and maintenance of hospitals, nursing homes, and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing, and equipping of hospitals, nursing homes, and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes, and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. Facilities in which five or more first trimester abortions are performed per month are classified as a category of hospital for the purposes of this requirement. (§ 32.1-127 B 1).

Section 32.1-127.001 requires the State Board of Health to adopt minimum standards for design and construction that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities, now the Guidelines for Design and Construction of Hospitals and Outpatient Facilities.

Purpose: On May 12, 2014, Governor McAuliffe issued Executive Directive 1 (2014), which directed the State Board of Health to conduct a periodic review of 12VAC5-412, Regulations for Licensure of Abortion Facilities. As a result of the review, the Department of Health determined it was necessary to use the regulatory process to amend the regulations. This regulatory action will amend the regulations to clarify the requirements for parental consent, insert additional best practices regarding medical testing and laboratory services, insert additional best practices regarding anesthesia service, align the requirements regarding emergency services more specifically with medical best practices, update the requirements for facility design and construction, and make minor technical amendments.

The regulations are mandated by § 32.1-127 of the Code of Virginia. The regulations ensure health and safety standards are maintained throughout licensed facilities within the Commonwealth. The review of the regulations was mandated by Executive Directive. Upon review, the Department of Health found areas of the regulations which could be improved, therefore protecting the health and safety of patients of these facilities to a higher degree.

Substance: No new regulatory sections are being proposed. The following amendments will be proposed:

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Definitions - Technical change. Addition of the terms "medication induced abortion" and "surgical abortion" in order to tailor the facility design and construction guidelines more precisely to the requirements of each facility.

Classification - Repeal the section. Unnecessary due to Code of Virginia requirements.

Violation of this chapter or applicable law; denial, revocation, or suspension of license - Amend this section to include guidance issued by the Virginia Department of Health Office of Licensure and Certification.

Patient services; patient counseling - Remove an unnecessary restriction not required by the Code of Virginia. Clarify the requirements of parental consent. Ensure all requirements of parental consent are within the regulations. Make additional technical changes that are in line with medical best practices.

Medical testing and laboratory services - Remove an unnecessary documentation requirement. Incorporate additional best practice standards. Remove an unnecessary mandate, that will allow the patient and physician to work together to determine the best course of action. Insert a new requirement which will allow tracking of lab results.

Anesthesia Service - Incorporate additional best practice standards. Add a documentation requirement.

Emergency Services - Align these provisions more precisely with medical best practices. Remove an unnecessary provision that is not required due to federal requirements.

Facility Design and Construction - Update the design and construction requirements.

Documents Incorporated by Reference - Update those documents incorporated by reference to reflect the most current publications.

Issues: The primary advantages of the regulatory action to the public are increased health and safety protections at abortion facilities. The primary disadvantage to the public associated with the regulatory action is some abortion facilities may need to change some of their current operating policies and procedures, which may cause a financial impact on these facilities. The financial impact might be passed on to the facilities' patients. The Department of Health does not foresee any additional disadvantages to the public. The primary advantage to the agency and the Commonwealth is the promotion of public health and safety. There are no disadvantages associated with the proposed regulatory action in relation to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In this action, the State Board of Health (Board) proposes to: 1) exempt existing abortion facilities from meeting the Facilities Guidelines Institute (FGI) Guidelines requirements, unless they build an addition or have a major renovation, 2) require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements (rather than the 2010 FGI

Guidelines requirements), 3) specify that abortion facilities that perform only medication induced abortions meet general building requirements (instead of the special building requirements for office-based procedures and operating rooms), 4) amend requirements for when villi or fetal parts cannot be identified with certainty in the tissue removed in the abortion, 5) no longer require that abortion facilities have a written agreement with a licensed general hospital regarding emergency treatment as this requirement is duplicative of federal law and unnecessary, 6) no longer require abortion facilities to develop, implement, and maintain policies and procedures for the screening of sexually transmitted diseases as this service is not a part of abortion procedures, and 7) amend other language to be consistent with the Code or to make the regulation more clear.

Estimated Economic Impact.

Exempting Existing Facilities. The current regulation requires that abortion facilities, both existing and newly constructed, comply with state and local codes, zoning, and building ordinances, the Virginia Uniform Statewide Building Code, and specified sections of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute. In practice, 12 of the 16 abortion facilities operating in the Commonwealth have been licensed with variances from meeting the FGI Guidelines requirement. For the majority of facilities, complying with the requirement would have cost hundreds of thousands of dollars.

The Board proposes to amend the requirement to apply to "construction of new buildings and additions, or major renovations to existing buildings for occupancy as an abortion facility that perform only surgical abortions or a combination of surgical and medication induced abortions." The amended language would exempt existing facilities from the requirement, unless an addition or major renovation is built. Abortion facilities would no longer need to apply for variances with this change. According to the Department of Health, applying for a variance merely consists of asking for a variance in writing (can be one paragraph or one sentence) when applying for the yearly license renewal. So no longer needing to apply for a variance saves only a negligible amount of time and effort for facilities. On the other hand, the proposal to exempt existing facilities from the requirement will likely reduce uncertainty for these facilities since the possibility of having to meet the Guidelines requirement for their existing buildings (without an addition or major renovation) due to the possibility of their variance application disapproved will no longer apply.

2014 vs 2010 FGI Guidelines. The Board proposes to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines¹ requirements rather than the 2010 FGI Guidelines requirements. The Facility Guidelines Institute published a study² that estimates the change in costs of applying the 2014 Guidelines rather than the 2010 Guidelines for hospitals and outpatient facilities. The study breaks up

hospitals and outpatient facilities into five facility types, and lists the estimated percentage cost increases for each category, as well as other across-the-board changes that would reduce costs. Based upon the study's cost estimate for the category that best fits abortion facilities and other factors that likely reduce the estimated costs for abortion facilities,³ the proposal to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements rather than the 2010 FGI Guidelines requirements would on average increase net cost by less than two percent. The Board and the architects and engineers associated with the Facility Guidelines Institute believe that adopting the 2014 edition will increase patient and staff health and safety. Thus, the proposed amendment will likely produce a net benefit.

Surgical vs Medication Induced. The Board proposes to specify that abortion facilities that perform only medication induced abortions need not be designed and constructed or renovated with the full requirements for office-based procedures and operating rooms, but instead need only meet general building requirements. The Board also proposes to add the following definition: "Medication induced abortion means any abortion caused solely by the administration of any medication or medications given to a woman in the first trimester of pregnancy with the intent to produce abortion." There is one current facility that falls into this category. If this facility were to undertake a major renovation or build an addition, this proposed change would potentially save the owners hundreds of thousands of dollars in construction costs. The proposed amendment would also produce commensurate savings for the construction of new facilities that perform only medication induced abortions, but no surgical abortions.

