VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2017 through January 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 **(Tuesday)**	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 **(Tuesday)**	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Initial Agency Notice

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

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

Name of Petitioner: Jena Jung, O.D.

Nature of Petitioner's Request: To amend regulations to allow a practitioner to request inactive licensure. The petitioner would also like for the board to reactivate an inactive license for military persons or spouses at no additional cost.

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 December 25, 2017. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov; comment will be requested until January 24, 2018. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its next meeting scheduled for March 2, 2018.

Public Comment Deadline: January 24, 2018.

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

VA.R. Doc. No. R18-13; Filed December 5, 2017, 2:10 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC48-60, Common Interest Community Board Management Information Fund Regulations**, which was published in 33:21 VA.R. 2299 June 12, 2017. The Common Interest Community Board voted to withdraw this action and issue a new notice at a later date so as to allow additional opportunity for public participation through formation of a stakeholder committee.

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

VA.R. Doc. No. R17-5087; Filed December 4, 2017, 11:14 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending **18VAC85-50, Regulations Governing the Practice of Physician Assistants**. The purpose of the proposed action is to simplify and clarify the definitions and usage of various terms for supervision for more consistency with the Code of Virginia and with the actual practice of physician assistants and supervising physicians. Further, the action will add a provision on pharmacotherapy for weight loss to clarify that a physician assistant can conduct the physical examination, review tests, and prescribe drugs if so authorized in a practice agreement with a supervising physician.

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

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

Public Comment Deadline: January 24, 2018.

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

VA.R. Doc. No. R18-5334; Filed December 4, 2017, 1:43 p.m.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Titles of Regulations: **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

5VAC5-40. Administration of the Office of the Clerk of the Commission (amending 5VAC5-40-10).

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9834, FAX (804) 371-9521, or email joel.peck@scc.virginia.gov.

Summary:

The amendments (i) change fees charged by the Office of the Clerk for furnishing paper copies of State Corporation Commission records and the certification of those copies; (ii) allow the Office of the Clerk to charge and collect reasonable fees for providing records from a computer database, electronic data processing system, or any other structured collection of data or for abstracting or summarizing data or creating a record that does not already exist if the State Corporation Commission chooses to fulfill such a request; (iii) make numerous minor and technical changes; and (iv) change filing time for certain Uniform Commercial Code (UCC) records based on the type of delivery, payment methods, and the requirements for filing of UCC records previously refused by the filing office in error.

AT RICHMOND, NOVEMBER 29, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2017-00004

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing Administration of
the Office of the Clerk of the Commission and
Uniform Commercial Code Filing Rules

ORDER ADOPTING REGULATIONS

On October 11, 2017, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt regulations pursuant to §§ 12.1-20, 12.1-21.1, 12.1-21.2 and § 8.9A-526 of the Code of Virginia. The proposed regulations amend the rules regarding "Administration of the Office of the Clerk of the Commission" ("Clerk's Rules") as well as the "Uniform Commercial Code Filing Rules" ("UCC Rules") under Title 5, Chapters 40 and 30, respectively, of the Virginia Administrative Code.

Among other amendments, the proposed regulations include changes to the fees charged by the Office of the Clerk for furnishing paper copies of Commission records and the certification of those copies. The proposed regulations also amend the Clerk's Rules to allow the Office of the Clerk to charge and collect reasonable fees for: (a) providing records from a computer database, electronic data processing system, or any other structured collection of data; or (b) for abstracting or summarizing data or creating a record that does not already exist, if the Commission chooses to fulfill such a request. Additionally, the proposed regulations include: (a) numerous minor and technical changes to the UCC Rules; and (b) changes regarding the filing time for certain UCC records based on the type of delivery, changes regarding payment methods, and the requirements regarding the filing of UCC records previously refused for acceptance by the filing office in error.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on October 30, 2017, posted on the Commission's website, and sent to various interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before November 20, 2017. No comments or requests for a hearing were filed.

Following entry of the Order to Take Notice, several minor and stylistic amendments to the proposed regulations for the

UCC Rules have been made. Those amendments are shown in the proposed regulations accompanying this Order Adopting Regulations ("Order") and the Commission is of the opinion that these amendments should be accepted.

NOW THE COMMISSION, upon consideration of the proposed regulations and applicable law, concludes that the proposed regulations, as amended, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations as amended, and attached hereto, are ADOPTED effective December 1, 2017.

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

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

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

AN ATTESTED COPY HEREOF shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order, including a copy of the attached regulations, to any interested persons as he may designate.

5VAC5-30-20. Definitions.

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

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to ~~describe the correction of an error or inaccuracy made~~ explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates ~~that~~ a financing statement is inaccurate or wrongfully filed.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who ~~tenders~~ delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for ~~tendering~~ delivering the UCC record for filing. "Remitter" does not include a person responsible merely for the delivery of the UCC record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records may be ~~tendered for filing at~~ delivered to the filing office for filing as follows:

1. By personal delivery, at the filing office street address;

2. By courier delivery, at the filing office street address;

3. By postal delivery, to the filing office mailing address; or

4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered to the filing office for filing by personal~~,~~ or courier~~, or postal~~ delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered to the filing office for filing after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business. The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

5VAC5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.

2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (http://www.scc.virginia.gov/clk/uccfile.aspx) shall be accepted.

3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record is $20.

2. The fee for submitting a UCC search request is $7.00.

3. ~~The fee for furnishing UCC search copies is $.50 for each page. The fee for affixing the seal of the commission to a certificate is $3.00.~~ There is no fee for furnishing a [paper] copy of a UCC record of 25 or fewer pages. The fee for furnishing a [paper] copy of a UCC record that exceeds 25 pages is $10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is $6.00.

C. Methods of payment. Filing fees and fees for services provided under this chapter may be paid by the following methods:

1. Payment ~~in~~ by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.

2. Personal ~~checks~~ check, cashier's ~~checks~~ check and money ~~orders~~ order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

3. Payment by debit or credit card ~~acceptable to~~ of a type approved by the filing office ~~or electronic check may~~ shall be accepted for the filing or submission of ~~documents~~ a document delivered to the filing office for filing by authorized electronic delivery method.

4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Overpayment and underpayment policies.

1. The filing office shall notify the remitter of the amount of any overpayment exceeding $24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing office shall refund an overpayment of $24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

Part II
UCC Record Requirements

5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;

2. Determine that a security interest in collateral exists or does not exist;

3. Determine that information in the UCC record is correct or incorrect, in whole or in part; or

4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if ~~tendered~~ delivered to the filing office for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. ~~If a secured party or a remitter demonstrates to the satisfaction of the filing office that a UCC record that was refused for filing should not have been refused, the filing office shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing.~~ If it is determined that the filing office refused to accept [~~the~~ a UCC] record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing. The filing office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally ~~tendered~~ delivered to the filing office for filing.

Part III
UCC Record Filing and Searches

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. ~~If the correction occurs after the filing office has issued a certification, the~~ The filing office shall file a filing officer statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and ~~explaining the nature~~ an explanation of the corrective or other action taken. The ~~record~~ filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. 1. A UCC record ~~tendered~~ delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the UCC record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional name or names, and any suffix. Such forms

diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.

2. The name and address of the person to whom the search report is to be sent.

3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report, and

2. Instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.

2. No distinction is made between upper and lower case letters.

3. Punctuation marks and accents are disregarded.

4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."

5. All spaces are disregarded.

6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unlapsed or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.

2. Identification of the name searched.

3. The through date as of the date and time the report was generated.

4. For an organization, the name as it appears after application of the standardized search logic.

5. Identification of each unlapsed initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.

6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.

7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

5VAC5-40-10. Fees to be charged by the commission.

A. The Office of the Clerk shall charge and collect a fee of $6.00 for each certificate of fact provided pursuant to § 12.1-20 of the Code of Virginia.

B. The commission shall charge and collect for furnishing ~~and certifying~~ a paper copy of any document~~, instrument, or paper~~ or any information from its records ~~$ .50 per page and $3.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof~~ a fee as set forth in this subsection.

1. If the number of pages is 25 or fewer, no charge.

2. If the number of pages is between 26 and 50, $10.

3. If the number of pages is 51 or more, $20.

If the commission receives two or more requests for copies of documents or information that it reasonably believes are intended to evade the payment of the charge for furnishing a copy, the requests may be aggregated and treated as a single request.

C. For certifying a paper copy, the commission shall charge and collect $6.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof.

D. The commission may charge and collect reasonable fees:

1. For providing records from a computer database, an electronic data processing system, or any other structured collection of data; or

2. For abstracting or summarizing data or creating a record that does not already exist, if the commission chooses to fulfill a request for same.

VA.R. Doc. No. R18-5272; Filed November 29, 2017, 12:32 p.m.

TITLE 8. EDUCATION

UNIVERSITY OF VIRGINIA

Final Regulation

REGISTRAR'S NOTICE: The University of Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC85-30. Open Burn and Open Flame Operations (adding 8VAC85-30-10 through 8VAC85-30-80).**

Statutory Authority: § 23.1-1301 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Anthony P. de Bruyn, University Spokesperson, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904, telephone (434) 243-2070, or email adebruyn@virginia.edu.

Summary:

The regulation establishes the requirements and permitting process for open burn and open flame devices on the property of the University of Virginia.

CHAPTER 30
OPEN BURN AND OPEN FLAME OPERATIONS

8VAC85-30-10. Definitions.

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

"Open burning" means the burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Examples include campfires, bon fires, and fire pits.

"Open flame" and "open flame devices" means candles, tiki torches, oil lanterns, and similar items.

"University" means the University of Virginia, including its Medical Center.

"University facility" means any defined space of the university, including a room, lab, series of labs, building, or controlled outdoor area.

"University Medical Center" or "Medical Center" means the hospital and all other buildings that make up the Medical Center, such as facilities used for administrative, clinical, or lab activities.

"University property" means land or buildings that the university owns or leases and that are under the direct control of the Board of Visitors of the University of Virginia. University property also includes premises the university uses for activities of its offices, departments, personnel, or students.

8VAC85-30-20. Open burning.

Unless otherwise permitted under this chapter, a person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless it is (i) approved by the university's Office of Environmental Health and Safety or the Medical Center Fire Protection Inspector's Office as appropriate and (ii) conducted in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51), Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia, and applicable local city and county codes and regulations.

8VAC85-30-30. Open flame and open flame devices.

A. Unless otherwise permitted under this chapter, a person shall not use an open flame or open flame device unless it is (i) approved by the Office of Environmental Health and Safety or the Medical Center Fire Protection Inspector's Office as appropriate, (ii) conducted in accordance with applicable university or Medical Center procedures, and (iii) conducted in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51).

B. A person shall not use an open flame or open flame device in any place where flammable, combustible, or explosive material is utilized or stored.

C. Open burn and open flame device use and operation in any university facility or on university property must be operated and managed in accordance with this chapter.

D. Users of cutting torches and welding equipment must satisfy requirements outlined in 13VAC5-51-31.

8VAC85-30-40. Requests for permission.

A. A request must be made to the university's Office of Environmental Health and Safety (EHS) or the Medical Center Fire Protection Inspector's Office for the purpose of an

open burn and open flame device use and operation. EHS or the Medical Center Fire Protection Inspector will review the request to ensure the open burn and open flame device is used in accordance with and meets the requirements of (i) the Virginia Statewide Fire Prevention Code (13VAC5-51), (ii) § 10.1-1142 of the Code of Virginia, (iii) EHS procedures, (iv) Medical Center procedures, and (v) applicable local city and county codes and regulations.

B. Each request will be reviewed (i) to ensure the safety of the university's faculty, staff, students, patients, and visitors and (ii) for stewardship of the university's facilities and property.

C. EHS or the Medical Center Fire Protection Inspector shall notify the requesting party of the approval or denial of a request for permission granted under this section permitting an open burn or use of an open flame or open flame device. EHS or the Medical Center Fire Protection Inspector shall concurrently notify the University Police Department of any approval or denial under this section and confirm receipt by the University Police Department.

8VAC85-30-50. Persons lawfully in charge.

In addition to university personnel responsible for the management or supervision of university property and activities, the fire code representative from the university's Office of Environmental Health and Safety or the Medical Center Fire Protection Inspector's Office (or designee) or university law-enforcement officers are lawfully in charge of university property and facilities for purposes of:

1. Forbidding entry upon university property or into a university facility while conducting open burning or while in possession of an open flame or open flame device;

2. Prohibiting remaining upon university property or within a university facility while conducting open burning or while in possession of an open flame or open flame device; and

3. Ordering any fire that is deemed as noncompliant with this chapter or that creates a hazard or nuisance to be extinguished.

8VAC85-30-60. Exemptions.

The following are exempted from the requirements of this chapter:

1. Outdoor cooking operations where propane and charcoal are used in a safe manner. Ashes, cinders, and coals shall be disposed of in an approved manner. Disposal guidelines are available from the university's Office of Environmental Health and Safety (EHS) or the Medical Center Fire Protection Inspector.

2. Indoor and outdoor use of Sterno for the purpose of warming foods. Such use should be maintained and operated in an approved manner. Operating guidelines are available from EHS or the Medical Center Fire Protection Inspector.

3. Laboratory flame producing equipment.

8VAC85-30-70. Compliance.

Failure to comply with the requirements of this chapter may result in disciplinary action up to and including termination or expulsion in accordance with relevant university policies and may result in prosecution in accordance with state and federal law.

8VAC85-30-80. Procedure.

A. Academic Division. All requests for the use and operation of an open burn or an open flame device must be submitted to the university Office of Environmental Health and Safety at least three weeks prior to the proposed activity. Review of proposals of a routine nature (i.e., similar to previously approved activities) may be expedited at the discretion of EHS. Requests may be submitted by calling 434-243-1711; emailing fire-safety@virginia.edu, or completing and submitting the appropriate form provided by the Office of Environmental Health and Safety.

B. Medical Center. All requests for the use and operation of an open burn and open flame device at the Medical Center must be submitted to the Medical Center Fire Protection Inspector by calling 434-982-6420 or emailing the request to aco9m@virginia.edu as soon as possible.

C. Additional requirements may apply at the discretion of the fire code representative from EHS or Medical Center Fire Protection Inspector's Office.

VA.R. Doc. No. R18-5346; Filed December 1, 2017, 1:59 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: The form used in administering the following regulation has been filed by the Department of Environmental Quality. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-130. Solid Waste Planning and Recycling Regulations.**

Contact Information: Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, 629 East

Main Street, Richmond, VA 23219, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC20-130)

~~Locality Recycling Rate Report for Calendar Year 2016, DEQ Form 50–30 (rev. 12/2016)~~

Locality Recycling Rate Report for Calendar Year 2017, DEQ Form 50–30 (rev. 9/2017)

VA.R. Doc. No. R18-5351; Filed November 27, 2017, 1:04 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-10, 12VAC5-110-90).**

Statutory Authority: §§ 22.1-271.2, 32.1-46, and 32.1-47 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 24, 2018.

Effective Date: February 10, 2018.

Agency Contact: Sandra Sommer, PhD, Acting Director, Division of Immunization, Virginia Department of Health, 101 North 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 864-8055, FAX (804) 864-8089, or email sandra.sommer@vdh.virginia.gov.

Basis: Statutory authority to promulgate these regulations is granted to the State Board of Health by §§ 22.1-271.2 and 32.1-46 of the Code of Virginia. Penalties are established in § 32.1-27 of the Code of Virginia.

Purpose: The regulations are amended to clarify that immunization records shall be open to inspection by health department officials. Amendments are necessary to ensure children are protected to the extent possible from vaccine-preventable diseases and to protect the health of all Virginians. School officials must comply with the law as stated in § 22.1-271.2 of the Code of Virginia in regard to inspection of immunization records by health department officials. The Virginia Department of Health (VDH) annually reviews a random sample of school immunization records to ensure compliance with current requirements. VDH would also need to review school immunization records in the event of a vaccine-preventable disease outbreak. Local health department representatives have encountered increasing resistance from school officials. Most recently, at least three of the selected 600 sites initially refused to allow records to be reviewed as part of the annual immunization survey, despite instructions to de-identify records prior to review. If the amendments are approved, failure to allow inspection of records could result in a decision to seek imposition of penalties (i.e., Class 1 misdemeanor) authorized by § 32.1-27 of the Code of Virginia.

Each year, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (CDC) recommends changes to the immunization schedules that are subsequently published by the CDC and the American Academy of Pediatrics. The regulation is also amended to include the most recent schedules.

Rationale for Using Fast-Track Rulemaking Process: Incorporating current statutory provisions into the Virginia Administrative Code reinforces the duties of school admitting officials as currently required by law and does not change current practices.

Updating documents incorporated by reference is routine.

Substance: Amendments to the regulations (i) clarify required activities of school officials and (ii) update references to the most current version of the immunization schedule.

Issues: The primary advantages to the agency and the public are that amended regulations will help ensure that children are appropriately protected to the extent possible from vaccine preventable diseases. This also serves to protect the health of all Virginians. Proposed changes clarify processes required for immunization record review and ensure that the most current recommendations are applied. No disadvantages to the public or the Commonwealth are anticipated.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to: 1) incorporate language from § 22.1-271.2 of the Code of Virginia to clarify that each admitting official is required to allow inspection of school immunization records by officials of the Virginia Department of Health (VDH), and 2) amend the definition of "Immunization schedules" to reference 2017 Centers for Disease Control and Prevention recommended schedules.