When Villi or Fetal Parts Cannot Be Identified. Under both the current regulation and the proposed regulation, all tissues removed resulting from the abortion procedure must be examined to verify that villi or fetal parts are present. Under the current regulation, if villi or fetal parts cannot be identified with certainty, the tissue specimen must be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy. The Board proposes to instead require that when villi or fetal parts cannot be identified with certainty, the patient be notified that pregnancy tissue was not identified and the possibility of ectopic pregnancy be explained to the patient. In such cases, the patient is to be offered a pathologic examination of the tissue including a disclosure of the cost; and should the patient desire, the tissue specimen would be sent for further pathologic examination. In essence, the proposed language enables the patient to make an informed decision whether or not to order a pathologic examination of the tissue, and to incur its associated cost. The proposed amendment likely produces a net benefit since it allows the patient to make an informed decision, rather than requiring that a potentially unwanted test be conducted.

Emergency Services and Screening for Sexually Transmitted Diseases. The current regulation requires that "A written agreement shall be executed with a licensed general hospital to ensure that any patient of the abortion facility shall receive needed emergency treatment." The Board determined that a written agreement is not necessary to ensure that any patient of the abortion facility shall receive needed emergency treatment due to the federal Emergency Medical Treatment and Labor Act. According to the Department of Health, all facilities have thus far been able to obtain such written agreements. Thus this proposed amendment will not significantly affect existing abortion facilities. The proposed amendment would save the time involved for obtaining such agreements for any potential future facilities.

The current regulation requires that "The abortion facility shall develop, implement, and maintain policies and procedures for screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention." Pursuant to the recommendation of the Board's physician's regulatory advisory panel, the Board proposes to eliminate this provision as it is unrelated to abortion procedures. The Department of Health has accepted a statement indicating that the facility does not have such procedures as fulfilling the requirement.⁴ Thus to the extent that abortion facilities have been aware of this, the proposed amendment would not have a large impact.

Businesses and Entities Affected. The proposed amendments pertain to the 16 licensed abortion facilities within the Commonwealth, as well as any potential future abortion facilities. Six of the facilities qualify as small businesses.⁵

Localities Particularly Affected. The 16 abortion facilities operating in the Commonwealth are located in the following localities: Alexandria (2), Blacksburg (1), Charlottesville (2), Fairfax (1), Falls Church (1), Henrico (1), Newport News (1), Norfolk (1), Richmond (2), Roanoke (2), and Virginia Beach (2).⁶

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

Effects on the Use and Value of Private Property. Due to significant reduction in associated cost, the proposal to specify that abortion facilities that perform only medication induced abortions need not be designed and constructed or renovated with the full requirements for office-based procedures and operating rooms, may increase the likelihood that such facilities are renovated or constructed.

Real Estate Development Costs. The proposal to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements rather than the 2010 FGI Guidelines requirements would on average increase net cost for the construction of new buildings, additions, and major renovations of surgical abortion facilities by less than two percent.

The proposal to specify that abortion facilities that perform only medication induced abortions need not be designed and

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constructed or renovated with the full requirements for office-based procedures and operating rooms would potentially save the owners hundreds of thousands of dollars in construction 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 proposal to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements rather than the 2010 FGI Guidelines requirements would on average moderately increase net costs for small surgical abortion facilities that undergo such construction projects.

The proposal to specify that abortion facilities that perform only medication induced abortions need not be designed and constructed or renovated with the full requirements for office-based procedures and operating rooms, but instead need only meet general building requirements, would reduce costs for small facilities that perform only medication induced abortions and undergo building construction.

The proposals to no longer require that abortion facilities: a) have a written agreement with a licensed general hospital to ensure that any patient of the abortion facility shall receive needed emergency treatment, and b) develop, implement, and maintain policies and procedures for screening of sexually transmitted diseases, will moderately reduce costs for small abortion facilities.

Alternative Method that Minimizes Adverse Impact. The proposal to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements rather than the 2010 FGI Guidelines requirements will moderately increase costs in net for small abortion facilities that undergo such projects. Not amending the regulation to include the 2014 edition requirements would eliminate the moderate net cost increase, but would also eliminate the likely increase in potential patient and staff health and safety.

Adverse Impacts:

Businesses. The proposal to require that new buildings, additions, and major renovations meet the 2014 FGI Guidelines requirements rather than the 2010 FGI Guidelines requirements would on average moderately increase net costs for surgical abortion facilities that undergo such construction projects.

Localities. The proposed amendments are unlikely to adversely affect localities.

Other Entities. The proposed amendments are unlikely to adversely affect other entities.

²Gormley T, Garland J, Jones W. "Estimated Cost of Applying the 2014 vs. the 2010 FGI Guidelines for Design and Construction Requirements to Hospitals and Outpatient Facilities."

³The facility type that best fits abortion facilities includes dialysis centers. One of the items listed as contributing to cost increases in this category is a new requirement for a soiled workroom in renal dialysis centers. Since this does not apply to abortion facilities, the listed estimate of a 2.68% cost increase for the category is likely too high for abortion facilities. Combined with the across-the-board changes and a Board proposal to exempt abortion facilities from a FGI Guideline procedure room size requirement, the likely average net cost change for abortion facilities is less than 2%

⁴Source: Virginia Department of Health

⁵Data source: Virginia Department of Health

⁶Ibid

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

Summary:

The proposed amendments (i) clarify the requirements for parental consent; (ii) add best practices for medical testing, laboratory services, and anesthesia services; (iii) align the emergency services requirements more specifically with medical best practices; (iv) update the facility design and construction requirements; and (v) make minor technical amendments. The proposed amendments are a result of the periodic review conducted in accordance with Governor McAuliffe's Executive Directive 1 (2014).

Part I

Definitions and Requirements for Licensure

12VAC5-412-10. Definitions.

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

"Abortion" means the use of an instrument, medicine, drug, or other substance or device with the intent to terminate the pregnancy of a woman, known to be pregnant, for reasons other than a live birth or to remove a dead fetus. Spontaneous miscarriage is excluded from this definition.

"Abortion facility" means a facility in which five or more first trimester abortions per month are performed.

"Administrator" means the person appointed by the governing body as having responsibility for the overall management of the abortion facility. Job titles may include director, executive director, office manager, or business manager.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"First trimester" means the first 12 weeks from conception based on an appropriate clinical estimate by a licensed

¹The applicable 2014 edition is called Guidelines for Design and Construction of Hospitals and Outpatient Facilities.

physician as determined in compliance with § 18.2-76 of the Code of Virginia.

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age in accordance with § 18.2-76 of the Code of Virginia.

"Licensee" means the person, partnership, corporation, association, organization, or professional entity who owns or on whom rests the ultimate responsibility and authority for the conduct of the abortion facility.

"Medication induced abortion" means any abortion caused solely by the administration of any medication or medications given to a woman in the first trimester of pregnancy with the intent to produce abortion.

"Minor" means a patient under the age of 18.

"Patient" means any person seeking or obtaining services at an abortion facility.

"Physician" means a person licensed to practice medicine in Virginia.

"Spontaneous miscarriage" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an abortion.

"Surgical abortion" means any abortion caused by any means other than solely by the administration of any medication or medications given to a woman in the first trimester of pregnancy with the intent to produce abortion.

~~"Trimester" means a 12-week period of pregnancy.~~

12VAC5-412-30. Classification. (Repealed.)

~~Abortion facilities shall be classified as a category of hospital.~~

12VAC5-412-130. Violation of this chapter or applicable law; denial, revocation, or suspension of license.

A. When the department determines that an abortion facility is (i) in violation of ~~any provision of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 § 32.1-125.01, 32.1-125.4, 32.1-132, 32.1-135.2, or 32.1-137.01~~ of the Code of Virginia or of any applicable regulation; or (ii) is permitting, aiding, or abetting the commission of any illegal act in the abortion facility, the department may deny, suspend, or revoke the license to operate an abortion facility in accordance with § 32.1-135 of the Code of Virginia.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with ~~all provisions of Article 1 of Chapter 5 of Title 32.1 § 32.1-125.01, 32.1-125.4, 32.1-132, 32.1-135.2, or 32.1-137.01~~ of the Code of Virginia and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may restore a suspended license when he determines that the conditions upon which

suspension was based have been corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional fee shall be required for restoring such license.

D. The abortion facility has the right to contest the denial, revocation, or suspension of a license in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part IV
Patient Care Management

12VAC5-412-230. Patient services; patient counseling.

A. Abortions performed in abortion facilities shall be performed only on patients who are within the first trimester of pregnancy ~~based on an appropriate clinical estimate by a licensed physician as determined in compliance with § 18.2-76 of the Code of Virginia.~~

B. No person may perform an abortion upon an unemancipated minor unless informed written consent is obtained from the minor and the minor's parent, guardian, or other authorized person. The informed written consent shall be notarized as required by § 16.1-241 of the Code of Virginia. If the unemancipated minor elects not to seek the informed written consent of an authorized person, a copy of the court order authorizing the abortion entered pursuant to § 16.1-241 of the Code of Virginia shall be obtained prior to the performance of the abortion.

C. A physician shall not perform an abortion without first obtaining the informed written consent of the patient pursuant to the provisions of § 18.2-76 of the Code of Virginia.

D. When abortions are being performed, a staff member currently certified to perform cardiopulmonary resuscitation shall be available on site for emergency care.

E. The abortion facility shall offer each patient seeking an abortion, in a language or manner she understands, appropriate counseling and instruction in the abortion procedure and shall develop, implement, and maintain policies and procedures for the provision of or referral for family planning and post-abortion counseling services to its patients.

F. There shall be an organized discharge planning process that includes ~~an evaluation of the patient's capacity for self-care and~~ an assessment of a patient's safety for discharge and discharge instructions for patients to include instructions to call or return if signs of infection develop.

12VAC5-412-240. Medical testing and laboratory services.

A. Prior to the initiation of any abortion, a medical history and physical examination, including a confirmation of pregnancy, and completion of all the requirements of informed written consent pursuant to § 18.2-76 of the Code of Virginia, shall be completed for each patient.

~~1. Use of any additional medical testing shall be based on an assessment of patient risk. The clinical criteria for such~~

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~~additional testing and the actions to be taken if abnormal results are found shall be documented. Medical testing shall include a recognized method to confirm pregnancy and determination or documentation of Rh factor.~~

~~2. Medical testing shall include a recognized method to confirm pregnancy and determination or documentation of Rh factor. Use of any additional medical testing shall be based on an assessment of patient risk.~~

~~3. The abortion facility shall develop, implement, and maintain policies and procedures for screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention. The policies and procedures shall address appropriate responses to a positive screening test.~~

~~4. 3. A written report of each laboratory test and examination shall be a part of the patient's record.~~

B. Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88) (42 CFR Part 493).

1. Facilities for collecting specimens shall be available on site.

2. If laboratory services are provided on site they shall be directed by a person who qualifies as a director under CLIA-88 and shall be performed in compliance with CLIA-88 standards.

3. All laboratory supplies shall be monitored for expiration dates, if applicable, and disposed of properly.

C. All tissues removed resulting from the abortion procedure shall be examined to verify that villi or fetal parts are present ~~if~~. If villi or fetal parts cannot be identified with certainty, the patient shall be notified that pregnancy tissue was not identified and the possibility of ectopic pregnancy shall be explained to the patient. In such cases, the patient shall be offered a pathologic examination of the tissue including a disclosure of the cost and should the patient desire, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy, and referred appropriately. The facility shall track and log any specimens sent for further pathologic examination.

D. All tissues removed resulting from the abortion procedure shall be managed in accordance with requirements for medical waste pursuant to the Regulated Medical Waste Management Regulations (9VAC20-120).

12VAC5-412-250. Anesthesia service.

A. The anesthesia service shall comply with the office-based anesthesia provisions of the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (18VAC85-20-310 et seq.).

B. The anesthesia service shall be directed by and under the supervision of a physician licensed in Virginia.

C. When moderate sedation or conscious sedation is administered, the licensed health care practitioner who administers the anesthesia shall routinely monitor the patient according to procedures consistent with such administration. The administration of sedation and monitoring of the patient shall be documented in the patient's medical record.

D. An abortion facility administering moderate sedation/conscious sedation shall maintain the following equipment, supplies, and pharmacological agents as required by 18VAC85-20-360 B:

1. Appropriate equipment to manage airways;
2. Drugs and equipment to treat shock and anaphylactic reactions;
3. Precordial stethoscope;
4. Pulse oximeter with appropriate alarms or an equivalent method of measuring oxygen saturation;
5. Continuous electrocardiograph;
6. Devices for measuring blood pressure, heart rate, and respiratory rate;
7. Defibrillator; and
8. Accepted method of identifying and preventing the interchangeability of gases.

E. Elective general anesthesia shall not be used.

F. If deep sedation or a major conductive block is administered or if general anesthesia is administered in an emergent situation, the licensed health care practitioner who administers the anesthesia service shall remain present and available in the facility to monitor the patient until the patient meets the discharge criteria.