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

Estimated Economic Impact.

Incorporating Code of Virginia Language: Code of Virginia § 22.1-271.2 (E) states that: "Every school shall record each student's immunizations on the school immunization record. The school immunization record shall be a standardized form provided by the State Department of Health, which shall be a part of the mandatory permanent student record. Such record shall be open to inspection by officials of the State Department of Health and the local health departments."

Nevertheless, VDH reports that local health department representatives have encountered increasing resistance from some school officials. Most recently, three schools initially refused to allow records to be reviewed as part of the annual immunization survey, despite instructions to de-identify records prior to review. Access to the records by health officials help ensure that children, and adults, are appropriately protected to the extent possible from vaccine preventable diseases. VDH needs access to records in the event of a vaccine-preventable disease outbreak, as well as annually review a random sample of school immunization records to ensure compliance with current requirements. Clarifying in the regulation that the records are required by law to be open for inspection by health department officials may increase cooperation and may thus indirectly help limit the spread of disease.

The proposal to incorporate language from § 22.1-271.2 of the Code of Virginia to clarify that each admitting official is required to allow inspection of school immunization records by health department staff may encourage cooperation for a reason beyond just reminding the school officials that it is the law. Code of Virginia § 32.1-27 A states that: "Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified."

The referenced Board is the State Board of Health; thus violating the Regulations for the Immunization of School Children constitutes a Class 1 misdemeanor. The referenced title is Title 32.1. Health, which does not include § 22.1-271.2;[1] thus failing to comply with § 22.1-271.2 in of itself does not constitute a Class 1 misdemeanor.

The Board's proposal to incorporate language from § 22.1-271.2 to clarify that each admitting official is required to allow inspection of school immunization records by officials of the VDH will affectively make failure to comply a Class 1 misdemeanor, since it would then be a violation of a State Board of Health regulation.

Amending Definition: Under the current regulation "Immunization schedules" is defined as "the 2015 Recommended Immunization Schedules for Persons Aged 0 through 18 Years developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP)."

The Board proposes to amend 2015 to 2017. The requirements of the 2017 version are the same as in the 2015 version.[2] Thus amending the definition will have no impact on families seeking to meet immunization requirements.

Businesses and Entities Affected. The regulation affects the 5,012 licensed child care facilities, 1,862 public schools and an estimated 750 private schools in the Commonwealth, as well as families with children in these schools and facilities.

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

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

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]§ 22.1-271.2 is under Title 22.1. Education.

[2]Source: Virginia Department of Health

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

Summary:

The amendments incorporate language from § 22.1-271.2 of the Code of Virginia to clarify that each admitting official is required to allow inspection of school immunization records by officials of the Department of Health. An amendment also incorporates by reference the latest recommended immunization schedules.

Part I
Definitions

12VAC5-110-10. Definitions.

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

"Adequate immunization" means the immunization requirements prescribed under 12VAC5-110-70.

"Admit" or "admission" means the official enrollment or reenrollment for attendance at any grade level, whether full-time or part-time, of any student by any school.

"Admitting official" means the school principal or his designated representative if a public school; if a nonpublic school or child care center, the principal, headmaster or director of the school or center.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Compliance" means the completion of the immunization requirements prescribed under 12VAC5-110-70.

"Conditional enrollment" means the enrollment of a student for a period of 90 days contingent upon the student having received at least one dose of each of the required vaccines and the student possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

"Documentary proof" means an appropriately completed copy of the most current version of Form MCH 213G signed by a physician or his designee, registered nurse, or an official of a local health department. A copy of the immunization record signed or stamped by a physician or his designee, registered nurse, or an official of a local health department indicating the dates of administration including month, day, and year of the required vaccines, shall be acceptable in lieu of recording these dates on Form MCH 213G, as long as the record is attached to Form MCH 213G and the remainder of Form MCH 213G has been appropriately completed. A printout of an immunization record from the provider's electronic health record can be accepted without a signature or stamp. For a new student transferring from an out-of-state school, any immunization record, which contains the exact date (month/day/year) of administration of each of the required doses of vaccines, is signed by a physician or his designee or registered nurse, and complies fully with the requirements prescribed under 12VAC5-110-70 shall be acceptable.

"Immunization" means the administration of a product licensed by the FDA to confer protection against one or more specific pathogens.

"Immunization schedules" means the ~~2015~~ 2017 Recommended Immunization Schedules for ~~Persons~~ Children and Adolescents Aged ~~0 through~~ 18 Years or Younger developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

"Physician" means any person licensed to practice medicine in any of the 50 states or the District of Columbia.

"School" means:

1. Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth;

2. Any private or religious school that offers instruction at any level or grade from kindergarten through grade 12;

3. Any private or religious nursery school or preschool, or any private or religious child care center required to be licensed by this Commonwealth;

4. Any preschool classes or Head Start classes operated by the school divisions within this Commonwealth; and

5. Any family day home or developmental center.

"Student" means any person who seeks admission to a school, or for whom admission to a school is sought by a parent or guardian, and who will not have attained the age of 20 years by the start of the school term for which admission is sought.

"Twelve months of age" means the 365th day following the date of birth. For the purpose of evaluating records, vaccines administered up to four days prior to the first birthday (361 days following the date of birth) will be considered valid.

Part IV
Procedures and Responsibilities

12VAC5-110-90. Responsibilities of admitting officials.

A. Procedures for determining the immunization status of students. Each admitting official or his designee shall review, before the first day of each school year, the school medical record of every new student seeking admission to his school, and that of every student enrolling in grade six for compliance with the requirements prescribed in 12VAC5-110-70. Such review shall determine into which one of the following categories each student falls:

1. Students whose immunizations are adequately documented and complete in conformance with 12VAC5-110-70. Students with documentation of existing immunity

to mumps, measles, rubella, or varicella as defined in 12VAC5-110-80 B shall be considered to be adequately immunized for such disease.

2. Students who are exempt from the immunization requirements of 12VAC5-110-70 because of medical contraindications or religious beliefs provided for by 12VAC5-110-80.

3. Students whose immunizations are inadequate according to the requirements of 12VAC5-110-70.

4. Students without any documentation of having been adequately immunized.

B. Notification of deficiencies. Upon identification of the students described in subdivisions A 3 and 4 of this section, the admitting official shall notify the parent or guardian of the student:

1. That there is no, or insufficient, documentary proof of adequate immunization in the student's school records.

2. That the student cannot be admitted to school unless he has documentary proof that he is exempted from immunization requirements pursuant to 12VAC5-110-70.

3. That the student may be immunized and receive certification by a licensed physician, registered nurse, or an official of a local health department.

4. How to contact the local health department to receive the necessary immunizations.

C. Conditional enrollment. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 calendar days, during which time that student shall complete the immunizations required under 12VAC5-110-70. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days. If a student is a homeless child or youth and does not have documentary proof of necessary immunizations or has incomplete immunizations and is not exempted from immunization as described in 12VAC5-110-80, the school administrator shall immediately admit such student and shall immediately refer the student to the local school division liaison, who shall assist in obtaining the documentary proof of, or completing, immunizations. The admitting official should examine the records of any conditionally enrolled student at regular intervals to ensure that such a student remains on schedule with his plan of completion.

D. Exclusion. The admitting official shall, at the end of the conditional enrollment period, exclude any student who is not in compliance with the immunization requirements under 12VAC5-110-70 and who has not been granted an exemption under 12VAC5-110-80 until that student provides documentary proof that his immunization schedule has been completed, unless documentary proof that a medical contraindication developed during the conditional enrollment period is submitted.

E. Transfer of records. The admitting official of every school shall be responsible for sending a student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which a student is transferring within 10 days of his transfer to the new school.

F. Report of student immunization status. Each admitting official shall, within 30 days of the beginning of each school year or entrance of a student, or by October 15 of each school year, file with the State Health Department through the health department for his locality, a report summarizing the immunization status of the students in his school as of the first day of school. This report shall be filed using the web-enabled reporting system or on the most current version of Form SIS, the Student Immunization Status Report, and shall contain the number of students admitted to that school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted.

G. Immunization records shall be open to inspection by health department officials.

H. Each admitting official shall ensure that the parent or guardian of a female to be enrolled in the sixth grade receives educational materials describing the link between the human papillomavirus and cervical cancer. Materials shall be approved by the board and provided to the parent or guardian prior to the child's enrollment in the sixth grade.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-110)

~~2015 Recommended Immunization Schedules for Persons Aged 0 through 18 Years, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, effective January 1, 2015~~

Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger, United States 2017, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, effective January 1, 2017

VA.R. Doc. No. R18-5095; Filed December 4, 2017, 6:44 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-740, 12VAC30-141-760).**

Statutory Authority: §§ 32.1-325 and 32.1-351 of the Code of Virginia; 42 USC § 1397aa et seq.

Effective Date: January 24, 2018.

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

Summary:

In Virginia the federal Children's Health Insurance Program (CHIP) is known as the Family Access to Medical Insurance Security (FAMIS) Plan, and the CHIP waiver program for pregnant women is known as FAMIS MOMS. FAMIS MOMS is only available to pregnant women, according to their income, who are uninsured. Under the authority of the federal Centers for Medicare and Medicaid Services, pregnant, low-income state employees and their pregnant dependents who are otherwise eligible for FAMIS MOMS have been permitted to enroll in the FAMIS MOMS program. The amendments reflect these changes.

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

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth;

4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;

5. Be uninsured, that is, not have comprehensive health insurance coverage; and

~~6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and~~

~~7.~~ 6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 [~~e~~ B 1 b]. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is

required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal [~~identify~~ identity] unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

H. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

12VAC30-141-760. Pregnant women ineligible for FAMIS MOMS.

A. If a pregnant woman is:

1. Eligible for Medicaid, or would be eligible if she applied for Medicaid, she shall be ineligible for coverage under FAMIS MOMS. A pregnant woman found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason~~,~~ cannot be enrolled in FAMIS MOMS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, she shall be ineligible for FAMIS MOMS;~~

~~3.~~ 2. An inmate of a public institution as defined in 42 CFR 435.1009, she shall be ineligible for FAMIS MOMS; or

~~4.~~ 3. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, she shall be ineligible for FAMIS MOMS.

B. If a pregnant woman age 18 years or older or, if ~~under~~ younger than age 18 years, a parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the pregnant woman shall be ineligible for FAMIS MOMS.

C. If a pregnant woman age 18 years or older, or if ~~under~~ younger than age 18 years, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a pregnant woman who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the pregnant woman for whom the application is made shall be ineligible for FAMIS MOMS. The pregnant woman age 18 years or older, or if ~~under~~ younger than age 18 years, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

VA.R. Doc. No. R16-4365; Filed December 5, 2017, 2:34 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-318. Rules Governing Term and Universal Life Insurance Reserve Financing (adding 14VAC5-318-10 through 14VAC5-318-80).**

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-1316.7 of the Code of Virginia.

Effective Date: January 1, 2018.

Agency Contact: Raquel C. Pino, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

Pursuant to Chapter 477 of the 2017 Acts of Assembly, the State Corporation Commission is adopting new regulations setting forth standards governing reserve financing arrangements pertaining to (i) life insurance policies containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and (ii) universal life insurance policies with secondary guarantees. The

regulations provide additional requirements related to the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements, and the circumstances in which credit will be reduced or eliminated. The implementation of the regulations will address reinsurance arrangements entered into with life and health insurer-affiliated captives, special purpose vehicles, or similar entities that may not have the same statutory accounting or solvency requirements as multistate life and health insurers based in the United States.

AT RICHMOND, NOVEMBER 22, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00186

Ex Parte: In the matter of
Adopting New Rules Governing
Term and Universal Life Insurance
Reserve Financing

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered September 5, 2017, insurers and interested persons were ordered to take notice that subsequent to November 3, 2017, the State Corporation Commission ("Commission") would consider the entry of an order adopting new rules to be set forth in Chapter 318 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Term and Universal Life Insurance Reserve Financing ("Rules"), which adds new Rules at 14 VAC 5-318-10 through 14 VAC 5-265-80, unless on or before November 3, 2017, any person objecting to the adoption of the new Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The new rules are necessary to implement the amendments to §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4 and 38.2-1316.7 of the Code, which were enacted in Chapter 477 of the 2017 Acts of Assembly (HB 1471). The amendments to the Code authorize the Commission to adopt regulations specifying additional requirements relating to the valuation of asset or reserve credits, the amount and forms of security supporting certain reinsurance arrangements, and the circumstances pursuant to which credit will be reduced or eliminated. The amendments to the Code became effective on July 1, 2017.

The Order required insurers and interested persons to file their comments in support of or in opposition to the proposed new Rules with the Clerk on or before November 3, 2017.

No comments were filed with the Clerk. No requests for a hearing were filed with the Clerk.

The Commission's Bureau of Insurance ("Bureau") has included additional non-substantive revision to the Rules. These changes include deleting the references to the National Association of Insurance Commissioner's Accounting Practices and Procedures Manual and Annual Statement Instructions and replacing them with a reference to § 38.2-1300 of the Code, clarifying the definition of "primary security", and other editorial changes.

NOW THE COMMISSION, having considered the proposed new Rules, and the recommended revisions to the proposal, is of the opinion that the attached new Rules should be adopted effective date of January 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The new Rules entitled Rules Governing Term and Universal Life Insurance Reserve Financing, to be set out at 14 VAC 5-318-10 through 14 VAC 5-318-80 which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2018.

(2) The Bureau forthwith shall give notice of the adoption of the Rules to all life insurers domiciled in Virginia and to interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached new Rules on the Commission's website: http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be place in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Insurance and Utilities Regulatory Section, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

CHAPTER 318
RULES GOVERNING TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

14VAC5-318-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedural requirements to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and

universal life insurance policies with secondary guarantees and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in 14VAC5-318-30, are held by or on behalf of ceding insurers in the forms and amounts required in this chapter. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (i) are issued by the ceding insurer or its affiliates; (ii) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (iii) create a reimbursement, indemnification, or other similar obligation on the part of the ceding insurer or any if its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

14VAC5-318-20. Applicability.

This chapter shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in 14VAC5-318-30, issued by any life insurance company domiciled in this Commonwealth. The requirements of this chapter shall pertain to all covered policies in force as of and after January 1, 2018. This chapter and 14VAC5-300 shall both apply to such reinsurance treaties, provided that in the event of a direct conflict between the provisions of this chapter and 14VAC5-300, the provisions of this chapter shall apply, but only to the extent of the conflict.

14VAC5-318-30. Definitions.

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

"Actuarial method" means the methodology used to determine the required level of primary security, as described in 14VAC5-318-50.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Covered policy" means, subject to the exemptions described in 14VAC5-318-40, those policies, other than grandfathered policies, of the following policy types:

1. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or

2. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

"Grandfathered policies" means policies of the types described in the "covered policy" definition that were:

1. Issued prior to January 1, 2015; and

2. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in 14VAC5-318-40 had that section then been in effect.

"NAIC" means the National Association of Insurance Commissioners.

"Noncovered policy" means any policy that does not meet the definition of covered policy, including grandfathered policies.

"Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

"Primary security" means the following forms of security:

1. Cash meeting the requirements of subdivision 2 a of § 38.2-1316.4 of the Code of Virginia;

2. Securities listed by the Securities Valuation Office meeting the requirements of subdivision 2 b of § 38.2-1316.4 of the Code of Virginia, but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

3. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

a. Commercial loans in good standing of CM3 quality and higher as calculated for the life risk-based capital report;

b. Policy loans; and

c. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

"Other security" means any security acceptable to the commission other than security meeting the definition of primary security.

"Valuation manual" means the valuation manual adopted by the NAIC as described in subdivision B 1 of § 38.2-1379 of the Code of Virginia, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

"VM-20" means "requirements for principle-based reserves for life products," including all relevant definitions, from the valuation manual.

14VAC5-318-40. Exemptions from this chapter.

This chapter does not apply to the situations described in subdivisions 1 through 6 of this section.

1. Reinsurance of:

a. Policies that satisfy the criteria for exemption set forth in 14VAC5-319-50 F or G and that are issued before the later of:

(1) January 1, 2018; and

(2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

b. Portions of policies that satisfy the criteria for exemption set forth in 14VAC5-319-50 E and that are issued before the later of:

(1) January 1, 2018; and

(2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

c. Any universal life policy that meets all of the following requirements:

(1) Secondary guarantee period, if any, is five years or less;

(2) Specified premium for the secondary guarantee period is equal to or greater than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(3) The initial surrender charge is equal to or greater than 100% of the first year annualized specified premium for the secondary guarantee period;

d. Credit life insurance;

e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

f. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year;

2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivision C 4 of § 38.2-1316.2 of the Code of Virginia and 14VAC5-300-90 C 1;

3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivision C 1, C 2, or C 3 of § 38.2-1316.2 of the Code of Virginia and that in addition:

a. Prepares statutory financial statements in compliance with § 38.2-1300 of the Code of Virginia, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and

b. Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia when its risk-based capital (RBC) is calculated in accordance with § 38.2-5502 of the Code of Virginia;

4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivision C 1, C 2, or C 3 of § 38.2-1316.2 of the Code of Virginia and that in addition:

a. Is not an affiliate, as that term is defined in § 38.2-1322 of the Code of Virginia, of:

(1) The insurer ceding the business to the assuming insurer; or

(2) Any insurer that directly or indirectly ceded the business to that ceding insurer;

b. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

c. Is both:

(1) Licensed or accredited in at least 10 states (including its state of domicile); and

(2) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

d. Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in § 38.2-5501 of the Code of Virginia when its RBC is calculated in accordance with § 38.2-5502 of the Code of Virginia and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus;

5. Reinsurance ceded to an assuming insurer that meets the requirements of either subdivision B 4 a or B 4 b of § 38.2-1316.7 of the Code of Virginia; or

6. Reinsurance not otherwise exempt under subdivisions 1 through 5 of this section if the commission, after consulting with the NAIC Financial Analysis Working Group or other group of regulators designated by the

NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

a. The risks are clearly outside of the intent and purpose of this chapter, as described in 14VAC5-318-10;

b. The risks are included within the scope of this chapter only as a technicality; and

c. The application of this chapter to those risks is not necessary to provide appropriate protection to policyholders. The commission shall publicly disclose any decision made pursuant to this subdivision to exempt a reinsurance treaty from this chapter, as well as the general basis therefor (including a summary description of the treaty).