G. In addition to the requirements of subsection D of this section, an abortion facility administering deep sedation or a major conductive block, or administering general anesthesia in an emergent situation, shall maintain the following equipment, supplies, and pharmacological agents as required by 18VAC85-20-360 C:

1. Drugs to treat malignant hyperthermia, when triggering agents are used;
2. Peripheral nerve stimulator, if a muscle relaxant is used; and
3. If using an anesthesia machine, the following shall be included:
 - a. End-tidal carbon dioxide monitor (capnograph);
 - b. In-circuit oxygen analyzer designed to monitor oxygen concentration within breathing circuit by displaying oxygen percent of the total respiratory mixture;
 - c. Oxygen failure-protection devices (fail-safe system) that have the capacity to announce a reduction in oxygen pressure and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced;

- d. Vaporizer exclusion (interlock) system, which ensures that only one vaporizer, and therefore only a single anesthetic agent can be actualized on any anesthesia machine at one time;
- e. Pressure-compensated anesthesia vaporizers, designed to administer a constant nonpulsatile output, which shall not be placed in the circuit downstream of the oxygen flush valve;
- f. Flow meters and controllers, which can accurately gauge concentration of oxygen relative to the anesthetic agent being administered and prevent oxygen mixtures of less than 21% from being administered;
- g. Alarm systems for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia; and
- h. A gas evacuation system.

H. The abortion facility shall develop, implement, and maintain policies and procedures outlining criteria for discharge from anesthesia care. Such criteria shall include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain, and minimal nausea and vomiting. Discharge from anesthesia care is the responsibility of the health care practitioner providing the anesthesia care and shall occur only when the patient has met specific physician-defined criteria, and those criteria have been documented within the patient's medical record.

12VAC5-412-290. Emergency services.

A. An abortion facility shall provide ongoing urgent or emergent care and maintain on the premises adequate monitoring equipment, suction apparatus, oxygen, and related items for resuscitation and control of hemorrhage and other complications.

B. An abortion facility that performs abortions using intravenous sedation shall provide equipment and services to render emergency resuscitative and life-support procedures pending transfer of the patient to a hospital. Such medical equipment and services shall be consistent with the current edition of the American Heart Association's Guidelines for Advanced Cardiopulmonary Resuscitation and Emergency Cardiovascular Life Support Care.

C. ~~A written agreement shall be executed with a licensed general hospital to ensure that any patient of the abortion facility shall receive needed emergency treatment. The agreement shall be with a licensed general hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on 30 minutes notice and which has a physician in the hospital and available for emergency service at all times. When emergency transfer is necessary, the responsible physician at the abortion facility must provide direct communication to the emergency department staff appropriate receiving facility staff regarding the status of the patient, the procedure details, and the suspected complication.~~

All patients must be provided with contact information for a representative of the abortion facility, so that an emergency department physician or treating provider may make contact with a provider of the facility if late complications arise.

Part VII
Design and Construction

12VAC5-412-370. Local and state codes and standards.

~~Abortion facilities~~ A. All construction of new buildings and additions or major renovations to existing buildings for occupancy as an abortion facility shall comply with conform to state and local codes, and zoning, and building ordinances and the Virginia Uniform Statewide Building Code (13VAC5-63). In addition, abortion facilities All construction of new buildings and additions or major renovations to existing buildings for occupancy as an abortion facility that perform only surgical abortions or a combination of surgical and medication induced abortions shall comply be designed and constructed consistent with Part 1 and sections 3.1-1 through 3.1-8 and section 3.7 section 3.8 of Part 3 of the 2014 Guidelines for Design and Construction of Health Care Hospitals and Outpatient Facilities of the, 2014 edition, The Facilities Guidelines Institute (2014 guidelines), which shall take precedence over the Virginia Uniform Statewide Building Code pursuant to § 32.1-127.001 of the Code of Virginia. Abortion facilities that perform only medication induced abortions shall be designed and constructed consistent with sections 1.1, 1.3, and 1.4 of Part 1 of the 2014 guidelines.

~~Entities operating as of the effective date of this chapter as identified by the department through submission of Reports of Induced Termination of Pregnancy pursuant to 12VAC5-550-120 or other means and that are now subject to licensure may be licensed in their current buildings if such entities submit a plan with the application for licensure that will bring them into full compliance with this provision within two years from the date of licensure.~~

Abortion procedures may take place in a procedure room, as detailed in section 3.8-3.1 of Part 3 of the 2014 guidelines, except that minimum square footage requirements for procedure rooms used for the provision of surgical abortion do not need to be greater than 120 square feet, with a minimum room dimension of 10 feet and a minimum clear dimension of three feet at each side and at the foot of the bed. Rooms designed in accordance with section 3.8-3.2 of Part 3 of the 2014 guidelines are not required for abortion facilities. Section 3.7-3.6.13.1(2) of Part 3 of the 2014 guidelines shall not apply to facilities that do not have a room designed in accordance with section 3.8-3.2.

Architectural drawings and specifications for all new construction or for additions, alterations, or renovations to any existing building shall be dated, stamped with professional seal, and signed by the architect. The architect shall certify that the drawings and specifications were prepared to conform to the Virginia Uniform Statewide

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Building Code (13VAC5-63) and be consistent with the applicable sections of the 2014 guidelines. The certification shall be forwarded to the Office of Licensure and Certification of the Virginia Department of Health.

B. In order to determine whether the abortion facility facility's design and construction is ~~in compliance~~ consistent with ~~this provision~~ the applicable sections of the 2014 guidelines, the commissioner may obtain additional information from the facility or its architect ~~concerning the design and construction of the facility.~~

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-412)

Guidelines for Design and Construction of ~~Health Care Hospitals and Outpatient Facilities, 2010 Edition~~ 2014 edition, Part 1 and Sections 3.1.1 through 3.1.8 and 3.7 of Part 3, The Facilities Guidelines Institute (formerly of the American Institute of Architects), Washington, D.C. (<http://www.fgiguide.org>)

Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care. Circulation. November 2, 2010, Volume 122, Issue 18 Suppl 3, American Heart Association, 7272 Greenville Avenue, Dallas, TX 75231-4596

(http://circ.ahajournals.org/content/vol122/18_suppl_3/).

~~Sexually Transmitted Diseases Treatment Guidelines, 2010, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services~~

~~Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services~~ (http://www.cdc.gov/HAI/prevent/prevent_pubs.html)

[Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care, version 2.2, November 2015, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services](http://www.cdc.gov/HAI/settings/outpatient/outpatient-care-guidelines.html) (<http://www.cdc.gov/HAI/settings/outpatient/outpatient-care-guidelines.html>)

~~Standards for Ambulatory Care, Rights and Responsibilities of the Individual, 2011, 2015 Standards for Ambulatory Care, The Joint Commission, 1515 W. 22nd Street, Suite 1300W, Oak Brook, IL 60523, telephone 1-877-223-2866 1-770-238-0454, email jrcustomerservice@pbd.com.~~

[Bloodborne Pathogens - OSHA's Bloodborne Pathogens Standard, OSHA Fact Sheet and Quick Reference Guide, 2011 U.S. Occupational Safety and Health Administration.](#)

VA.R. Doc. No. R15-4258; Filed April 12, 2016, 5:24 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-60. Virginia Egg Excise Tax (repealing 23VAC10-60-40, 23VAC10-60-50).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2016.

Effective Date: July 18, 2016.

Agency Contact: Joseph E. Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Section 3.2-1607 of the Code of Virginia authorizes the Tax Commissioner to administer the egg excise tax.

Purpose: As a result of a periodic review of the egg excise tax regulation (23VAC10-60) initiated by the Department of Taxation on April 28, 2015, and completed June 6, 2015, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor McAuliffe's Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the egg excise tax.

Rationale for Using Fast-Track Rulemaking Process: The repeal of the egg excise tax regulation is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

Substance: This action will repeal the egg excise tax regulation. The egg excise tax is levied on eggs, in both shell and liquid form, purchased or sold for use or consumption in the Commonwealth. The tax is remitted monthly and the revenues deposited into the Egg Fund. The Egg Board uses these funds to provide for programs of research, education, publicity, advertising, and other promotion of eggs.

Because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies, repeal of the regulation does not reflect any change in current tax policy.

Repeal of the regulation will have no impact on the administration of the egg excise tax.

Issues: As the regulation provides no additional guidance to statutes that are clear and unambiguous, it is unnecessary. Accordingly, its repeal poses 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 Department of Taxation (Department) proposes to repeal this regulation.

Result of Analysis. The repeal of this regulation will have no impact in that all sections are repetitive of statutes.

Estimated Economic Impact. The text in this regulation is repetitive of language in the following sections of the Code of Virginia: § 3.2-1600, § 3.2-1607, and § 3.2-1608. Repealing the regulation will have no impact in that all sections are repetitive of statutes.

Businesses and Entities Affected. The regulation and statutes pertain to the 90¹ registered egg handlers in the Commonwealth. Code of Virginia § 3.2-1600 defines a "handler" as "any person who operates a grading station, a packer, distributor, or other person who purchases, sells, or handles eggs that are used at the wholesale level for consumption in Virginia or, a farmer who packs, processes, or otherwise performs the functions of a handler."

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

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

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

Real Estate Development Costs. The proposed repeal of the regulation does 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 repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

¹ Data source: Department of Taxation

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The Department of Taxation determined that the regulation provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. Therefore, the regulation is repealed. The repeal of the regulation does not reflect a change in current tax policy and has no impact on the administration of the egg excise tax.

VA.R. Doc. No. R16-4556; Filed April 5, 2016, 11:57 a.m.

Fast-Track Regulation

Title of Regulation: **23VAC10-65. Virginia Peanut Excise Tax (repealing 23VAC10-65-40).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2016.

Effective Date: July 18, 2016.

Agency Contact: Joseph E. Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Section 3.2-1907 of the Code of Virginia authorizes the Tax Commissioner to administer the peanut excise tax.

Purpose: As a result of a periodic review of the peanut excise tax regulation (23VAC10-65) initiated by the Department of Taxation on April 28, 2015, and completed June 6, 2015, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and it is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor McAuliffe's Executive Order 17 signed June 30, 2014.

Regulations

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the peanut excise tax.

Rationale for Using Fast-Track Rulemaking Process: The Department of Taxation is using the fast-track rulemaking process because the repeal of the peanut excise tax regulation is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

Substance: This action will repeal the peanut excise tax regulation. The peanut excise tax is levied on peanuts grown in and sold in the Commonwealth for processing. The tax is remitted semiannually and the revenues deposited into the Peanut Fund. The Peanut Board uses these funds to plan and conduct campaigns for education, advertising, publicity, sales promotion, and research for Virginia peanuts.

Because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies, repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the peanut excise tax.

Issues: As the regulation provides no additional guidance to statutes that are clear and unambiguous, it is unnecessary. Accordingly, its repeal poses 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 Department of Taxation (Department) proposes to repeal this regulation.

Result of Analysis. The repeal of this regulation will have no impact in that all sections are either obsolete or repetitive of statutes.

Estimated Economic Impact. The text in this regulation is either obsolete or repetitive of language in Code of Virginia: § 3.2-1908. Repealing the regulation will therefore have no impact.

Businesses and Entities Affected. The regulation and statutes pertain to the 11¹ peanut processors in the Commonwealth.

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

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

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

Real Estate Development Costs. The proposed repeal of the regulation does 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 repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

¹ Data source: Department of Taxation

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The Department of Taxation determined that the regulation provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. Therefore, the regulation is repealed. The repeal of the regulation does not reflect a change in current tax policy and has no impact on the administration of the peanut excise tax.

VA.R. Doc. No. R16-4557; Filed April 5, 2016, 12:00 p.m.

Fast-Track Regulation

Title of Regulation: **23VAC10-75. Virginia Soybean Excise Tax Regulations (repealing 23VAC10-75-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2016.

Effective Date: July 18, 2016.

Agency Contact: Joseph E. Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Section 3.2-

2312 of the Code of Virginia authorizes the Tax Commissioner to administer the soybean excise tax.

Purpose: As a result of a periodic review of the Virginia Soybean Excise Tax Regulations (23VAC10-75) initiated by the Department of Taxation on April 28, 2015, and completed June 6, 2015, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor McAuliffe's Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the soybean excise tax.

Rationale for Using Fast-Track Rulemaking Process: The repeal of the Virginia Soybean Excise Tax Regulations is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

Substance: This action will repeal the Virginia Soybean Excise Tax Regulations. The soybean excise tax is levied on soybeans purchased in the Commonwealth. The tax is remitted quarterly and the revenues deposited into the Soybean Fund. The Soybean Board uses these funds to provide for programs of research, education, publicity, and the promotion of the sale and use of soybeans.

Because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies, repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the soybean excise tax.

Issues: As the regulation provides no additional guidance to statutes that are clear and unambiguous, it is unnecessary. Accordingly, its repeal poses 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 Department of Taxation (Department) proposes to repeal this regulation.

Result of Analysis. The repeal of this regulation will have no impact in that all sections are either obsolete or repetitive of statutes.

Estimated Economic Impact. The text in this regulation is either obsolete or repetitive of language in Code of Virginia:

§ 3.2-2313. Repealing the regulation will therefore have no impact.

Businesses and Entities Affected. The regulation and statutes pertain to the 37¹ soybean handlers in the Commonwealth. Code of Virginia § 3.2-2300 defines a "handler" as "any processor, dealer, shipper, exporter, or any other business entity that purchases soybeans from a producer."