14VAC5-318-50. The actuarial method.

A. The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this chapter shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

1. For covered policies as provided in subdivision 1 of the definition of "covered policy" in 14VAC5-318-30, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies as provided in subdivision 2 of the definition of "covered policy" in 14VAC5-318-30, the ceding insurer may elect to instead use subdivision 2 of this subsection as the actuarial method for the entire reinsurance agreement. Whether subdivision 1 or 2 of this subsection is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

2. For covered policies, as that term is defined in subdivision 2 of the definition of "covered policy" of 14VAC5-318-30, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

3. Except as provided in subdivision 4 of this subsection, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

4. If the reinsurance treaty cedes less than 100% of the risk with respect to the covered policies then the required level of primary security may be reduced as follows:

a. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subdivision A 4 c of this section, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

b. If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

c. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed:

$$\frac{c_x}{2(\text{number of reinsurance premiums per year})}$$

where c_x is calculated using the same assumptions used in calculating the NPR; and

d. For any other treaty ceding a portion of risk to a different reinsurer, including stop loss, excess of loss, and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of subdivisions A 4 a, b, c, and d of this section to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

5. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

6. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this chapter, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this chapter.

7. If a reinsurance treaty subject to this chapter cedes risk on both covered and noncovered policies, credit for the ceded reserves shall be determined as follows:

a. The actuarial method shall be used to determine the required level of primary security for the covered policies, and 14VAC5-318-60 shall be used to determine the reinsurance credit for the covered policy reserves; and

b. Credit for the noncovered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subdivision A 7 a of this section, is held by or on behalf of the ceding insurer in accordance with §§ 38.2-1316.2 and 38.2-1316.4 of the Code of Virginia, 14VAC5-300-90 C, 14VAC5-300-100, and 14VAC5-300-150 B and C. Any primary security used to meet the requirements of this subdivision may not be used to satisfy the required level of primary security for the covered policies.

B. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

1. For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

2. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

14VAC5-318-60. Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation.

A. Subject to the exemptions described in 14VAC5-318-40 and the provisions of subsection B of this section, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to § 38.2-1316.2 of the Code of Virginia, 14VAC5-300-90 C, 14VAC5-300-100, and 14VAC5-300-150 B and C, or § 38.2-1316.4 of the Code of Virginia if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

1. The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of Article 10 (§ 38.2-1365 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this chapter does not exceed the proportionate share of those reserves ceded under the contract;

2. The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this chapter and provides support for its calculation as determined to be acceptable to the commission;

3. Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of § 38.2-1316.4 of the Code of Virginia, on a funds withheld, trust, or modified coinsurance basis;

4. Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision 3 of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of § 38.2-1316.4 of the Code of Virginia;

5. Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of 14VAC5-300-120, except that:

a. Funds consisting of primary security or other security held in trust shall for the purposes identified in 14VAC5-318-50 B be valued according to the valuation rules set forth in 14VAC5-318-50 B, as applicable;

b. There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of subdivision 3 of this subsection;

c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision 3 of this subsection below 102% of the level required by subdivision 3 of this subsection at the time of the withdrawal or substitution; and

d. The determination of reserve credit under 14VAC5-300-120 D shall be determined according to the valuation rules set forth in 14VAC5-318-50 B, as applicable; and

6. The reinsurance treaty has been approved by the commission.

B. Requirements at inception date and on an on-going basis; remediation.

1. The requirements of subsection A of this section must be satisfied as of the date that risks under covered policies are ceded if such date is on or after January 1, 2018, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivision A 3 or A 4 of this section with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of 14VAC5-318-20 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subdivision A 3 or A 4 of this section were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subdivision A 3 of this section, unless either:

a. The requirements of subdivision A 3 or A 4 of this section were fully satisfied as of the valuation date as to such reinsurance treaty; or

b. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, as the case may be, in such amount and in such form as would have caused the requirements of subdivision A 3 or A 4 of this section to be fully satisfied as of the valuation date.

3. Nothing in subdivision 2 of this subsection shall be construed to allow a ceding company to maintain any deficiency under subdivision A 3 or A 4 of this section for any period of time longer than is reasonably necessary to eliminate it.

14VAC5-318-70. Prohibition against avoidance.

No insurer that has covered policies to which this chapter applies, as set forth in 14VAC5-318-20, shall take any action or series of actions or enter into any transaction, arrangement, or series of transactions or arrangements if the purpose of such action, transaction, arrangement, or series thereof is to avoid the requirements of this chapter or to circumvent its purpose and intent, as set forth in 14VAC5-318-10.

14VAC5-318-80. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R18-5199; Filed November 27, 2017, 1:52 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

Title of Regulation: **16VAC25-200. Virginia Voluntary Protection Program (adding 16VAC25-200-10 through 16VAC25-200-110).**

Statutory Authority: §§ 40.1-22 and 40.1-49.13 of the Code of Virginia.

Effective Date: January 25, 2018.

Agency Contact: Jay Withrow, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-9873, or email jay.withrow@doli.virginia.gov.

Summary:

The regulation establishes the Virginia Voluntary Protection Program (VPP) in accordance with Chapters 20 and 339 of the 2015 Acts of Assembly. The VPP is intended to promote safe and healthy workplaces throughout the Commonwealth. The new chapter applies to Virginia employers and employees who volunteer to participate in the program and includes the following requirements for participation: upper management

leadership and active and meaningful employee involvement; systematic assessment of occupational hazards; comprehensive hazard prevention, mitigation, and control programs; employee safety and health training; and safety and health program evaluation.

The new chapter addresses (i) categories of participation, such as Star, Merit, and Challenge; (ii) ways to participate, such as site-based in both general industry and construction, mobile workforce, and VPP corporate; (iii) application requirements; (iv) comprehensive safety and health management system requirements; (v) certification and recertification processes; (vi) onsite evaluations; (vii) annual submissions; (viii) other participation requirements; (ix) enforcement activity at VPP sites; and (x) withdrawal or termination from VPP.

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

CHAPTER 200
VIRGINIA VOLUNTARY PROTECTION PROGRAM

16VAC25-200-10. Voluntary [~~participation~~ protection] program.

A. Participation in VPP is strictly voluntary. The applicant that wishes to participate freely submits information to VOSH on its safety and health management system and opens itself to department review.

B. VPP emphasizes trust and cooperation between VOSH, the employer, employees, and employee representatives and is complementary to the department's enforcement activity [,] but does not take its place. This partnership enables the department to remove participating sites from programmed inspection lists, allowing it to focus inspection resources on establishments in greater need of department oversight and intervention. However, VOSH will continue to investigate valid employee safety and health complaints, referrals, fatalities, accidents, and other significant events at VPP participant sites in accordance with VOSH enforcement procedures.

C. VPP participants develop and implement a systems approach to effectively identify, evaluate, prevent, and control occupational hazards so that injuries and illnesses to employees are prevented.

D. VPP participants are selected based on their written safety and health management system, the effective implementation of this system over time, and their performance in meeting VPP requirements. Not all worksites are appropriate candidates for VPP. At qualifying sites, all personnel are involved in the effort to maintain rigorous, detailed attention to safety and health. VPP participants often mentor other worksites interested in improving safety and health, participate in safety and health outreach and training initiatives, share best practices, and promote excellence in safety and health in their industries and communities.

E. VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participant's measure success, identify areas needing improvement, and determine needed changes. VOSH onsite evaluation teams verify this improvement.

F. Participation in VPP does not diminish employee and employer rights and responsibilities under VOSH laws, standards, and regulations.

G. The provisions of this chapter are intended to provide solely for the safety, health, and welfare of employees and the benefits thereof shall not run to any applicant, participant, or any other person nor shall a third party have any right of action for breach of any provision of this chapter except as otherwise specifically provided [~~herein~~ in this chapter].

H. Nothing in this chapter shall be construed to in any way limit the commissioner's discretion to use department personnel and resources in accordance with the powers and duties as set forth in Title 40.1 of the Code of Virginia.

16VAC25-200-20. Definitions.

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

"90-day item" means compliance related issues that must be corrected within a maximum of 90 days, with effective protection provided to employees in the interim.

"Annual evaluation" means a participant's yearly self-assessment to gauge the effectiveness of all required VPP elements and any other elements of the safety and health management system.

"Annual submission" means a document written by a participant and submitted to the department on or before February 15 each year, consisting of the following information: updated names and addresses, the participant's and applicable contractors' injury and illness case numbers and rates, average annual employment and hours worked for the previous calendar year, a copy of the most recent annual evaluation of the safety and health management system, descriptions of significant changes or events, progress made on the previous year's recommendations, Merit or one-year conditional goals (if applicable), and any success stories.

"Applicable contractor" means a contractor whose employees worked at least 1,000 hours for the participant in any calendar quarter within the last 12 months and are not directly supervised by the applicant or participant.

["Applicant" means an employer that has submitted an application for one of the Voluntary Protection Programs specified in 16VAC25-200-40 that has been accepted but has

not yet been approved for participation. Depending on the context used in this chapter, an employer's application may concern one or more locations or sites.]

"Challenge" means a voluntary protection program that provides participating employers and workers a three-stage process to work with their designated Challenge administrators to develop and improve their safety and health management program. VOSH-approved volunteer third party Challenge administrators collaborate with participating employers to improve safety and health management programs through mentoring, training, and progress tracking.

"Challenge administrator" means selected individuals in organizations such as corporations, state agencies, or nonprofit associations that have met VOSH VPP criteria, including dedicated resources to administer the Challenge program for their worksites or members or other organizations' worksites or members. Administrators are involved in the application and review processes. In certain situations as specified by the commissioner, VOSH can serve as a Challenge administrator.

"Commissioner" means the Commissioner of Labor and Industry or his designees.

["Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.]

"Contract employees" means workers who are employed by a company that provides services under contract to the VPP applicant or participant, usually at the VPP applicant's or participant's worksite.

"Days away, restricted, or transfer case incidence rate" or "DART rate" means the rate of all injuries and illnesses resulting in days away from work, restricted work activity, or job transfer. This rate is calculated for a worksite for a specified period of time, usually one to three years.

"Department" means the Department of Labor and Industry.

"Mentoring" means the assistance that a VPP participant provides to another [~~company~~ employer] to improve that site's safety and health management system or prepare it for VPP application or participation.

"Merit goal" means a target for improving one or more deficient safety and health management system elements for a participant approved to the Merit program. A Merit goal must be met in order for a site to achieve Star status.

"Merit program" means a program designed for worksites that have demonstrated the potential and commitment to achieve Star quality but need to further improve their safety and health management system. A worksite may be designated as "Merit" when, during an initial Star certification review, the VOSH review team determines that not all Star requirements are being fully met. In the case of a Merit designation, the participant must complete specified Merit goals in order to achieve Star status and continue in VPP. "Merit" is not a participation level that can be applied for.

"Misclassification" means when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.

"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP requirements of this chapter.

["Nested contractor" means a contractor whose employees are supervised by the applicant or participant and are regularly intermingled with the host participant's employees.]

"One-year conditional goal" means a target for correcting deficiencies in safety and health management system elements or sub-elements identified by VOSH during the onsite evaluation of a Star participant.

"Onsite assistance visit" means a visit to an applicant or participant site by [~~agency~~ department] personnel or other nonenforcement personnel to offer assistance, including help with its application, conduct of a records review, or make general observations about the site's safety and health management system.

"Onsite evaluation" means a visit to an applicant or participant site by a VOSH onsite evaluation team to determine whether the site qualifies to participate, continue participation, or advance within VPP.

"Onsite evaluation report" means a document written by the VOSH onsite evaluation team and consisting of the site report. This document contains the team's assessment of the safety and health management system and the team's recommendation regarding approval of the applicant or reapproval of the participant in VPP.

"Onsite evaluation team" means an interdisciplinary group of VOSH professionals and private industry volunteers who conduct onsite evaluations. The team normally consists of a team leader, a backup team leader, safety and health specialists, and other specialists as appropriate.

["Participant" means an employer that has submitted an application and been approved for one of the Voluntary Protection Programs specified in 16VAC25-200-40. Depending on the context used in this chapter, a "participant" may have one or more active physical locations or sites.]

"Private industry volunteer" or "PIV" means a volunteer from a VPP site or corporation knowledgeable in safety and health management system assessment, formally trained in the policies and procedures of VPP, and determined by VOSH to be qualified to perform as a team member on a VPP onsite evaluation.

"Recommendations" means suggested improvements noted by the onsite evaluation team that are not requirements for VPP participation but would enhance the effectiveness of the site's safety and health management system. Compliance with VOSH standards is a requirement, not a recommendation.

"Safety and health management system" means a method of preventing worker fatalities, injuries, and illnesses through the ongoing planning, implementation, integration, and control of four interdependent elements: management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training.

"Star program" means the program within VPP designed for participants whose safety and health management systems operate in a highly effective, self-sufficient manner and meet all VPP requirements. Star is the highest level of VPP participation.

"Temporary employee" means an employee hired on a nonpermanent basis by the applicant or participant site.

"Total case incidence rate" or "TCIR" means a number that represents the total recordable injuries and illnesses per 100 full-time employees, calculated for a worksite for a specified period of time (usually one to three years).

"Voluntary Protection Program" or "VPP" means a voluntary program under which the commissioner recognizes and partners with workplaces in which a model system has been implemented.

"Voluntary Protection Program Participants' Association" or "VPPPA" means a nonprofit § 50l(c)(3) organization whose members are involved in VPP. The mission of the VPPPA is to promote safety, health, and environmental excellence through cooperative efforts among employees, management, and government.

"VOSH" means the Virginia Occupational Safety and Health program of the Department of Labor and Industry.

16VAC25-200-30. Categories of participation.

A. Categories of participation may include:

1. Site-based fixed worksites and long-term construction sites, including traditional Star and Merit designations.

2. Challenge participants where employers are guided by challenge administrators through a three-stage process, which can prepare [~~a company~~ an employer] to achieve VPP Star status.

3. Mobile workforce participants where employers often work as subcontractors and move from site to site.

4. Corporate participants that have adopted VPP on a large scale.

B. Levels of recognition:

1. Star worksite status recognizes the safety and health excellence of worksites where workers are successfully protected from fatality, injury, and illness by the implementation of comprehensive and effective workplace safety and health management systems. These worksites are self-sufficient in identifying and controlling workplace hazards.

2. Merit worksite status recognizes worksites that have good safety and health management systems and that show the willingness, commitment, and ability to achieve site-specific goals that will qualify them for Star participation.

a. If the onsite evaluation team recommends participation in the Merit program, the site must then complete a set of goals in order to maintain Merit status and qualify for the Star program.

b. Merit goals must address Star requirements not presently in place or aspects of the safety and health management system that are not up to Star quality.

c. Methods for improving the safety and health management system that will address identified problem areas must be included in Merit goals.

d. Correction of a specific hazardous condition must be a 90-day item, not a Merit goal. However, when a safety and health management system deficiency underlies a specific hazardous condition, then corrections to the system must be included as Merit goals.

e. Reducing a three-year TCIR or DART rate to below the national average is not by itself an appropriate Merit goal. Corrections to safety and health management system deficiencies underlying the high rate must be included in the Merit goals.

f. Merit worksites are given a three-year conditional goal of achieving Star status. A participant must meet Star rate requirements within the first two years of its Merit participation. This is to afford an additional year's experience, for a total of no more than three years to gain Star approval.

g. A Merit participant qualifies for Star when it has met its Merit goals, Star rate requirements, and when all other safety and health elements and sub-elements are operating at Star quality.

h. A Merit participant may qualify for the Star program before the end of its Merit term if the participant meets all conditions in subdivision 2 g of this subsection.

3. Challenge recognizes three stages of accomplishment as specified in 16VAC25-200-40 B.

C. Nothing in this chapter shall be construed to prohibit the commissioner from establishing programs that are site-specific, company-wide, statewide, or any combination thereof.

16VAC25-200-40. Ways to participate.

A. Site-based fixed participation is directed at the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:

1. Private-sector fixed worksites in general industry;

2. Construction worksites or projects that will have been in operation for at least 12 months at the projected time of approval and that expect to continue in operation for at least an additional 12 months;

3. State and local government sector fixed worksites;

4. Resident contractors at participating VPP sites for the contractors' operations at those VPP sites; [or]

5. Resident contractors at nonparticipating sites for the contractors' operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option.