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

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

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

Real Estate Development Costs. The proposed repeal of the regulation does 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 repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

¹ Data source: Department of Taxation

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The Department of Taxation determined that the regulation provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. Therefore, the regulation is repealed. The repeal of the regulation does not reflect a change in current tax policy and has no impact on the administration of the soybean excise tax.

VA.R. Doc. No. R16-4558; Filed April 5, 2016, 12:03 p.m.

Regulations

Fast-Track Regulation

Title of Regulation: 23VAC10-400. Writ Taxes Regulations (repealing 23VAC10-400-10).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2016.

Effective Date: July 18, 2016.

Agency Contact: Joseph E. Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Sections 58.1-1727, 58.1-1728, and 58.1-1729 of the Code of Virginia impose writ taxes.

Purpose: As a result of a periodic review of the Writ Taxes Regulations (23VAC10-400) initiated by the Department of Taxation on April 28, 2015, and completed June 6, 2015, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor McAuliffe's Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the writ taxes.

Rationale for Using Fast-Track Rulemaking Process: The repeal of the Writ Taxes Regulations is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

Substance: This action will repeal the Writ Taxes Regulations. A writ tax is levied on (i) any original suit that is commenced in a court of record, (ii) every case of removal or appeal of a cause from a district court to a court of record, (iii) every appeal from the decision of the board of supervisors or other governing body of a county to a court of record, (iv) every attachment returnable to a court of record, and (v) every writ of mandamus sued out of any court except the Supreme Court of Virginia. The taxes are paid to the clerk of court wherein the suit or other judicial proceeding is commenced.

Because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies, repeal of the regulation does not reflect any change in current tax policy.

Repeal of the regulation will have no impact on the administration of the writ taxes.

Issues: As the regulation provides no additional guidance to statutes that are clear and unambiguous, it is unnecessary. Accordingly, its repeal poses 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.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to repeal this regulation.

Result of Analysis. The repeal of this regulation will have no impact in that all sections are either obsolete, or repetitive of either the Constitution of Virginia or the Code of Virginia.

Estimated Economic Impact. The text in this regulation is either obsolete, repetitive of language in the Constitution of Virginia (Article X, Section 6(a)), or repetitive of the Code of Virginia (§ 17.1-606). Thus, repealing the regulation will have no impact.

Businesses and Entities Affected. The regulation, relevant portion of the state constitution, and statute all pertain to exemptions to taxation on legal proceedings. The exemptions apply to the indigent and political subdivisions in particular.

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

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

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

Real Estate Development Costs. The proposed repeal of the regulation does 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 repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The Department of Taxation determined that the regulation provides no guidance beyond the plain meaning of the statutes to which it applies and is not necessary to protect the public health, safety, or welfare. Therefore, the regulation is repealed. The repeal of the regulation does not reflect a change in current tax policy and has no impact on the administration of the writ taxes.

VA.R. Doc. No. R16-4559; Filed April 5, 2016, 12:05 p.m.

GUIDANCE DOCUMENTS

Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

Documents of the Virginia Economic Development Partnership (VEDP) are available using the links below, which will link the user to the guidance document on VEDP's Ally Information Exchange website at <http://virginiaallies.org>.

Questions regarding these documents may be directed to Alexander R. Thorup, Manager, Legislation and Policy, Virginia Economic Development Partnership, 901 East Byrd Street, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 545-5600.

Guidance Documents:

[Guidelines for the Clean Energy Manufacturing Incentive Grant Program](#), FY 2015, §§ 59.1-284.25 through 59.1-284.27

[Guidelines for the Commonwealth's Development Opportunity Fund Program](#), FY 2016, § 2.2-115

[Guidelines for the Major Eligible Employer Grant Program](#), FY 2016, §§ 2.2-5100 through 2.2-5104

[Major Employment and Investment \(MEI\) Project Site Planning Grant Program Guidelines](#), August 2010, § 2.2-2240.2

[Brownfield Restoration and Economic Redevelopment Assistance Fund Guidelines](#), FY 2012, § 10.1-1237

[Guidelines for the Virginia Economic Development Incentive Grant Program](#), FY 2016, §§ 2.2-5100 through 2.2-5104

[Guidelines for the Virginia Investment Partnership Grant Program](#), FY 2016, §§ 2.2-5100 through 2.2-5104

GENERAL NOTICES/ERRATA

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Renewal of 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)

Agency Decision with Amendment to Variance Request and Additional Comment Period

Notice of Decision and Additional Comment Period: The Department of Behavioral Health and Developmental Services (DBHDS) sought comment on an application submitted by the DBHDS Central State Hospital (CSH) for the proposed 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) for the maximum security forensic unit at CSH. The notice of action for the proposed renewal of variances was published in [32:7 VA.R. 1323-1327 November 30, 2015](#).

The following sentence was inadvertently omitted from Variances to Procedures for Complaint Resolution, Hearing, and Appeals, 12VAC35-115-150: General Provisions, page 1324, column 2, after the first sentence:

The CSH Maximum Security Appeals Committee consists of the Chairperson of the State Human Rights Committee, the Department of Behavioral Health and Developmental Services (DBHDS) Director of Human Rights, and the DBHDS Assistant Commissioner for Forensic Services.

Agency Decision: On March 4, 2016, the State Human Rights Committee approved the application for the renewal of variances from certain requirements of 12VAC35-115 for the maximum security forensic unit at CSH, with an amendment to the proposed provision that was not published with the variance request. The amendment is:

12VAC35-115-150: General Provisions.

The CSH Maximum Security Appeals Committee consists of the Chairperson of the State Human Rights Committee, the Department of Behavioral Health and Developmental Services (DBHDS) Director of Human Rights, and ~~the DBHDS Assistant Commissioner for Forensic Services a~~ State Human Rights Committee member.

The purpose of the amendment is to avoid the appearance of a conflict of interest because the Assistant Commissioner for

Forensic Services has direct administrative oversight of the Virginia Center for Behavioral Rehabilitation.

DBHDS is announcing an opportunity for public comment on the amendment to the approved variance to 12VAC35-115-150, General Provisions.

Public comment period: May 2, 2016, through June 1, 2016.

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.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of § 2.2-613 and subdivision 6 of § 15.2-2903 of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor McAuliffe, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are either new (in effect for at least 24 months) or newly identified. In conducting these assessments, agencies will follow the process established by Executive Order 58 (2007). These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact J. David Conmy, Local Government Policy Administrator, Commission on Local Government, email david.conmy@dhcd.virginia.gov, telephone (804) 371-8010, or visit the commission's website at <http://www.dhcd.virginia.gov>.