B. Challenge provides participating employers and workers an avenue to work with designated Challenge administrators to develop or improve their safety and health management system. Challenge participants do not generally receive exemptions from VOSH programmed inspections, although it is within the commissioner's discretion to design programs that permit exemption from programmed inspections for successful Stage 3 applicants.

Challenge administrators collaborate with participating employers to improve their safety and health management programs in three stages through mentoring, training, and progress tracking:

1. Stage 1 - assess, learn, and develop. Challenge participants learn the elements necessary to develop and implement an effective safety and health management program; assess performance of existing safety and health programs and policies; provide training to management and workers; and develop strategies, programs, and policies.

2. Stage 2 - implement, track, and control. Challenge participants complete and implement policies and programs developed in Stage 1; continue to enhance and develop their safety and health management program; implement and improve their safety and health management program; and begin to incorporate policies for contractor [~~or~~ and] special trade contractor safety and health management program requirements.

3. Stage 3 - reassess, monitor, and improve. Challenge participants monitor, reassess, and continuously improve their safety and health management program. Challenge participants who complete Stage 3 have a safety and health management system sufficiently advanced for the participant to begin the application process for VPP Star certification.

C. Mobile workforce companies typically function as contractors or subcontractors that may or may not have the authority for safety and health for an entire worksite and for those companies that have employees that move site to site, such as a specialty trade contractor or repair and maintenance company, regardless of size or length and duration of the project or service.

D. VPP corporate is designed for corporate applicants who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or state or local government agencies, have adopted VPP on a large scale for protecting the safety and health of their employees. VPP corporate applicants must have established standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal audit or screening processes that evaluate their facilities for safety and health performance.

16VAC25-200-50. Application requirements.

A. Term of participation.

1. There is no time limit to the term of participation in Star, as long as a site continues to meet all Star requirements and to maintain Star quality.

2. Fixed-site construction participation ceases with the completion of the construction project.

3. There is no time limit to the term of participation for mobile worksite, corporate, or Challenge site as long as the participant continues to meet all applicable requirements and maintain quality systems.

B. Injury and illness history requirements.

1. Injury and illness history is evaluated using a three-year total case incident rate (TCIR) and a three-year day away, restricted, or transfer case incident rate (DART rate). The three-year TCIR and DART rates must be compared to the published Bureau of Labor Statistics (BLS) national average for the five-digit or six-digit North American Industrial Classification System (NAICS) code for the industry in which the applicant is classified. The BLS publishes NAICS industry averages two years after data is collected. For example, in calendar year 2016, calendar year 2014 national averages will be available and used for comparison.

2. Both the three-year TCIR and the three-year DART rate must be below one of the three most recently published BLS national averages for the specific NAICS code.

3. Some smaller worksites may be eligible to use the alternate rate calculation as provided for in VOSH written procedures.

C. VOSH inspection history.

1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period prior to application submission. In the event that the [~~company~~ employer] elects to contest a citation related to a VOSH fatality, the [~~company~~ employer] may not submit a VPP application until such time as all fatality-related citations have become a final order of the [~~commissioner~~ Commissioner of Labor and Industry].

2. If VOSH has inspected an applicant site in the 36 months preceding the application, the inspection, abatement, and any other history of interaction with VOSH must indicate good faith attempts by the employer to improve safety and health at the site. This includes verification of correction of all serious violations. In addition, the existence of any of the following at the site precludes the site's participation in VPP:

a. Open enforcement investigations;

b. Pending or open contested citations or notices under appeal at the time of application;

c. Affirmed willful or antidiscrimination whistleblower violations under § 40.1-51.2:1 of the Code of Virginia during the 36 months prior to application;

d. Documented instances of misclassification of employees during the 36 months prior to application; [or]

e. Unresolved, outstanding enforcement actions, such as long-term abatement agreements or contests.

D. Contract worker coverage.

1. Workers for applicable contractors must be provided with safety and health protection equal in quality to that provided to participant employees.

2. All contractors, whether regularly involved in routine site operations or engaged in temporary projects such as construction or repair, must follow the safety and health rules of the host site.

3. VPP participants must have in place a documented oversight and management system covering applicable contractors to:

a. Ensure that safety and health considerations are addressed during the process of selecting contractors and when contractors are on site;

b. Ensure that contractors follow site safety rules;

c. Include provisions for timely identification, correction, and tracking of uncontrolled hazards in contractor work areas; [and]

d. Include a provision for removing a contractor or contractor's employees from the site for safety or health violations.

4. Nested contractors, such as contracted maintenance workers, and temporary employees who are supervised by host site management and governed by the site's safety and health management system are entitled to the same workplace protections as host employees and are therefore included in the host site's injury and illness rates.

5. Site management must maintain copies of the TCIR and DART rate data for all applicable contractors based on hours worked at the site. Sites must report all applicable contractor TCIR and DART rate data to VOSH annually.

6. Managers, supervisors, and nonsupervisory employees of contract employers must be made aware of:

a. The hazards they may encounter while on the site.

b. How to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses and injuries.

c. The implemented hazard controls, including safe work procedures.

d. Emergency procedures.

E. Assurances.

1. Applicants must understand and agree, through assurances, to fulfill program requirements for participation in VPP.

2. Applicants must assure that:

a. The applicant will comply with VOSH laws, standards, and regulations and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, VOSH onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Site deficiencies related to compliance with VOSH requirements and identified during the VOSH onsite review will be corrected within 90 days, with interim protection provided to employees.

c. Site employees support the VPP application.

d. VPP elements are in place, and the requirements of the elements will be met and maintained.

e. Employees, including newly hired employees and contract employees when they reach the site, will have

the VPP explained to them, including employee rights under the program and VOSH laws, standards, and regulations.

f. Employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties. See § 40.1-51.2:1 of the Code of Virginia.

g. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. At unionized sites, this requirement may be met through the employee representative's access to these results.

h. The information listed in this subdivision 2 h will be maintained and available for VOSH review to determine initial and continued approval to the VPP:

(1) Written safety and health management system;

(2) Agreements between management and the collective bargaining agents concerning safety and health; [and]

(3) Data necessary to evaluate the achievement of individual Merit goals or one-year conditional goals.

i. On or before February 15 each year, each participating site must submit its annual evaluation to the department.

j. Whenever significant organizational, ownership, union, or operational changes occur, such as a change in management, corporate takeover, merger, or consolidation, a new statement of commitment signed by both management and any authorized collective bargaining agents, as appropriate, will be provided to VOSH within 60 days of the effective date of the significant changes.

3. The applicant must demonstrate a willingness to follow through on all assurances.

4. Employees must be aware of the recourse available to them if management fails to fulfill any of these assurances. This may include rescinding their support of VPP participation or exercising the right to file a VOSH complaint.

F. Preapplication assistance.

1. Department personnel may conduct onsite assistance visits of a prospective applicant's site to offer assistance in the application process or before scheduling the onsite evaluation to obtain additional information or clarification of information provided in the application.

2. Preapplication assistance may also include referrals to the VPP mentoring program, Virginia VPP best practices training sessions, VPPPA conferences, and VPPPA application workshops.

G. Application receipt and review.

1. The commissioner shall establish written procedures to address requirements concerning receipt and review of application contents, including the comprehensive safety and health management system requirements outlined in 16VAC25-200-60.

2. If, upon review, the application is considered incomplete, the department shall notify the applicant by letter, noting the missing elements and requesting that the missing information be submitted within 90 days. If the additional information is not provided within that timeframe, the application must be returned to the applicant. Applications can be resubmitted at any time.

3. If it is clear that the applicant cannot qualify for VPP, the department must ask the applicant to withdraw the application within 30 days. If the application is not withdrawn, the application will be returned with a letter indicating the reasons the application was denied.

4. An applicant may withdraw the application by notifying the department. The withdrawal is effective on the date the notification is received. The original application must be returned to the applicant. If the application had already been accepted, the department must retain a working copy for one year, for use in responding to questions that may arise.

16VAC25-200-60. Comprehensive safety and health management system requirements.

A. The elements for VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;

2. Systematic assessment of occupational hazards;

3. Comprehensive hazard prevention, mitigation, and control programs;

4. Employee safety and health training; and

5. Safety and health program evaluation.

B. The commissioner shall establish written procedures to address applicant and participant requirements concerning the elements and sub-elements appropriate to the program:

1. Management commitment;

2. VPP commitment;

3. Employee involvement;

4. Contract worker coverage;

5. Safety and health management system evaluation;

6. Worksite analysis;

7. Baseline and comprehensive safety and industrial hygiene hazard analysis;

8. Hazard analysis of routine jobs, tasks, and processes;

9. Hazard analysis of significant changes;

10. Pre-use analysis;

11. Documentation and use of hazard analysis;

12. Routine self-inspections;

13. Hazard reporting system for employees;

14. Industrial hygiene (IH) program;

a. IH surveys;

b. Sampling strategy;

c. Sampling results;

d. Documentation;

e. Communication;

f. Use of results;

g. IH expertise;

h. Procedures; and

i. Use of contractors for IH surveys;

15. Analysis of injury, illness, and near-hit incidents;

16. Trend analysis;

17. Hazard prevention and control;

18. Certified professional resources;

19. Hazard elimination and control methods;

a. Engineering;

b. [~~Adminstrative~~ Administrative];

c. Work practices; and

d. PPE;

20. Hazard control programs;

21. Compliance with applicable Virginia unique occupational safety and health regulations;

22. Occupational health care program;

23. Preventative maintenance of equipment;

24. Tracking of hazard correction;

25. Disciplinary system;

26. Emergency preparedness and response; and

27. Safety and health training.

16VAC25-200-70. Certification process.

A. Evaluation periods. The commissioner shall establish written procedures to set time periods and scheduling requirements for onsite evaluations in response to initial applications accepted by the department and for recertification of participants.

B. Scheduling exceptions. Onsite evaluations shall be conducted earlier than normal scheduled requirements when:

1. Significant changes have occurred in management, processes, or products that may require evaluation to ensure the site is maintaining a VPP quality safety and health management system.

2. VOSH has learned of significant problems at the site, such as increasing injury and illness rates, serious deficiencies described in the site's annual evaluation of its safety and health management system, or deficiencies discovered through VOSH enforcement activity resulting from an employee complaint, fatality, accident, or other event.

C. Decision to conduct the onsite evaluation. Once an application is accepted, the department must:

1. Notify the [~~site~~ applicant] by letter or email in a timely manner that an onsite evaluation will be conducted. However, no onsite evaluation may be conducted until all prior enforcement actions have been closed.

2. Notify the appropriate VOSH enforcement personnel so that the site can be removed from any programmed inspection lists, effective no more than 75 days prior to the scheduled onsite review.

D. Methods of evaluation. The three primary methods of evaluation during the certification or recertification process are document review, walkthrough, and employee interviews. Additional activities that must occur are the opening conference, daily briefings, report preparation, and closing conference. The onsite evaluation team must evaluate each element and sub-element of the safety and health management system and VPP requirements.

E. Recommendations. At the conclusion of the onsite evaluation, the onsite evaluation team must reach a consensus to recommend to the [~~commissioner~~ Commissioner of Labor and Industry] as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.

16VAC25-200-80. Onsite evaluations.

A. Onsite evaluation team. An onsite evaluation consists of a thorough evaluation of a VPP applicant's or participant's safety and health management system in order to recommend approval or re-approval. Onsite evaluations are carried out by a team consisting of VOSH staff acting in a nonenforcement

capacity, private industry volunteers, and other qualified team members.

B. Onsite evaluation procedures. The commissioner shall establish written procedures for onsite evaluations of applicants and participants undergoing recertification. The procedures shall address issues including:

1. Prioritizing and scheduling onsite evaluations;

2. Inclusion of union representatives, if any, in the opening and closing conferences and the opportunity to accompany the onsite evaluation team on the site walkthrough;

3. Onsite evaluation team composition, qualifications, preparation, and assessment of personal protective equipment needed;

4. Opening conference subjects, review of injury and illness records, incentive programs, document review, walkthrough, review of safety and health management system elements and sub-elements, formal and informal interviews of employees, including applicable contractor employees, and closing conference subjects and recommendations;

5. Employee rights under the program and under VOSH laws, standards, and regulations; and

6. Assuring that employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties, pursuant to § 40.1-51.2:1 of the Code of Virginia.

C. Correction of hazards.

1. As hazards are found and discussed during the walkthrough, the onsite evaluation team must add them to a written list of the uncontrolled hazards identified. This list will be used when the team briefs site management at the end of each day on site.

2. VOSH expects that every effort will be made by the site to correct identified hazards before the closing conference. If hazard correction cannot be accomplished before the conclusion of the onsite evaluation, the onsite evaluation team and site management must discuss and agree upon correction methods and timeframes.

3. The site may be given up to a maximum of 90 days to correct uncontrolled hazards, as long as interim protection is provided. These 90-day items must be corrected before the final onsite evaluation report can be processed. Management must provide the team leader with a signed letter indicating how and when the correction will be made. The team leader may decide to return to the site to verify correction.

4. If, after repeated attempts to reach agreement, site management refuses to correct a situation that exposes employees to serious safety or health hazards, that situation shall be referred for enforcement action.

5. Should any identified hazard be determined to present a risk of imminent danger to life or health of an employee, department personnel shall assure that its procedures for immediately removing employees from exposure to the hazard until corrected are complied with by the applicant or participant.

D. Deficiencies in the safety and health management system. Where the team detects deficiencies in the safety and health management system, even when physical hazards are not present, the onsite evaluation team must document these deficiencies as goals for correction, recommendations for improvement, or both.

1. If the system deficiency is a requirement for VPP at the Star level, it must become the subject of a goal, either a Merit goal or a one-year conditional goal.

[2. A deficiency resulting in a one-year conditional goal indicates that a participant no longer fully meets Star requirements. For the conditional status to be lifted, (i) the deficiency must be corrected within 90 days, and (ii) the participant must then operate at the Star level for one year. Failure to meet this requirement will result in termination from VPP in accordance with the requirements of 16VAC25-200-110 C.

3. A Merit goal must be met in order for a site to achieve Star status.

4.] Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.

[~~2.~~ 5.] If improvement of the system deficiency is not necessarily a requirement for VPP, but will improve worker safety and health at the site, the improvement must be a recommendation. Implementation of recommendations is encouraged but is not mandatory for VPP participation.

E. Final analysis of findings.

1. When the documentation review, the walkthrough, and employee interviews have been completed, the onsite evaluation team must meet privately to review and summarize its findings before conducting the closing conference.

2. A draft of the certification or recertification report shall be completed by the team before leaving the site. The draft report must reflect the consensus of the onsite evaluation team.

F. Closing conference. The findings of the onsite evaluation team, including its recommendation to the commissioner,

must be presented to site management and appropriate employee representatives before the team leaves the site.

16VAC25-200-90. Annual submissions.

A. Annual self-assessment.

1. Participation in VPP requires each site or participant to annually evaluate the effectiveness of its safety and health management system, including the effectiveness of all VPP elements and sub-elements.

2. The commissioner shall establish written procedures establishing the content and reporting requirements of participant annual submissions.

3. Annual submissions are due on or before February 15 each year.

B. Applicable contractors. Participants shall report on the injury and illness data for all applicable contractors.

16VAC25-200-100. Enforcement activity at Voluntary Protection Program sites.

A. Types of enforcement activity. Two types of enforcement activity trigger additional VPP assessment:

1. Unprogrammed VOSH inspections, which occur in response to all referrals, formal complaints, fatalities, and certain accidents.

2. Other incidents or events, whether or not injuries or illnesses have occurred and whether or not normal enforcement procedures apply to the situation.

B. Site reassessment. VOSH may reassess the site's safety and health management system if there is reason to believe that a serious deficiency exists that would have an impact on the site's continued qualification for VPP.

C. Enforcement personnel. The commissioner shall establish written procedures describing the use of enforcement personnel during onsite evaluations and any limitations placed on their conducting an enforcement inspection at a VPP site.

D. Impact of enforcement activity.

1. If the event that triggers enforcement activity occurs during the time between application and onsite evaluation, the onsite evaluation must be postponed until the enforcement case is closed.

2. If the event that triggers enforcement activity occurs during the onsite evaluation, the onsite evaluation must cease until the enforcement case is closed.

16VAC25-200-110. Withdrawal, suspension, or termination.

A. Withdrawal.

1. Participants may withdraw of their own accord or be asked by VOSH to withdraw from the programs.

2. Any participant may choose to withdraw voluntarily at any time.

3. VOSH shall request that a participant withdraw from VPP if it is determined that it is no longer meeting the requirements for VPP participation.

4. The commissioner shall establish written withdrawal procedures that (i) provide for the participant's formal notification to the department, (ii) the commissioner's acknowledgment of receipt and notification to the participant of the status change, (iii) notification to department personnel of the status change, (iv) return of the participant to the VOSH programmed inspection list, and (v) disposition of the VPP participant file.

5. The commissioner shall establish written procedures to address a VPP participant's change of location that establishes criteria for determining whether the participant can retain its VPP status or must withdraw.

6. The commissioner will consider the [~~company's~~ employer's] reapplication to VPP if and when eligibility requirements are met.

B. Suspension.

1. Participants that experience a work-related fatality, whether an employee or contract employee, may be immediately suspended from program participation until such time as a VOSH fatality investigation can be completed.

2. The commissioner shall establish written procedures to address a VPP participant's temporary suspension from VPP, that provides for the department's formal notification to the participant and removal of the VPP flag or other recognition device from display until the suspension is lifted [in accordance with the provisions of §§ 2.2-4019 and 2.2-4021 of the Code of Virginia. Decisions of the Commissioner of Labor and Industry may be appealed in the manner provided for in §§ 2.2-4026 through 2.2-4029 of the Code of Virginia].

3. A participant's suspension will not result in the participant being returned to the VOSH programmed inspection list.

C. Termination.

1. The [~~commissioner~~ Commissioner of Labor and Industry] may terminate a participant from the VPP for failure to maintain the requirements of the program.

2. In the event a fatality investigation shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the participant from participation in the VPP, the [~~commissioner~~ Commissioner of Labor and Industry], in his discretion, may terminate the participation in VPP.

3. If a whistleblower investigation pursuant to §§ 40.1-51.2:1 and 40.1-51.2:2 of the Code of Virginia shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the site from participation in the VPP, the [~~commissioner~~ Commissioner of Labor and Industry], in his discretion, may terminate the participation in VPP.

4. Under most other situations, termination should occur only when all reasonable efforts for assistance have been exhausted.

5. The commissioner shall establish written termination procedures that provide for the commissioner's formal notification to the participant and union representatives, an appeal process, and notification of the [~~commissioner's~~ Commissioner of Labor and Industry's] final decision [in accordance with the provisions of §§ 2.2-4019 and 2.2-4021 of the Code of Virginia. Decisions of the Commissioner of Labor and Industry may be appealed in the manner provided for in §§ 2.2-4026 through 2.2-4029 of the Code of Virginia].

6. If the [~~commissioner~~ Commissioner of Labor and Industry] finds the participant's appeal valid, the participant may continue in VPP.

7. In the event of a final decision to terminate, the written procedures shall provide for notification to department personnel of the status change, return of the participant to the VOSH programmed inspection list, and disposition of the VPP participant file. If a terminated participant wishes to pursue reinstatement, it must wait three years to reapply.

VA.R. Doc. No. R16-4468; Filed December 5, 2017, 8:44 a.m.

VIRGINIA WORKERS' COMPENSATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Workers' Compensation Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 15 of the Code of Virginia, which exempts regulations adopted pursuant to § 65.2-605 of the Code of Virginia, including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption. The commission will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC30-110. Medical Fee Schedule Regulations (adding 16VAC30-110-10 through 16VAC30-110-40).**

Statutory Authority: § 65.2-605 of the Code of Virginia.

Effective Date: January 24, 2018.

Agency Contact: James J. Szablewicz, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 205-3097, FAX (804) 823-6936, or email james.szablewicz@workcomp.virginia.gov.

Summary:

The regulatory action establishes and implements the medical fee schedules required by § 65.2-605 of the Code of Virginia for all medical services rendered to injured workers under the Virginia Workers' Compensation Act on or after January 1, 2018, regardless of the date of injury. The schedules establish the maximum amount payable for fee schedule medical services, which include services provided by physicians, surgeons, hospitals, ambulatory surgery centers, and other health care service providers and suppliers.

CHAPTER 110
MEDICAL FEE SCHEDULES REGULATIONS

16VAC30-110-10. Definitions.

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

"Commission" means the Virginia Workers' Compensation Commission.

"Community" means one of the six medical communities as defined in § 65.2-605 A of the Code of Virginia.

"Ground rules" means the Medical Fee Schedule Ground Rules adopted by the Commission on June 13, 2017, and revised on November 14, 2017, incorporated by reference and available on the commission's website at http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules-ground-rules.

"Medical services" means any medical, surgical, or hospital service required to be provided to an injured person pursuant to Title 65.2 of the Code of Virginia, exclusive of a medical service provided in the treatment of a traumatic injury or serious burn as those terms are defined in § 65.2-605 A of the Code of Virginia.

"Virginia fee schedules" means the fee schedules adopted by the commission on June 13, 2017, and revised on November 14, 2017, incorporated by reference and available on the commission's website at http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules.

16VAC30-110-20. Applicability of fee schedules and ground rules; determination of communities.

A. The Virginia fee schedules and ground rules shall apply to all medical services rendered on or after January 1, 2018, regardless of the date of injury.

B. The applicable community for providers of medical services rendered in the Commonwealth shall be determined by the zip code of the location where the services were rendered.

C. The applicable community for providers of medical services rendered outside of the Commonwealth shall be determined by the zip code of the principal place of business of the employer if located in the Commonwealth or, if no such location exists, then the zip code of the location where the commission hearing regarding a dispute concerning the services would be conducted.

16VAC30-110-30. Disputes.

A. Administrative review process. Any dispute concerning the application of the Virginia fee schedules and ground rules to a particular medical service shall be submitted to the commission for an administrative review and determination according to such procedures as the commission may adopt from time to time.

B. Judicial review. If a request for hearing is made to the commission within 30 days after issuance of an administrative decision pursuant to subsection A of this section, the dispute shall be referred to the appropriate hearing docket and adjudicated in the same manner as change-in-condition claims, with the same rights of review and appeal as set forth in §§ 65.2-705 and 65.2-706 of the Code of Virginia and subject to the applicable Rules of the Commission.

C. Finality. An administrative decision of the commission issued pursuant to subsection A of this section shall be final and binding 30 days after its issuance unless a request for hearing is made pursuant to subsection B of this section.

16VAC30-110-40. Periodic review of fee schedules.

The commission shall review the Virginia fee schedules and ground rules biannually and shall make necessary adjustments as directed by § 65.2-605 D of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (16VAC30-110)

Virginia Workers' Compensation Medical Fee Schedules Ground Rules, adopted June 13, 2017, revised November 14, 2017, Virginia Workers' Compensation Commission

Virginia Workers' Compensation Medical Fee Schedules, adopted June 13, 2017, revised November 14, 2017, Virginia Workers' Compensation Commission, http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules.

VA.R. Doc. No. R18-5348; Filed December 5, 2017, 12:19 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Proposed Regulation

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-30, 18VAC60-21-40, 18VAC60-21-90, 18VAC60-21-130, 18VAC60-21-240, 18VAC60-21-250, 18VAC60-21-260, 18VAC60-21-290, 18VAC60-21-291).**

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-40, 18VAC60-25-190).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (amending 18VAC60-30-50).

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

Public Hearing Information:

January 26, 2018 - 8:50 a.m. - Department of Health Professions, Perimeter Building, 9960 Mayland Drive, 2nd Floor, Board Room 4, Henrico, VA 23233

Public Comment Deadline: February 23, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

The statutory authority for the Board of Dentistry to promulgate regulations to determine required equipment standards for safe administration and monitoring of sedation and anesthesia is found in Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2709.5 of the

Code of Virginia addresses permits for sedation and anesthesia required.

Purpose: As stated in the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, "because sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Hence, practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences (rescue) for patients whose level of sedation becomes deeper than initially intended." Therefore, the guidelines no longer specify a lesser amount of training for dentists who only intend to administer by the enteral route. The guidelines now specify training in moderate sedation adequate to prepare a dentist for an unintended loss of consciousness or greater alteration of the state of consciousness than is the intent of the dentist. Accordingly, regulations of the Board of Dentistry are amended to ensure the same level of training and experience as specified in the ADA guidelines that are necessary to protect the health and safety of patients in the Commonwealth.

Substance: For consistency with the revised Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (October 2016), the board has (i) amended the use of the term conscious/moderate sedation throughout the chapters to refer to moderate sedation; (ii) changed the name of the guidelines consistent with the 2016 title; and (iii) eliminated the training for dentists to administer moderate sedation by the enteral method only as the guidelines no longer make a distinction for enteral administration and specify the same training for all who administer moderate sedation.

Issues: The primary advantage to the public is the greater protection for the citizens of the Commonwealth who receive moderate sedation in dental offices. Adequate training for dentists who administer or supervise administration of moderate sedation is essential for health and safety of patients. There are no disadvantages.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to amend its regulations governing dentistry and dental hygiene in response to changed and retitled American Dental Association's (ADA) guidelines for teaching sedation.[1] Specifically and substantively, the Board proposes to remove training and experience requirements for the Board's permit for enteral administration[2] only sedation as the ADA now recommends that all dentists who will be using conscious or moderate sedation be required to complete the training for moderate sedation.

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

Estimated Economic Impact. Current regulation allows dentists to apply for and receive either a permit for conscious/moderate sedation by any method or a permit for conscious/moderate sedation by enteral administration only. The permit requirements for conscious/moderate sedation by any method include 60 hours of didactic training. The permit requirements for conscious/moderate sedation by enteral administration only include 18 hours of didactic training. The Board's dentistry regulation also currently requires that the course content for any didactic training that will qualify dentists for permitting "be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred." The Board now proposes to eliminate its permit of conscious/moderate sedation by enteral administration only and require all dentists seeking permits in the future to complete the training for moderate sedation by any method. The Board also proposes to update the title of the ADA's guidelines because the title of the ADA's guidance document was also changed. Board staff reports that the elimination of enteral administration only permits will not affect dentists who currently hold such permits but will affect future applicants.

Board staff reports that they are amending these regulations in response to changes in ADA guidelines for teaching sedation. The ADA states that they changed their guidelines to eliminate enteral administration only training because, "sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Hence, practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences (rescue) for patients whose level of sedation becomes deeper than initially intended." Board staff reports that they do not have specific data that would indicate dentists with enteral administration only permits are inadequately trained to handle emergencies or deeper levels of sedation that may arise with individual patients. To the extent that enteral administration only training might be inadequate, patients would likely benefit from requiring more training. Any benefit that may arise would need to be weighed against the costs that will accrue to affected dentists.

Dentists who may wish to obtain an enteral administration only permit in Virginia going forward will have to, instead, incur fees and time costs for the longer training for moderate sedation permitting. Board staff reports that a weekend course (18 hours of training) that prepares a dentist for enteral administration only permitting costs $2,800 plus travel and lodging; board staff did an internet search and found costs for 60-hour moderate sedation courses ranging between $3,750 to $14,495 (plus travel and lodging). Given these numbers, the cost of moderate sedation training will likely be $950 to

$11,695 higher fee costs than enteral administration only training. Additionally, using Bureau of Labor Statistics data[3] for the mean hourly wage of general dentists in Virginia ($85 per hour)[4], affected dentists will likely incur $3,570 in additional time costs for completing the additional 42 hours of training required for a moderate sedation permit.

Businesses and Entities Affected. This proposed regulation will affect all dentists who seek to obtain a moderate sedation permit in the future. This proposed regulation will not affect any dentists who obtained an enteral only permit in the past.

Localities Particularly Affected. No localities will be particularly affected by this proposed change.

Projected Impact on Employment. Increasing required hours of training for individuals who previously would have chosen to apply for an enteral administration only permit, but who will have to meet requirements for a moderate sedation permit instead, may increase employment for individuals who provide such training in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulatory change is unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Small businesses dentists who may wish to obtain an enteral administration only permit in Virginia going forward will have to, instead, incur fees and time costs for the longer training for moderate sedation permitting. Board staff reports that a weekend course (18 hours of training) that prepares a dentist for enteral administration only permitting costs $2,800 plus travel and lodging; board staff did an internet search and found costs for 60-hour moderate sedation courses ranging between $3,750 to $14,495 (plus travel and lodging). Given these numbers, the cost of moderate sedation training will likely be $950 to $11,695 higher fee costs than enteral administration only training. Additionally, using Bureau of Labor Statistics data for the mean hourly wage of general dentists in Virginia ($85 per hour), affected dentists will likely incur $3,570 in additional time costs for completing the additional 42 hours of training required for a moderate sedation permit. As of first quarter 2016, there were 3,201 private dental practices in Virginia.[5] All of these practices would qualify as small businesses.

Alternative Method that Minimizes Adverse Impact. In the absence of direct evidence that enteral administration only training does not adequately prepare dentists to respond to deepening levels of sedation that may occur when treating patients, small business dentists may benefit from being allowed enteral administration only permits with training requirements in current regulation.[6]

Adverse Impacts:

Businesses. Dentists who may wish to obtain an enteral administration only permit in Virginia going forward will have to, instead, incur fees and time costs for the longer training for moderate sedation permitting. Board staff reports that a weekend course (18 hours of training) that prepares a dentist for enteral administration only permitting costs $2,800 plus travel and lodging; board staff did an internet search and found costs for 60-hour moderate sedation courses ranging between $3,750 to $14,495 (plus travel and lodging). Given these numbers, the cost of moderate sedation training will likely be $950 to $11,695 higher fee costs than enteral administration only training. Additionally, using Bureau of Labor Statistics data for the mean hourly wage of general dentists ($85 per hour), affected dentists will likely incur $3,570 in additional time costs for completing the additional 42 hours of training required for a moderate sedation permit.

Localities. No locality is likely to suffer adverse impacts on account of this proposed regulatory change.

Other Entities. No other entities are likely to suffer adverse impacts on account of this proposed regulatory change.

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[1]Prior to October 2016, as referenced in the Board's Regulations Governing the Practice of Dentistry, guidelines for teaching sedation were titled Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry. The guidelines for teaching sedation approved by the ADA in October 2016 are titled Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students.

[2]"Enteral" is defined in these regulations as "any technique of administration in which the agent is absorbed through the gastrointestinal tract or the oral mucosa (i.e., oral, rectal, sublingual)."

[3]https://www.bls.gov/oes/2016/may/oes_va.htm

[4]This calculation assumes dentists will value their time what roughly their mean earnings for that time would be if they were working. Individuals may place a greater or lesser value on their own time.

[5]Source: Virginia Employment Commission

[6]The ADA's pre-2016 guidelines could likely serve as a guide for these training requirements.

Agency's Response to Economic Impact Analysis: The Board of Dentistry does not concur with the result of the economic impact analysis (EIA) by the Department of Planning and Budget (DPB) for the proposed regulation, 18VAC60-21, Regulations Governing the Practice of Dentistry, relating to regulations for moderate sedation permits.

The EIA noted that the change will affect future applicants for such permits. In fact, staff reported to DPB that the revised American Dental Association (ADA) for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry have been enforced since they were changed in October of 2016. Regulations currently state that training must be consistent with ADA guidelines, so applicants for moderate permits have already been required to complete the 60-hour training requirement for more than a year. Proposed amendments clarify the current requirement and are consistent with the current guidelines. Therefore, since the revised ADA standard is already in effect, it is incorrect to state that "this proposed regulation will affect all dentists who seek to obtain a moderate sedation permit in the future."

Staff of the board also reported to DPB that the number of hours of training required for an enteral permit has actually been 24 rather than 18 hours because that is the number that was specified by ADA guidelines in 2007. Although the board did not amend its regulations at that time, it has enforced the hourly requirement as stated in the guidelines, and continuing education providers adopted the 24-hour standard. As stated above, the requirement for a moderate sedation permit is and always has been completion of training as specified in the guidelines. The ADA guidelines are the only national standard for sedation and anesthesia in the dental profession. Therefore, the EIA is incorrect in stating that an additional 42 hours of training is required; in fact, the revised ADA guidelines require an additional 36 hours.

Summary:

The proposed regulatory action (i) amends the term "conscious/moderate sedation" throughout the chapter to refer to "moderate sedation," (ii) changes the name of the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students for consistency with the revised 2016 title, and (iii) eliminates the training for dentists to administer moderate sedation by the enteral method only.

Part I
General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

~~"Conscious/moderate sedation" or "moderate sedation" means a drug induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.~~

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).~~

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes "anxiolysis" (the diminution or elimination of anxiety through the use of pharmacological agents in a

dosage that does not cause depression of consciousness) and includes "inhalation analgesia" when used in combination with any anxiolytic agent administered prior to or during a procedure.

"Moderate sedation" ~~(see the definition of conscious/moderate sedation)~~ means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-30. Posting requirements.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by § 54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm, or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with § 54.1-2721 of the Code a dentist shall display his dental license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes, or dispenses Schedules II through V controlled substances shall maintain a copy of his current registration with the federal Drug Enforcement Administration in a readily retrievable manner at each practice location.

D. A dentist who administers ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia in a dental office shall display his sedation or anesthesia permit issued by the board or certificate issued by AAOMS.

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	$400
2. Dental license by credentials	$500
3. Dental restricted teaching license	$285
4. Dental faculty license	$400
5. Dental temporary resident's license	$60
6. Restricted volunteer license	$25
7. Volunteer exemption registration	$10
8. Oral maxillofacial surgeon registration	$175
9. Cosmetic procedures certification	$225
10. Mobile clinic/portable operation	$250
11. ~~Conscious/moderate~~ Moderate sedation permit	$100
12. Deep sedation/general anesthesia permit	$100

B. Renewal fees.

1. Dental license - active	$285
2. Dental license - inactive	$145
3. Dental temporary resident's license	$35
4. Restricted volunteer license	$15
5. Oral maxillofacial surgeon registration	$175
6. Cosmetic procedures certification	$100
7. ~~Conscious/moderate~~ Moderate sedation permit	$100
8. Deep sedation/general anesthesia permit	$100

C. Late fees.

1. Dental license - active	$100
2. Dental license - inactive	$50
3. Dental temporary resident's license	$15
4. Oral maxillofacial surgeon registration	$55
5. Cosmetic procedures certification	$35
6. ~~Conscious/moderate~~ Moderate sedation permit	$35
7. Deep sedation/general anesthesia permit	$35

D. Reinstatement fees.

1. Dental license - expired	$500
2. Dental license - suspended	$750
3. Dental license - revoked	$1000

4. Oral maxillofacial surgeon registration	$350
5. Cosmetic procedures certification	$225

E. Document fees.

1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. License certification	$35

F. Other fees.

1. Returned check fee	$35
2. Practice inspection fee	$350

G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

H. For the renewal of licenses, registrations, certifications, and permits in 2016, the following fees shall be in effect:

1. Dentist - active	$210
2. Dentist - inactive	$105
3. Dental full-time faculty	$210
4. Temporary resident	$25
5. Dental restricted volunteer	$10
6. Oral/maxillofacial surgeon registration	$130
7. Cosmetic procedure certification	$75
8. ~~Conscious/moderate~~ Moderate sedation certification	$75
9. Deep sedation/general anesthesia	$75
10. Mobile clinic/portable operation	$110

18VAC60-21-90. Patient information and records.