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STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS
Approved Schedule of Assessment Periods – July 2016 through June 2017
For Executive Agency Assessment of Cataloged Mandates

AGENCY	CATALOG	ASSESSMENT
Mandate Short Title	NUMBER	PERIOD
CRIMINAL JUSTICE SERVICES, DEPARTMENT OF		
Sexual Assault Services Program	SPSHS.DCJS033	4/1/2017 to 6/30/2017
EDUCATION, DEPARTMENT OF		
Teacher License Required	SOE.DOE004	7/1/2016 to 8/31/2016
Eligibility of Students in Military Families for Interscholastic Programs	SOE.DOE140	9/1/2016 to 10/31/2016
School Health	SOE.DOE141	7/1/2016 to 8/31/2016
Public School Security Equipment Grant Act	SOE.DOE144	7/1/2016 to 8/31/2016
Supplementary Written Historical Materials	SOE.DOE145	9/1/2016 to 10/31/2016
ENVIRONMENTAL QUALITY, DEPARTMENT OF		
Stormwater Local Assistance Funds	SNR.DEQ045	9/1/2016 to 11/30/2016
GAME AND INLAND FISHERIES, DEPARTMENT OF		
Wildlife Displayed in Schools	SNR.DGIF008	7/1/2016 to 9/30/2016
HEALTH, VIRGINIA DEPARTMENT OF		
Disposition of Dead Bodies	SHHR.VDH030	10/1/2016 to 12/31/2016
MARINE RESOURCES COMMISSION, VIRGINIA		
Wetlands Zoning Ordinance in Tidewater	SNR.MRC001	4/1/2017 to 6/30/2017
SOCIAL SERVICES, DEPARTMENT OF		
Child Protective Services	SHHR.DSS031	3/1/2017 to 5/31/2017
Provision of Independent Living Services for Current or Former Children in Foster Care	SHHR.DSS076	9/1/2016 to 11/30/2016
Written Interagency Agreements with Local School Divisions for Investigating Child Abuse and Neglect	SHHR.DSS077	3/1/2017 to 5/31/2017
TAXATION, DEPARTMENT OF		
Tax Exemption for Certified Pollution Control, Recycling, and Solar Energy Equipment and Facilities	SFIN.TAX014	7/1/2016 to 9/30/2016
Real Property Tax Exemption or Deferrals for the Elderly and Disabled	SFIN.TAX020	8/1/2016 to 10/31/2016
Food and Beverage and Meals Tax Exemption for Nonprofit Fundraising Sales	SFIN.TAX021	9/1/2016 to 11/30/2016

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 30, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2016-00022

Ex Parte: In the matter of receiving input for evaluating the establishment of protocols, a methodology, and a formula to measure the impact of energy efficiency measures

SCHEDULING ORDER

During the 2016 Session of the Virginia General Assembly, two identical bills, House Bill 1053 and Senate Bill 395, were passed by the General Assembly. These bills both require:

§ 1. That the State Corporation Commission (the "Commission") shall evaluate the establishment of uniform protocols for measuring, verifying, validating, and reporting the impacts of energy efficiency measures implemented by investor-owned electric utilities providing retail electric utility service in the Commonwealth and the establishment of a methodology for estimating annual kilowatt savings and a formula to calculate the levelized cost of saved energy for such energy efficiency measures. The Commission shall promptly commence such evaluation following the effective date of this act and shall receive input from interested parties and the Department of Mines, Minerals and Energy. The Commission shall submit to the Governor and the General Assembly a report of its findings and recommendations by December 1, 2016.¹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion that while this legislation has not yet become effective, it requires the Commission's prompt review and receipt of input from interested persons and entities prior to submitting a report of its findings and recommendations to the Governor and General Assembly. Therefore, the Commission herein establishes a schedule in advance of the effective date in order to receive timely input on this matter.

The Commission finds that an evaluation ("Evaluation") should be conducted to consider the establishment of: (i) uniform protocols for measuring, verifying, validating, and reporting the impacts of energy efficiency measures; (ii) a methodology for estimating annual kilowatt savings for such energy efficiency measures; and (iii) a formula to calculate the levelized cost of saved energy for such energy efficiency measures (collectively, "Objectives"). The Commission will conduct the Evaluation and consider the Objectives as they concern energy efficiency measures implemented by both investor-owned electric utilities and investor-owned natural gas utilities,² as both types of utilities conduct energy efficiency programs.

Further, since evaluation and verification of energy savings of energy efficiency programs typically are measured against the projected savings included in cost/benefit analyses, the Commission is of the opinion that the Evaluation also should encompass the methodologies by which utilities calculate the components of the cost/benefit tests³ in proceedings requesting approval to implement energy efficiency programs. In particular, the Evaluation should consider: (i) whether the application of costs and benefits is consistent across utilities; (ii) whether consistent application of costs and benefits across utilities is necessary or reasonable; and (iii) whether the application of the cost/benefit tests can be improved by enhanced evaluation and verification protocols for estimating savings actually realized (collectively, "Cost/Benefit Questions").

Accordingly, the Commission shall receive input from the Virginia Department of Mines, Minerals and Energy ("DMME"), from investor-owned electric utilities and investor-owned natural gas utilities providing service in the Commonwealth, and from other interested persons or entities, concerning the Objectives and/or the Cost/Benefit Questions. We will direct that the Clerk of the Commission provide copies of this Scheduling Order to: DMME; Virginia Electric and Power Company d/b/a Dominion Virginia Power, Appalachian Power Company, and Kentucky Utilities Company d/b/a Old Dominion Power Company (collectively, "Electric Companies"); Appalachian Natural Gas Distribution Company, Atmos Energy, Columbia Gas of Virginia, Inc., Roanoke Gas Company, Southwestern Virginia Gas Company, Virginia Natural Gas, Inc., and Washington Gas Light Company (collectively, "Natural Gas Companies"); and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").

We also will direct the Staff of the Commission's Division of Energy Regulation ("Staff") to identify other persons or entities that potentially may have an interest in this matter, including electric cooperatives and participants in past Commission cases wherein an Electric Company, a Natural Gas Company, or an electric cooperative has sought approval of energy efficiency programs and/or conservation and ratemaking efficiency plans, and to provide these persons or entities with copies of this Scheduling Order by electronic transmission or, when electronic transmission is not feasible, by first class mail. Further, we will direct the Director of the Commission's Division of Information Resources to post a copy of this Scheduling Order on the Commission's website.

We will provide DMME, the Electric Companies, the Natural Gas Companies, Consumer Counsel, and any other interested person or entity an opportunity to provide written and/or oral comments on the Objectives and the Cost/Benefit Questions under consideration in this matter. In addition to any general comments, the Commission seeks specific input concerning:

General Notices/Errata

- Existing measurement and verification protocols and their applicability for Virginia; and
- Appropriate formulae for developing the cost of saved energy resulting from energy efficiency programs and appropriate inputs for such formulae.

Finally, the Commission will hold a public session to receive comments from interested persons and entities regarding the Objectives and the Cost/Benefit Questions under consideration in this matter.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2016-00022 for purposes of receiving input from DMME and interested persons and entities.

(2) The Clerk of the Commission hereby is directed to provide a copy of this Scheduling Order to DMME, the Electric Companies, the Natural Gas Companies, and Consumer Counsel.

(3) Within five (5) business days of the filing of this Scheduling Order with the Clerk of the Commission, the Staff shall transmit electronically or by first class mail copies of this Scheduling Order to those persons and entities identified by the Staff as potentially having an interest in this matter. The Staff shall promptly file with the Clerk of the Commission a certificate of transmission or mailing and include a list of names and addresses of the persons and entities to whom the Scheduling Order was transmitted or mailed.

(4) The Director of the Commission's Division of Information Resources promptly shall post a copy of this Scheduling Order on the Commission's website.

(5) On or before May 25, 2016, interested persons or entities may file comments with Joel H. Peck, Clerk, State Corporation Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2016-00022 and shall address the Objectives and/or the Cost/Benefit Questions noted above. Those desiring to submit comments electronically may do so on or before May 25, 2016, by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(6) On or before June 24, 2016, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of a Staff Report containing its evaluation of the issues under consideration in this matter.

(7) A public session shall be convened on July 12, 2016, at 10 a.m. in the Commission's second floor courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive comments regarding the Objectives and the Cost/Benefit Questions under consideration in this matter.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Division of Energy Regulation.

¹ Senate Bill 395 was signed into law by the Governor on March 7, 2016, and is effective July 1, 2016. 2016 Va. Acts Ch. 255 (quotation marks added). House Bill 1053 is currently awaiting further action by the Governor.

² Though natural gas utilities are not specifically referred to by House Bill 1053 and Senate Bill 395, the Commission, in its discretion, is including consideration of natural gas utilities' energy efficiency measures to provide for a more thorough Evaluation.

³ The cost/benefit tests include, at a minimum, the Participants Test, the Utility Cost Test, the Ratepayer Impact Measure Test, and the Total Resource Cost Test. See the Commission's Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs, 20 VAC 5-304-10 et seq.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Tradewind Energy, Inc. and Centerville Pike Solar Project, LLC Notice of Intent - Small Renewable Energy Project (Solar)

Tradewind Energy, Inc. (TWE) and Centerville Pike Solar Project, LLC have provided notice to the Department of Environmental Quality of their intent to submit the necessary documentation for a permit by rule for a small renewable energy solar project. The TWE Centerville Pike Solar Project, LLC, is a 15 megawatt project, within the city limits of Chesapeake located along Centerville Turnpike Road and will cover approximately 245 acres. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology.

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

Tradewind Energy, Inc. and TWE Chesapeake Solar Project, LLC - Small Renewable Energy Project (Solar)

Tradewind Energy, Inc. (TWE) and TWE Chesapeake Solar Project, LLC, have provided notice to the Department of Environmental Quality of their intent to submit the necessary documentation for a permit by rule for a small renewable energy solar project. The TWE Chesapeake Solar Project is a 20 megawatt project within the city limits of Chesapeake between Centerville Turnpike South and Longridge Road to the west and east, respectively, and bounded by Beaver Dam Road to the north and will cover approximately 175 acres. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology.

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

Tradewind Energy, Inc. and TWE Myrtle Solar Project, LLC - Small Renewable Energy Project (Solar)

Tradewind Energy, Inc. (TWE) and TWE Myrtle Solar Project, LLC have provided notice to the Department of Environmental Quality of their intent to submit the necessary documentation for a permit by rule for a small renewable energy solar project. The TWE Myrtle Solar Project is a 15 megawatt project within the city limits of Suffolk along Pruden Boulevard (Hwy 460) and will cover approximately 120 acres. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology.

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

STATE BOARD OF HEALTH

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 Department of Health is conducting a periodic review and small business impact review of **12VAC5-590, Waterworks Regulations**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins May 2, 2016, and ends May 23, 2016.

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 Drew Hammond, Deputy Director, Office of Drinking Water, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7302, FAX (804) 864-7521, or email drew.hammond@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on April 11, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Thirty-One (16)

Virginia Lottery's "Print 'n Play Retailer Promotion" Final Rules for Operation (effective May 1, 2016)

Director's Order Number Fifty (16)

Virginia Lottery's "Thank a Teacher" Final Rules for Operation (effective April 25, 2016)

Director's Order Number Fifty-Seven (16)

Virginia Lottery's "2016 VIP Nascar® Awards Banquet Giveaway" Promotion Final Rules for Operation (effective April 23, 2016)

Director's Order Number Fifty-Eight (16)

Virginia Lottery's 2016 RIR Torque Club Ticket Giveaway Final Rules for Operation (effective April 23, 2016)

Director's Order Number Fifty-Nine (16)

Raise the Bar Appreciation Rewards Virginia Lottery Retailer Incentive Program Requirements (this Director's Order becomes effective on April 5, 2016, and shall remain in full force and effect until ninety (90) days after the conclusion of the incentive program, unless otherwise extended by the Director)

Director's Order Number Sixty (16)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games ended effective April 2, 2016:

Virginia Lottery's FastPlay \$15,000 Money Mania (164 15)

Virginia Lottery's FastPlay \$50,000 Blackjack (165 15)

Virginia Lottery's FastPlay Bankroll Bingo (166 15)

Virginia Lottery's FastPlay Blackjack (11 11)

General Notices/Errata

Virginia Lottery's FastPlay Bonus Bingo (42 09)
Virginia Lottery's FastPlay Crossword (167 15)
Virginia Lottery's FastPlay Dodgeball (130 12)
Virginia Lottery's Fast 50's Hot Slots Doubler (78 15)
Virginia Lottery's FastPlay Find the 9's (14 13)
Virginia Lottery's FastPlay Lucky Bucks (158 15)

This Director's Order becomes effective nunc pro tunc to April 2, 2016, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

Director's Order Number Sixty-One (16)

Virginia Lottery's "Game Room Promotion" Final Rules for Operation (effective May 1, 2016)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 Department of Medical Assistance Services is conducting a periodic review and small business impact review of **12VAC30-150, Uninsured Medical Catastrophe Fund**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 14, 2016, and ends May 5, 2016.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

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.

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 BOARD OF HEALTH

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Publication: 32:17 VA.R. 2340-2388 April 18, 2016

Correction to Final Regulation:

Page 2340, in the parenthetical after "amending" delete "12VAC5-481-3390 through 12VAC5-481-3450;" and insert "12VAC5-481-3390 through 12VAC5-481-3430, 12VAC5-481-3450;"

VA.R. Doc. No. R16-4305; Filed April 13, 2016