A. A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative pursuant to § 54.1-2405 of the Code; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

B. Every patient record shall include the following:

1. Patient's name on each page in the patient record;

2. A health history taken at the initial appointment that is updated (i) when analgesia, sedation, or anesthesia is to be administered; (ii) when medically indicated; and (iii) at least annually;

3. Diagnosis and options discussed, including the risks and benefits of treatment or nontreatment and the estimated cost of treatment options;

4. Consent for treatment obtained and treatment rendered;

5. List of drugs prescribed, administered, or dispensed and the route of administration, quantity, dose, and strength;

6. Radiographs, digital images, and photographs clearly labeled with patient name, date taken, and teeth identified;

7. Notation of each treatment rendered, the date of treatment and of the dentist, dental hygienist, and dental assistant II providing service;

8. Duplicate laboratory work orders that meet the requirements of § 54.1-2719 of the Code including the address and signature of the dentist;

9. Itemized patient financial records as required by § 54.1-2404 of the Code;

10. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-21-140 B; and

11. The information required for the administration of ~~conscious/moderate~~ moderate sedation, deep sedation, and general anesthesia required in 18VAC60-21-260 D.

C. A licensee shall comply with the patient record confidentiality, release, and disclosure provisions of § 32.1-127.1:03 of the Code and shall only release patient information as authorized by law.

D. Records shall not be withheld because the patient has an outstanding financial obligation.

E. A reasonable cost-based fee may be charged for copying patient records to include the cost of supplies and labor for copying documents, duplication of radiographs and images, and postage if mailing is requested as authorized by § 32.1-127.1:03 of the Code. The charges specified in § 8.01-413 of the Code are permitted when records are subpoenaed as evidence for purposes of civil litigation.

F. When closing, selling, or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code for giving notice and providing records.

G. Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a

licensed dentist, are sent to the patients of record, or are destroyed.

H. Patient confidentiality must be preserved when records are destroyed.

18VAC60-21-130. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

Part V
Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Every person holding an active or inactive license and those holding a permit to administer ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia shall annually, on or before March 31, renew his license or permit. Every person holding a faculty license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

C. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

D. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

E. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection H of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-21-250. Requirements for continuing education.

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia.

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation with hands-on airway training for health care providers or basic life support

unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

5. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. To be accepted for license renewal, continuing education programs shall be directly relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, and stress management). Courses not acceptable for the purpose of this subsection include~~, but are not limited to,~~ estate planning, financial planning, investments, business management, marketing, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subsection B of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association, their constituent and component/branch associations, and approved continuing education providers;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association, and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry, its constituent and component/branch associations, and approved continuing education providers;

7. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

8. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

9. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education;

10. A dental, dental hygiene, or dental assisting program or advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted prior to renewal of the license.

E. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

F. A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees

selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, shall submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

J. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part VI
Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. Application of Part VI. This part applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. ~~Conscious/moderate~~ Moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions, including the patient's weight and height or, if appropriate, the body mass index;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Preoperative vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

L. A dentist who allows the administration of general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.

18VAC60-21-290. Requirements for a ~~conscious/moderate~~ moderate sedation permit.

A. ~~After March 31, 2013, no~~ No dentist may employ or use ~~conscious/moderate~~ moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer ~~conscious/moderate~~ moderate sedation.

C. To determine eligibility for a ~~conscious/moderate~~ moderate sedation permit, a dentist shall submit the following:

1. A completed application form ~~indicating one of the following permits for which the applicant is qualified:~~

~~a. Conscious/moderate sedation by any method;~~

~~b. Conscious/moderate sedation by enteral administration only; or~~

~~c. Temporary conscious/moderate sedation permit (may be renewed one time)~~;

2. The application fee as specified in 18VAC60-21-40;

3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section~~, as applicable~~; and

4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer ~~conscious/moderate~~ moderate sedation. ~~1. Administration by any method.~~ A dentist may be issued a ~~conscious/moderate~~ moderate sedation permit to administer by any method by meeting one of the following criteria:

~~a.~~ 1. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching ~~the Comprehensive~~ Pain Control ~~of Anxiety~~ and ~~Pain in Dentistry~~ Sedation to Dentists and Dental Students in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

~~b.~~ 2. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in ~~conscious/moderate~~ moderate sedation, and (iii) management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching ~~the Comprehensive~~ Pain Control ~~of Anxiety~~ and ~~Pain in Dentistry~~ Sedation to Dentists and Dental Students in effect at the time the training occurred.

~~2. Enteral administration only. A dentist may be issued a conscious/moderate sedation permit to administer only by an enteral method if he has completed a continuing education program that meets the requirements of 18VAC60-21-250 and consists of not less than 18 hours of didactic instruction plus 20 clinically oriented experiences in enteral or a combination of enteral and nitrous oxide/oxygen conscious/moderate sedation techniques. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred. The certificate of completion and a detailed description of the course content must be maintained.~~

~~3. A dentist who self-certified his qualifications in anesthesia and moderate sedation prior to January 1989 may be issued a temporary conscious/moderate sedation permit to continue to administer only conscious/moderate sedation until May 7, 2015. After May 7, 2015, a dentist shall meet the requirements for and obtain a conscious/moderate sedation permit to administer by any method or by enteral administration only.~~

E. Additional training required. Dentists who administer ~~conscious/moderate~~ moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of ~~conscious/moderate~~ moderate sedation.

A. Delegation of administration.

1. A dentist who does not hold a permit to administer ~~conscious/moderate~~ moderate sedation shall only use the services of a qualified dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed outpatient surgery center, a dentist who does not hold a permit to administer ~~conscious/moderate~~ moderate sedation shall use a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.

2. A dentist who holds a permit may administer or use the services of the following personnel to administer ~~conscious/moderate~~ moderate sedation:

a. ~~A dentist with the training required by 18VAC60-21-290 D 2 to administer by an enteral method;~~

~~b.~~ A dentist with the training required by 18VAC60-21-290 D ~~1~~ to administer by any method and who holds a moderate sedation permit;

~~c.~~ b. An anesthesiologist;

~~d.~~ c. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D ~~1~~ and holds a moderate sedation permit; or

~~e.~~ d. A registered nurse upon his direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D ~~1~~ and holds a moderate sedation permit.

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

4. Preceding the administration of ~~conscious/moderate~~ moderate sedation, a permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

5. A dentist who delegates administration of ~~conscious/moderate~~ moderate sedation shall ensure that:

a. All equipment required in subsection B of this section is present, in good working order, and immediately available to the areas where patients will be sedated and treated and will recover; and

b. Qualified staff is on site to monitor patients in accordance with requirements of subsection D of this section.

B. Equipment requirements. A dentist who administers ~~conscious/moderate~~ moderate sedation shall have available the following equipment in sizes for adults or children as appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Pulse oximetry;

6. Blood pressure monitoring equipment;

7. Pharmacologic antagonist agents;

8. Source of delivery of oxygen under controlled positive pressure;

9. Mechanical (hand) respiratory bag;

10. Appropriate emergency drugs for patient resuscitation;

11. Electrocardiographic monitor if a patient is receiving parenteral administration of sedation or if the dentist is using titration;

12. Defibrillator;

13. Suction apparatus;

14. Temperature measuring device;

15. Throat pack;

16. Precordial or pretracheal stethoscope; and

17. An end-tidal carbon dioxide monitor (capnograph).

C. Required staffing. At a minimum, there shall be a two-person treatment team for ~~conscious/moderate~~ moderate sedation. The team shall include the operating dentist and a second person to monitor the patient as provided in 18VAC60-21-260 K and assist the operating dentist as provided in 18VAC60-21-260 J, both of whom shall be in the operatory with the patient throughout the dental procedure. If the second person is a dentist, an anesthesiologist, or a certified registered nurse anesthetist who administers the drugs as permitted in ~~18VAC60-21-291~~ subsection A of this section, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

2. Blood pressure, oxygen saturation, end-tidal carbon dioxide, and pulse shall be monitored continually during the administration and recorded every five minutes.

3. Monitoring of the patient under ~~conscious/moderate~~ moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge and vital signs have been taken and recorded.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

Part II
Practice of Dental Hygiene

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect or general supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administration of deep sedation or general anesthesia and ~~conscious/moderate~~ moderate sedation;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with any sedation or anesthesia administered.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planning, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations with a slow speed handpiece;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 D of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the protocol adopted by the Commissioner of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012, which is hereby incorporated by reference.

18VAC60-25-190. Requirements for continuing education.

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation shall complete four hours every two years of approved continuing education directly related to monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental hygiene services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). Courses not acceptable for the purpose of this subsection include~~, but are not limited to,~~ estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry and its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

10. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation;

15. The American Academy of Dental Hygiene, its constituent and component/branch associations; or

16. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.

2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.

3. Licensees selected for audit shall provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

G. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

18VAC60-30-50. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and subsections J and K of 18VAC60-21-260;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

VA.R. Doc. No. R17-4975; Filed December 4, 2017, 3:50 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Proposed Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-510; adding 18VAC65-20-581).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Hearing Information:

January 16, 2018 - 10:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Suite 201, Henrico, VA

Public Comment Deadline: February 23, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland

Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Basis: 18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers, are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Subdivision 6 of § 54.1-2400 provides the board with authority to promulgate regulations to administer the regulatory system.

Authority for the board to take disciplinary action for failure to obtain permission to embalm and for refrigeration of human remains is found in § 54.1-2806 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to provide clear, enforceable regulations on the meaning of the statutory requirement for "express" permission to embalm and on the requirement to maintain a body in refrigeration at no more than approximately 40 degrees. The board has received complaints and noted deficiencies on compliance with these requirements. Both the licensees and the public need clarity on these matters so public health and safety is not jeopardized.

Substance: Guidance document 65-18 specifies that subdivision 26 of § 54.1-2806 and § 54.1-2811.1 B of the Code of Virginia state that a dead human body "shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order." The board interprets "express permission by a next of kin" to mean written authorization to embalm as a specific and separate statement on a document or contract provided by the facility. Express permission may include direct, verbal authorization to embalm, provided it is followed as soon as possible by a written document signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.

Guidance document 65-18 specifies that § 54.1-2811.1 B of the Code of Virginia states, "if a dead human body is to be stored for more than 48 hours prior to disposition, a funeral services establishment having custody of such body shall ensure that the dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed." The Board of Funeral Directors and Embalmers interprets this provision as meaning that if a body is to be in the possession of the funeral home or crematory for more than 48 hours from the time the funeral establishment or crematory takes physical possession of the body until embalming, cremation, or burial, the body is to be placed in a mechanical refrigeration unit suitable for storing human remains. The board does not interpret lowering the air conditioning in a storage room to 40 degrees or packing the body in ice or dry ice as meeting the statutory requirement.

The board would view evidence of compliance with § 54.1-2811.1 B of the Code of Virginia as a working refrigeration unit in the funeral home or crematory or a letter of agreement or contract with another funeral establishment, hospital, or morgue to allow the funeral home or crematory to refrigerate in its refrigeration unit. The board would view evidence of the body being "maintained in refrigeration" as log entries indicating times of placement and removal of a body in refrigeration.

In order to enforce its interpretative statements on permission to embalm and refrigeration of human remains, the board has incorporated the guidance into its regulations.

Issues: The primary advantage of the amendments to the public is assurance of proper care of the human remains of their loved ones, so an unembalmed body is not allowed to deteriorate with refrigeration or conversely, remains are not embalmed without express permission of the next of kin. There are no disadvantages to the public.

There are no advantages or disadvantages to the Commonwealth, except more clarity in regulation will assist the board in interpretation of the law.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Funeral Directors and Embalmers (Board) proposes to incorporate in the regulation that written permission to embalm a dead human body and mechanical equipment to refrigerate a dead human body are required.

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

Estimated Economic Impact. Virginia Code § 54.1-2806 (26)[1] and § 54.1-2811.1 (B)[2] state that a dead human body "shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order." In Guidance Document 65-8,[3] the Board interprets "express permission" to mean verbal authorization so long as the verbal authorization is followed by a signed written document. A written authorization would help determine if in fact there was an authorization in case there is a dispute. Containing the requirement in regulation as opposed to having it in a guidance document should better inform the public and regulants concerning what is required and should bolster the Board's authority to enforce it through disciplinary action. If additional enforcement capacity brings some facilities currently out of compliance into compliance, they are unlikely to incur any significant costs since a written permission may be incorporated into forms currently maintained by a funeral establishment.

The Board also proposes to incorporate in the regulation its current interpretation expressed in the Guidance Document 65-18[4] of the Virginia Code § 54.1-2811.1 (B) stating that "if

a dead human body is to be stored for more than 48 hours prior to disposition, a funeral services establishment having custody of such body shall ensure that the dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed." The Board interprets this provision to mean that the body be either embalmed or placed in a mechanical refrigeration unit suitable for storing human remains. The Board does not interpret lowering the air conditioning in a storage room to 40 degrees or packing the body in ice or dry ice as meeting the statutory requirement. If a facility does not have a mechanical refrigeration unit, it can contract with another funeral establishment, hospital, or morgue that has such equipment to store the body. Containing the requirement in regulation as opposed to having it in a guidance document should better inform the public and regulants concerning what is required and should bolster the Board's authority to enforce it through disciplinary action. If additional enforcement capacity brings some facilities currently out of compliance into compliance, they may incur costs: of $3,000 to $5,000 to purchase a refrigeration unit[5], to embalm the body, to contract for refrigeration, or to transfer the remains to another establishment.

Businesses and Entities Affected. There are 76 branch establishments, 113 crematories, and 430 funeral establishments licensed in Virginia. Although it is known there are facilities currently out of compliance with the proposed regulation, there is no estimate of the number of such facilities. Virginia Code § 54.1-2811.1, which has been in effect since 2010, requires a dead human body to be maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed. Furthermore, the guidance documents have been in effect since January 10, 2017. Therefore, it is presumed that the majority of funeral establishments have refrigeration or have made arrangements for storage of human remains in refrigeration.

Localities Particularly Affected. The proposed changes do not disproportionally affect particular localities.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. If a facility has to purchase refrigeration equipment for $3,000 to $5,000, its profit would be lowered by the purchase amount and consequently its asset price may be reduced.

Real Estate Development Costs. No impact on real estate development costs is expected.

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. There is no estimate of the number of independently owned small businesses. Many of the funeral establishments have been bought by large national chains in recent years according to the Department of Health Professions. The costs and effects on them are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact

Given the language in the Virginia Code, there is no alternative method that minimizes the potential adverse impact.

Adverse Impacts:

Businesses. Some of the affected funeral establishments may be non-small businesses since many have been bought by large national chains in recent years. The adverse impacts discussed above apply to them.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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[1]https://law.lis.virginia.gov/vacode/title54.1/chapter28/section54.1-2806/

[2]https://law.lis.virginia.gov/vacode/title54.1/chapter28/section54.1-2811.1/

[3]http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_6169_v1.pdf

[4]http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_6168_v1.pdf

[5]Source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments clarify requirements for the express permission needed to embalm a body and for the proper refrigeration of a human body.

Part VII
Standards for Embalming and Refrigeration

18VAC65-20-510. Embalming ~~report~~.

A. In accordance with the provisions of subdivision 26 of § 54.1-2806 and subsection B of § 54.1-2811.1 of the Code of Virginia, express permission by a next of kin for embalming means written authorization to embalm as a specific and separate statement on a document or contract provided by the funeral establishment. Express permission may include direct, verbal authorization to embalm, provided it is followed as soon as possible by a written document or statement signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.

B. Every funeral establishment shall record and maintain a separate, identifiable report for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;

2. The date and location of the embalming;

3. The name and signature of the embalmer and the Virginia license number of the embalmer; and

4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor.

18VAC65-20-581. Refrigeration requirements.

A. If a dead human body is to be in the possession of a funeral establishment or crematory for more than 48 hours from the time the funeral establishment or crematory takes physical possession of the body until embalming, cremation, or burial, the body shall be placed and maintained in refrigeration in a mechanical refrigeration unit suitable for storing human remains in accordance with subsection B of § 54.1-2811.1 of the Code of Virginia.

B. The mechanical refrigeration unit may be located in the funeral establishment or crematory, or the funeral establishment or crematory may enter into an agreement or contract with another funeral establishment, crematory, or other licensed entity for refrigeration in a mechanical refrigeration unit.

C. Evidence of compliance with the requirement for refrigeration shall be maintained as a log entry or other documentation indicating times of placement in and removal of a body in refrigeration.

VA.R. Doc. No. R17-5042; Filed December 4, 2017, 1:42 p.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-120).**

Statutory Authority: §§ 54.1-2400, 54.1-2957, and 54.1-2957.01 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 24, 2018.

Effective Date: February 8, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

Section 54.1-2957.01 of the Code of Virginia sets out the requirements for a practice agreement for nurse practitioners who have prescriptive authority, including a provision for an electronic practice agreement.

Purpose: The goal of the proposal is to eliminate a potential conflict between the Code of Virginia and regulation. Public health and safety continues to be protected with practice agreements that are maintained in written or electronic form and must be available to the Board of Nursing if there are questions about practice.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendment is less burdensome for all parties and conforms to the Code of Virginia, and therefore, the board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track action.

Substance: The change eliminates reference to an agreement being on file with the board and includes the allowance for an agreement to be in electronic format rather than written format.

Issues: The primary advantage of the amendment is elimination of confusing and conflicting language in regulation. There are no disadvantages.

There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing and the Board of Medicine (Boards) propose amendments to improve clarity.

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

Estimated Economic Impact. Section 120 of the current regulation[1] states that "A nurse practitioner may dispense only those manufacturers' samples of drugs that are included in the written practice agreement as is on file with the board." Practice agreement is defined[2] as "a written or electronic agreement jointly developed by the patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician." Since the practice agreement may be written or electronic, the Boards propose to amend the sentence in Section 120 to reflect that.

Additionally, practice agreements are no longer kept on file by a board. The Regulations Governing the Licensure of

Nurse Practitioners (18 VAC 90-30) state that "The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request."[3] Consequently, the Boards also propose to remove "as is on file with the board" from the sentence in Section 120.

Thus, the proposed new sentence in Section 120 is "A nurse practitioner may dispense only those manufacturers' samples of drugs that are included in the written or electronic practice agreement." Since the proposed amendments do not alter rules or requirements, but may reduce the likelihood of confusion for readers of the regulation, there would likely be a net benefit.

Businesses and Entities Affected. The proposed amendments pertain to the 6,748 nurse practitioners[4] licensed in the Commonwealth.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]See https://law.lis.virginia.gov/admincode/title18/agency90/chapter40/section120/

[2]See https://law.lis.virginia.gov/admincode/title18/agency90/chapter40/section10/

[3]See https://law.lis.virginia.gov/admincode/title18/agency90/chapter30/section120/ and https://law.lis.virginia.gov/admincode/title18/agency90/chapter30/section123/

[4]Data source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Nursing and the Board of Medicine concur with the analysis of the Department of Planning and Budget.

Summary:

The amendments eliminate reference to a practice agreement being on file with the board and permit a practice agreement to be electronic rather than written.

18VAC90-40-120. Dispensing.

A nurse practitioner may dispense only those manufacturers' samples of drugs that are included in the written or electronic practice agreement ~~as is on file with the board~~.

VA.R. Doc. No. R18-5193; Filed December 4, 2017, 2:28 p.m.

Final Regulation

Title of Regulation: **18VAC90-50. Regulations Governing the Licensure of Massage Therapists (amending 18VAC90-50-40, 18VAC90-50-60, 18VAC90-50-70, 18VAC90-50-75, 18VAC90-50-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: January 24, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments (i) offer additional options for completion of continuing education, (ii) require an attestation of compliance with laws and ethics for initial licensure, (iii) add provisions to the standards of conduct that may subject a licensee to disciplinary action, (iv) clarify eligibility for provisional licensure, and (v) clarify the effect of a lapsed license.

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

Part II
Requirements for Licensure

18VAC90-50-40. Initial licensure.

A. An applicant seeking initial licensure shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;

2. Has successfully completed a minimum of 500 hours of training from a massage therapy program certified or approved by the State Council of Higher Education for Virginia or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of § ~~23-276.2~~ 23.1-226 of the Code of Virginia;

3. Has passed the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board;

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90; and

5. Has completed a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

B. An applicant shall attest that he has read and will comply with laws and regulations and the professional code of ethics relating to massage therapy.

~~B.~~ C. An applicant who has been licensed or certified in another country and who~~, in the opinion of the board, meets~~ provides certification of equivalency to the educational requirements in Virginia from a credentialing body acceptable to the board shall take and pass an examination as required in subsection A of this section in order to become licensed.

18VAC90-50-60. Provisional licensure.

A. An eligible candidate who has filed a completed application for licensure in Virginia, including completion of education requirements, may engage in the provisional practice of massage therapy in Virginia while waiting to take the licensing examination for a period not to exceed 90 days ~~upon~~ from the date on the written authorization from the board. A provisional license may be issued for one 90-day period and may not be renewed.

B. The designation of "massage therapist" or "licensed massage therapist" shall not be used by the applicant during the 90 days of provisional licensure.

C. An applicant who fails the licensing examination shall have his provisional licensure withdrawn upon the receipt of the examination results and shall not be eligible for licensure until he passes such examination.

Part III
Renewal and Reinstatement

18VAC90-50-70. Renewal of licensure.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. The licensee shall complete the renewal form and submit it with the required fee and attest that he has complied with continuing competency requirements of 18VAC90-50-75.

C. Failure to receive the application for renewal shall not relieve the licensed massage therapist of the responsibility for renewing the license by the expiration date.

D. The license shall automatically lapse by the last day of the birth month if not renewed, and the practice of massage therapy or use of the title "massage therapist" or "licensed massage therapist" is prohibited.

18VAC90-50-75. Continuing competency requirements.

A. In order to renew a license biennially, a licensed massage therapist shall:

1. Hold current certification by the NCBTMB; or

2. Complete at least 24 hours of continuing education or learning activities with at least one hour in professional ethics. Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy and may be distributed as follows:

a. A minimum of 12 of the 24 hours shall be in activities or courses provided by ~~an NCBTMB approved provider~~ one of the following providers and may include seminars, workshops, home study courses, and continuing education courses:

(1) NCBTMB;

(2) Federation of State Massage Therapy Boards;

(3) American Massage Therapy Association;

(4) Associated Bodywork and Massage Professionals;

(5) Commission on Massage Therapy Accreditation;

(6) A nationally or regionally accredited school or program of massage therapy; or

(7) A school of massage therapy approved by the State Council of Higher Education for Virginia.

b. No more than 12 of the 24 hours may be activities or courses that may include consultation, independent reading or research, preparation for a presentation, a course in cardiopulmonary resuscitation, or other such experiences that promote continued learning.

B. A massage therapist shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The massage therapist shall retain in his records the completed form with all supporting documentation for a

period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of licensees to determine compliance. The persons selected for the audit shall provide evidence of current NCBTMB certification or the completed continued competency form provided by the board and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the massage therapist to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV
Disciplinary Provisions

18VAC90-50-90. Disciplinary provisions.

The board has the authority to deny, revoke, or suspend a license issued by it or to otherwise discipline a licensee upon proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit, which shall mean, but shall not be limited to:

a. Filing false credentials;

b. Falsely representing facts on an application for initial licensure, or reinstatement or renewal of a license; or

c. Misrepresenting one's qualifications including scope of practice.

2. Unprofessional conduct, which shall mean, but shall not be limited to:

a. Performing acts ~~which~~ that constitute the practice of any other health care profession for which a license or a certificate is required or acts ~~which~~ that are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;

c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;

d. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include [~~but not be limited to~~] actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement, or sexual conduct with a patient or client;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "licensed massage therapist";

h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; ~~or~~

i. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;

j. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 of the Code of Virginia;

k. Providing false information to staff or board members in the course of an investigation or proceeding;

l. Failing to report evidence of child abuse or neglect as required by § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required by § 63.2-1606 of the Code of Virginia;

m. Violating any provision of this chapter; or

n. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

VA.R. Doc. No. R16-4739; Filed December 4, 2017, 1:46 p.m.

BOARD OF PHYSICAL THERAPY

Fast-Track Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-131).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 24, 2018.

Effective Date: February 8, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system.

The specific mandate for physical therapists to complete board-approved continuing education is found in § 54.1-3480.1 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to expand the list of entities that may sponsor or approve continuing education. Since the Federation of State Boards of Physical Therapy (FSBPT) is the organization comprised of state boards of physical therapy, the board is confident that it only approves or offers continuing education courses or programs that have validity and add to the competency of licensees to provide patient care in a safe and effective manner.

Rationale for Using Fast-Track Rulemaking Process: The addition of FSBPT as a continuing education provider and approving body should add to the opportunities for continuing education for licensees and should not be controversial.

Substance: 18VAC112-20-131 is amended to include the Federation of State Boards of Physical Therapy as one of the organizations or entities that may approve or provide continuing education in physical therapy.

Issues: The advantage to the public is that a licensee has more options for continuing education, which improves his ability to provide good patient care. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (Board) proposes to add the Federation of State Boards of Physical Therapy (FSBPT) to the list of entities that may approve or sponsor continuing education (CE) for physical therapists and physical therapist assistants.

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

Estimated Economic Impact. The Department of Health Professions believes that it is already generally assumed that CE approved or provided by FSBPT would be recognized by the Board. Consequently, practically speaking, the proposed amendment serves mostly as a clarification and most likely would not change who offers CE and from where physical therapists and physical therapist assistants choose to obtain their CE. Nevertheless, adding FSBPT to the list of entities that may approve or sponsor CE for physical therapists and physical therapist assistants is beneficial in that it eliminates potential confusion.

Businesses and Entities Affected. The proposed amendment potentially affects the 7708 physical therapists and 3207 physical therapist assistants licensed in the Commonwealth, their employers, and providers of continuing education for physical therapists and physical therapist assistants. Many physical therapists and physical therapist assistants work for large health systems. It is unknown how many work for small businesses.

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

Projected Impact on Employment. The proposed amendment does not significantly affect total employment.

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

Real Estate Development Costs. The proposed amendment 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 amendment does not significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment adds the Federation of State Boards of Physical Therapy to the list of entities that may approve or sponsor continuing education for physical therapists and physical therapist assistants.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

c. Local, state or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;

f. The American Medical Association - Category I Continuing Medical Education course; ~~and~~

g. The National Athletic Trainers' Association; or

h. The Federation of State Boards of Physical Therapy.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include ~~but not be limited to~~ consultation with colleagues, independent study, and research or writing on subjects related to practice. Up to two of the Type 2 continuing education hours may be satisfied through delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he has met the standard of the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment tool was taken.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R18-5255; Filed December 4, 2017, 2:29 p.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Appraiser Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational

Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-90, 18VAC130-20-130, 18VAC130-20-250).**

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: February 1, 2018.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments reduce certain fees for the period February 28, 2018, to February 1, 2020, to comply with § 54.1-113 of the Code of Virginia.

18VAC130-20-90. Application and registration fees.

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

Registration of Business Entity	$160
Certified General Real Estate Appraiser	$290
Temporary Certified General Real Estate Appraiser	$75
Certified Residential Real Estate Appraiser	$290
Temporary Certified Residential Real Estate Appraiser	$75
Licensed Residential Real Estate Appraiser	$290
Temporary Licensed Residential Real Estate Appraiser	$75
Appraiser Trainee	$155
Upgrade of License	$130
Instructor Certification	$150

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a ~~$30~~ $37.50 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

3. An $80 National Registry fee assessment for all permanent license applicants is to be assessed of each applicant in accordance with § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331–3351). This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

18VAC130-20-130. Fees for renewal and reinstatement.

A. All fees are nonrefundable.

B. National Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, $80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a ~~$30~~ $37.50 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

Certified general real estate appraiser	$205
Certified residential real estate appraiser	$205
Licensed residential real estate appraiser	$205
Appraiser trainee	$125
Registered business entity	$120
Certified instructor	$150

For licenses expiring on February 28, 2018, and before February 1, 2020, the renewal fees are as follows:

Certified general real estate appraiser	$150
Certified residential real estate appraiser	$150
Licensed residential real estate appraiser	$150
Appraiser trainee	$70
Registered business entity	$60
Certified instructor	$75

D. Reinstatement fees are as follows:

Certified general real estate appraiser	$385
Certified residential real estate appraiser	$385
Licensed residential real estate appraiser	$385
Appraiser trainee	$250
Registered business entity	$280
Certified instructor	$300

For licenses expiring on February 28, 2018, and before February 1, 2020, the reinstatement fees shall be as follows:

Certified general real estate appraiser	$330
Certified residential real estate appraiser	$330
Licensed residential real estate appraiser	$330
Appraiser trainee	$165
Registered business entity	$220
Certified instructor	$225

18VAC130-20-250. ~~Re-approval~~ Reapproval of courses required.

Approval letters issued under this chapter for educational offerings shall expire two years from the last day of the month in which they were issued, as indicated in the approval letter. The ~~re-approval~~ reapproval fee shall be equivalent to the original approval fee specified in 18VAC130-20-240. For courses expiring on February 28, 2018, and before February 1, 2020, the course reapproval fee shall be $75.

VA.R. Doc. No. R18-5358; Filed December 4, 2017, 6:29 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Appraiser Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-30. Appraisal Management Company Regulations (amending 18VAC130-30-60).**

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

Effective Date: February 1, 2018.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments reduce renewal and reinstatement fees for appraisal management company licenses for the period February 28, 2018, to February 1, 2020, to comply with § 54.1-113 of the Code of Virginia.

18VAC130-30-60. Fee schedule.

Fee Type	Fee Amount	When Due
Initial Application - Appraisal Management Company	$490	With application
Renewal - Appraisal Management Company	$300	With renewal application
Reinstatement - Appraisal Management Company	$790 (includes a $490 reinstatement fee in addition to the regular $300 renewal fee)	With reinstatement application

For licenses expiring on February 28, 2018, and before February 1, 2020, the renewal fee shall be as follows:

Renewal - Appraisal Management Company	$150	With renewal application

For licenses expiring on February 28, 2018, and before February 1, 2020, the reinstatement fee shall be as follows:

Reinstatement - Appraisal Management Company	$640 (includes a $490 reinstatement fee in addition to the $150 renewal fee)	With reinstatement application

VA.R. Doc. No. R18-5356; Filed December 4, 2017, 6:30 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Regulations (amending 19VAC30-70-50, 19VAC30-70-210).**

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Effective Date: January 26, 2018.

Agency Contact: Captain Ronald C. Maxey, Jr., Safety Officer, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-6774, FAX (804) 674-2916, or email ron.maxey@vsp.virginia.gov.

Summary:

The amendments change the location of the inspection sticker from the center of the windshield to the lower left corner; revise the list of permissible decals; remove references to the U.S. Department of Defense base decals, which were eliminated in 2013; and change the placement of approved decals on the windshield.

19VAC30-70-50. Approval stickers and decals.

A. If the vehicle meets all inspection requirements, the certified safety inspector performing the inspection shall immediately enter the receipt information via the MVIP system.

The inspection sticker is not valid unless the rear portion is completed with the vehicle make, year built, license plate number (dealer name if a dealer tag is displayed), body type, and the complete vehicle identification number (VIN). The inspection sticker shall be completed using black indelible ink.

B. Approval stickers and decals shall be issued according to the following schedule:

ANNUAL PROGRAM

Vehicles inspected in January are issued stickers bearing the Number "1"
Vehicles inspected in February are issued stickers bearing the Number "2"
Vehicles inspected in March are issued stickers bearing the Number "3"
Vehicles inspected in April are issued stickers bearing the Number "4"
Vehicles inspected in May are issued stickers bearing the Number "5"
Vehicles inspected in June are issued stickers bearing the Number "6"
Vehicles inspected in July are issued stickers bearing the Number "7"
Vehicles inspected in August are issued stickers bearing the Number "8"
Vehicles inspected in September are issued stickers bearing the Number "9"
Vehicles inspected in October are issued stickers bearing the Number "10"
Vehicles inspected in November are issued stickers bearing the Number "11"
Vehicles inspected in December are issued stickers bearing the Number "12"

All February annual inspection stickers for trailer and motorcycle decals (#2) due to expire at midnight, February 28 automatically will be valid through midnight February 29 each leap year.

C. The numeral decal indicating the month of expiration shall be inserted in the box identified as month and the numeral decal indicating the year of expiration shall be inserted in the box identified as year of the approval sticker and the trailer or motorcycle sticker. Extreme care should be used by inspectors in applying these inserts. On all windshields, ~~except school buses,~~ the sticker is to be placed at the bottom left corner of the windshield ~~so that the inside or~~ when viewed from the inside of the vehicle. The left edge of the sticker is to be placed as close as practical, but no closer than one inch to the ~~right of the vertical center~~ left edge of the windshield when ~~looking through the windshield from~~ viewed from the inside of the vehicle. ~~(If the vehicle is normally operated from the right side, the sticker must be placed one inch to the left of the vertical center of the windshield.)~~ The top edge of the sticker is to be approximately four inches from the bottom of the windshield when viewed from the inside of the vehicle.

On passenger vehicles not equipped with a windshield, the sticker shall be placed on or under the dash and protected in some manner from the weather.

~~The approval sticker on official yellow school buses is to be placed at the bottom and in the right corner of the windshield when looking through the windshield from inside the vehicle.~~

EXCEPTIONS: ~~The approval sticker shall be placed one inch to the right of the vertical center of the windshield when looking through the windshield from the inside on all new flat face cowl yellow school buses.~~ On vehicles equipped with heating and grid elements on the inside of the windshield, the sticker shall be placed one inch above the top of the grid element and the ~~inside~~ left edge of the sticker shall be approximately one inch to the right of the ~~vertical center~~ left edge of the windshield when ~~looking through the~~

~~windshield from the inside~~ viewed from the inside of the vehicle.

~~Stickers or decals used by counties, cities and towns in lieu of license plates affixed adjacent to the old approval sticker and which are affixed in the location where the new approval sticker is required to be placed will not be removed.~~ Any sticker or decal required by the laws of any other state or the District of Columbia and displayed upon the windshield of a vehicle submitted for inspection in the Commonwealth is permitted by the superintendent, provided the vehicle is currently registered in that jurisdiction, and the sticker is displayed in a manner designated by the issuing authority and has not expired. In these cases, ~~the approval~~ if the sticker or decal is located where the inspection sticker is to be placed, it will not be removed unless the owner or operator authorizes its removal. The inspection sticker will be placed ~~as close to one~~ 1/4 inch to the right of the ~~vertical center of the windshield as it can be placed~~ sticker or decal when viewed from the inside of the vehicle without removing or overlapping the ~~county, city or town~~ sticker or decal.

D. The Code of Virginia requires that the inspection sticker be displayed on the windshield or at other designated places at all times. The inspection sticker cannot be transferred from one vehicle to another.

EXCEPTION: If the windshield in a vehicle is replaced, a valid sticker may be removed from the old windshield and placed on the new windshield.

E. The sticker issued to a motorcycle shall be affixed to the left side of the cycle where it will be most visible after mounting. The sticker may be placed on a plate on the left side where it will be most visible and securely fastened to the motorcycle for the purpose of displaying the sticker. The sticker may be placed horizontally or vertically.

F. Trailer stickers will be issued to all trailers and semitrailers required to be inspected. (No boat, utility, or travel trailer that is not equipped with brakes shall be required to be inspected.)

G. All inspected trailers must display a trailer sticker on that particular vehicle. These stickers are to be placed on the left side of the trailer near the front corner. The sticker must be affixed to the trailer body or frame. In those instances where a metal back container with a removable transparent cover has been permanently affixed to the trailer body, the sticker may be glued to it. The container must be permanently mounted in such a manner that the sticker must be destroyed to remove it.

H. In all other cases involving unusually designed trailers such as pole trailers, the safety inspector is to exercise his own good judgment in placing the sticker at a point where it will be as prominent as possible and visible for examination from the left side.

I. Motorcycles have a separate sticker that is orange and issued with the prefix M. Trailers have a separate sticker that is blue and issued with the prefix T. The trailer and motorcycle receipts are completed in the same manner as other inspection receipts.

J. Appointed stations will keep sufficient inspection supplies on hand to meet their needs. Requests for additional supplies shall be ordered via the MVIP system. Requests for supplies that are to be picked up at the Safety Division Headquarters must be made at least 24 hours prior to pick up.

Packing slips mailed with inspection supplies will be kept on file at the station for at least 24 months.

K. All unused center inserts used to indicate the month that a sticker expires, in possession of the inspection station at the end of each month, shall be retained by the inspection station, properly safeguarded, and used in the inspection of vehicles for that particular month in the following year or be disposed of as directed by the Department of State Police.

All inspection supplies that are voided, damaged, disfigured or become unserviceable in any manner, will be returned to the Safety Division. New replacement supplies will be issued to the station. Expired stickers will be picked up by the station's supervising trooper.

L. All voided approval or rejection stickers will be picked up by the station's supervising trooper.

M. The MVIP system approval or rejection printed receipt shall be given to the owner or operator of the vehicle.

N. All yellow receipt copies of approval stickers and decals will be retained in the books and shall be kept on file at the station for at least six months. They may be inspected by any law-enforcement officer during normal business hours.

O. Safety Division troopers may replace inspection stickers that have separated from the windshield of motor vehicles and become lost or damaged without conducting an inspection of the safety components of the vehicle. Such replacement of inspection stickers shall be made only in accordance with the following provisions:

1. A vehicle owner or operator complaining of the loss or damage to the inspection sticker on the windshield of their vehicle due to separation of the sticker from the windshield shall be directed to the nearest Safety Division Area Office or Safety Division trooper.

2. Safety Division troopers, upon receipt of a complaint from a vehicle owner or operator that their inspection sticker has been stolen, lost or become damaged due to separation from the windshield, will make arrangements to meet the person to effect the replacement of the sticker. A vehicle owner or operator alleging theft of the inspection sticker will furnish proof to the Safety Division trooper

that such theft has been reported to the proper law-enforcement authority.

3. The vehicle owner or operator must produce the original safety inspection approval sticker receipt indicating a valid approval inspection sticker was issued to the vehicle within the past 11 months. (The vehicle must be reinspected if the expiration of the original inspection sticker is in the month the request is being made.)

4. The Safety Division trooper will verify by the inspection receipt that the vehicle was issued an approval inspection sticker within the past 11 months and will then issue a replacement inspection sticker to the vehicle. If any obvious equipment defects are detected during the replacement process, the vehicle will not be issued a replacement approval sticker.

5. The Safety Division trooper will complete the inspection sticker receipt for the approval sticker from information contained on the original receipt. The date the replacement sticker is issued will be used in the date space. In the space for Inspection Related Charges, the trooper will insert the word "REPLACEMENT" and the sticker number from the original inspection receipt.

6. The Safety Division trooper will sign the receipt vertically in the O.K. column in the "Equipment Inspected" blocks. These blocks will not otherwise be completed.

7. The Safety Division trooper shall place month and year inserts on the inspection sticker to reflect the expiration as shown on the original approval inspection sticker and place the inspection sticker on the windshield in accordance with the requirements of subsection C of this section.

8. The Safety Division trooper will enter the replacement information into the MVIP system.

P. New vehicle safety inspections.

1. Section 46.2-1158.01 of the Code of Virginia allows an employee who customarily performs the inspection requirement of a manufacturer or distributor of new motor vehicles to place an inspection sticker furnished by the Department of State Police on the vehicle once it has met the requirements of that manufacturer or distributor. This employee does not have to be a certified safety inspector.

2. With the addition of other personnel using Department of State Police inspection supplies, a system shall be developed at each inspection station to afford accountability of all supplies. The system shall include proper safeguards to prevent the loss of supplies through carelessness, neglect, theft, or unauthorized use.

3. Inspection stations shall not mix annual state inspections with predelivery inspections (PDI) in the same book of inspection stickers.

4. All employees shall be reminded that anyone who performs inspections, whether it be for the annual inspection or the PDI inspection, is subject to criminal prosecution if inspection supplies are used illegally or used in some other unauthorized way.

5. Station management and licensed safety inspectors are subject to administrative sanctions for any misuse of inspection supplies.

6. The inspection receipts shall be completed as usual with the following exceptions: On the "inspector" line, the initials "PDI" (for predelivery inspection) and the printed employee's name performing the inspection shall be entered. On the "inspector's license number" line, the letters "N/A" shall be entered. In the equipment inspected section, the words "New Vehicle" shall be entered in the "adjust" column. The PDI employee performing the inspection shall sign his name in the "O.K." column.

19VAC30-70-210. Glass and glazing.

A. Motor vehicles may be inspected without windshields, side glasses, or any kind of glazing, except that any motor vehicle other than a motorcycle that was manufactured, assembled, or reconstructed after July 1, 1970, must be equipped with a windshield. If glass or other glazing is installed, it must be inspected. If no windshield is installed, see 19VAC30-70-50 C for location of the sticker.

B. Inspect for and reject if:

1. Any motor vehicle manufactured or assembled after January 1, 1936, or any bus, taxicab or school bus manufactured or assembled after January 1, 1935, is not equipped throughout with safety glass, or other safety glazing material. (This requirement includes slide-in campers used on pickups or trucks, caps, or covers used on pickup trucks, motor homes, and vans.)

2. Any safety glass or glazing used in a motor vehicle is not of an approved type and properly identified (refer to approved equipment section). (Replacement safety glass installed in any part of a vehicle other than the windshield need not bear a trademark or name, provided the glass consists of two or more sheets of glass separated by a glazing material, and provided the glass is cut from a piece of approved safety glass, and provided the edge of the glass can be observed.)

NOTE: A number of 1998 and 1999 model year Ford Contour/Mystique, Econoline and Ranger vehicles were produced without the AS-1 windshield marking as required by FMVSS #205. Ford has certified that these vehicles' windshields meet all performance standards and will not be rejected.

3. Any glass at any location where glass is used is cracked or broken so that it is likely to cut or injure a person in the vehicle.

4. Windshield has any cloudiness more than three inches above the bottom, one inch inward from the outer borders, one inch down from the top, or one inch inward from the center strip. The bottom of the windshield shall be defined as the point where the top of the dash contacts the windshield.

5. Any distortion or obstruction that interferes with a driver's vision; any alteration that has been made to a vehicle that obstructs the driver's clear view through the windshield. This may include ~~but is not limited to~~ large objects hanging from the inside mirror, CB radios or tachometers on the dash, hood scoops, and other ornamentation on or in front of the hood that is not transparent.

a. Any hood scoop installed on any motor vehicle manufactured for the year 1990 or earlier model year cannot exceed 2-1/4 inches high at its highest point measured from the junction of the dashboard and the windshield.

b. Any hood scoop installed on any motor vehicle manufactured for the 1991 or subsequent model year cannot exceed 1-1/8 inches high at its highest point measured from the junction of the dashboard and the windshield.

6. Windshield glass, on the driver's side, has any scratch more than 1/4 inch in width and six inches long within the area covered by the windshield wiper blade, excluding the three inches above the bottom of the windshield. A windshield wiper that remains parked within the driver's side windshield wiper area shall be rejected.

EXCEPTION: Do not reject safety grooves designed to clean wiper blades if the grooves do not extend upward from the bottom of the windshield more than six inches at the highest point.

7. There is a pit, chip, or star crack larger than 1-1/2 inches in diameter at any location in the windshield above the three-inch line at the bottom.

8. At any location in the windshield above the three-inch line at the bottom (as measured from the junction of the dash board and the windshield) there is more than one crack from the same point if at least one of the cracks is more than 1-1/2 inches in length. There is any crack that weakens the windshield so that one piece may be moved in relation to the other. (If there is more than one crack running from a star crack that extends above the three-inch line, the windshield shall be rejected.)

EXCEPTION: Windshield repair is a viable option to windshield replacement. A windshield that has been repaired will pass inspection unless:

a. It is likely to cut or injure a person.

b. There is any distortion that interferes with a driver's vision.

c. The windshield remains weakened so that one piece may be moved in relation to the other.

d. The integrity of the windshield has obviously been compromised by the damage or the repair.

9. Any sticker is on the windshield other than an official one required by law or permitted by the superintendent. Authorization is hereby granted for stickers or decals, to include those required by any county, town, or city, measuring not more than 2-1/2 inches in width and four inches in length to be placed in the blind spot behind the rear view mirror. ~~Department of Defense decals measuring no more than three inches in width and eight inches in length may be affixed to the upper edge of the center of the windshield. At the option of the motor vehicle's owner, the decal may be affixed at the lower left corner of the windshield so that the inside or left edge of the sticker or decal is within one inch of the extreme left edge of the windshield when looking through the windshield from inside the vehicle. When placed at this location, the bottom edge of the sticker or decal must be affixed within three inches of the bottom of the windshield. This location can only be used if the owner of the vehicle has chosen not to place any required county, town or city decal there~~. The normal location for any required county, town, or city ~~decal~~ sticker is adjacent to the right side of the official inspection sticker ~~and must not extend upward more than three inches from the bottom of the windshield~~ when viewed from inside the vehicle. The top edge of the sticker is to be approximately four inches from the bottom of the windshield. The left side edge adjacent to the official inspection sticker shall not be more than 1/4 inch from the right edge of the official inspection sticker when viewed from inside the vehicle. Valid Commercial Vehicle Safety Alliance (CVSA) inspection decals or similar commercial vehicle inspection decal issued by local law enforcement may be placed at the bottom ~~or sides~~ right corner of the windshield ~~provided~~ when viewed from inside the vehicle. The top edge of such decals ~~do not extend more than 4 1/2~~ are to be approximately four inches from the bottom of the windshield when viewed from inside the vehicle and are to be located outside the area swept by the windshield wipers ~~and outside the driver's sight line~~.

Any sticker or decal required by the laws of any other state or the District of Columbia and displayed upon the windshield of a vehicle submitted for inspection in this state is permitted by the superintendent, provided the vehicle is currently registered in that jurisdiction, and the sticker is displayed in a manner designated by the issuing authority and has not expired. This includes vehicles with dual registration; (i.e., Virginia and the District of Columbia).

NOTE: Any Virginia registered vehicle displaying a valid sticker or decal required by a county, town, or city is permitted by the superintendent to remain in its current location through December 31, 2018, unless such location conflicts with the inspection sticker placement. This provision will afford localities time to enact changes to regulations governing required stickers or decals that may be impacted by the 2018 inspection sticker placement change.

NOTE: ~~Fastoll Transponder~~ Toll transponder devices may be affixed to the inside center of the windshield at the roof line just above the rear view mirror. If space does not allow, then ~~it~~ the transponder device may be affixed to the immediate right of the mirror at the roof line.

~~NOTE: Volvo placed a warning sticker on the windshield of their cars equipped with side impact air bags. In accordance with this paragraph the sticker shall be removed. If the sticker can be removed intact then it may be placed on the left rear window in the lower front corner. Customers should be referred to the nearest Safety Division area office for replacement if it could not be removed intact.~~

NOTE: A licensed motor vehicle dealer may apply one transponder sticker no larger than one inch by four inches and one barcode sticker no larger than three inches by four inches to the driver's side edge of a vehicle's windshield to be removed upon the sale or lease of the vehicle provided that it does not extend below the AS-1 line. In the absence of an AS-1 line the sticker cannot extend more than three inches downward from the top of the windshield.

~~EXCEPTION: Stickers or decals used by counties, cities and towns in lieu of license plates may be placed on the windshield without further authority. Except on privately owned yellow school buses, the sticker or decal shall be placed on the windshield adjacent to the right side of the official inspection sticker or the optional placement to the extreme lower left side of the windshield. The top edge of the sticker or decal shall not extend upward more than three inches from the bottom of the windshield. The left side edge adjacent to the official inspection sticker shall not be more than 1/4 inch from the right edge of the official inspection sticker when looking through the windshield from inside the vehicle. At the option of the motor vehicle owner, the sticker or decal may be affixed at the lower left corner of the windshield so that the inside or left edge of the sticker or decal is within one inch of the extreme left edge of the windshield when looking through the windshield from inside the vehicle. When placed at this location, the bottom edge of the sticker or decal must be affixed within three inches of the bottom of the windshield.~~

NOTE: Any vehicle displaying an expired sticker or decal on its windshield at the time of inspection, excluding a rejection sticker ~~that is present on the windshield at the time of inspection~~, shall not be issued an approval sticker unless the ~~owner/operator "authorizes"~~ owner or operator authorizes its removal. A rejection sticker will be issued versus an involuntary removal. ~~On privately owned yellow school buses, the sticker or decal shall be placed on the windshield adjacent to the left side of the official inspection sticker, and not more than 1/4 inch from the left edge of the official inspection sticker when looking through the windshield from inside the vehicle. The top edge of the sticker shall not extend upward more than three inches from the bottom of the windshield.~~

10. Sunshading material on the windshield~~,~~ or words, lettering, numbers or pictures that ~~does~~ do not extend below the AS-1 line will not be considered for inspection. In the absence of an AS-1 line sunshading material on the windshield displaying words, lettering, numbers or pictures cannot extend more than three inches downward from the top of the windshield, unless authorized by the Virginia Department of Motor Vehicles and indicated on the vehicle registration.

NOTE: Vehicles with logos made into the glass at the factory meet federal standards and will pass state inspection.

11. Any sunscreening material is scratched, distorted, wrinkled or obscures or distorts clear vision through the glazing.

12. Front side windows have cloudiness above three inches from the bottom of the glass or other defects that affect the driver's vision or one or more cracks ~~which~~ that permit one part of the glass to be moved in relation to another part. Wind silencers, breezes or other ventilator adaptors are not made of clear transparent material.

EXCEPTION: Colored or tinted ventvisors that do not exceed more than two inches from the forward door post into the driver's viewing area are permitted.

13. Glass in the left front door cannot be lowered so a hand signal can be given. (This does not apply to vehicles that were not designed ~~and/or~~ or manufactured for the left front glass to be lowered, provided the vehicle is equipped with approved turn signals.) If either front door has the glass removed and material inserted in place of the glass that could obstruct the driver's vision.

EXCEPTION: Sunscreening material is permissible if the vehicle is equipped with a mirror on each side.

14. Any sticker or other obstruction is on either front side window, rear side windows, or rear windows. (The price label, fuel economy label and the buyer's guide required by federal statute and regulations to be affixed to ~~new/used~~ new or used vehicles by the manufacturer shall normally be affixed to one of the rear side windows.) If a vehicle only has two door windows, the labels may be affixed to

one of these windows. If a vehicle does not have any door or side windows the labels may be temporarily affixed to the right side of the windshield until the vehicle is sold to the first purchaser.

NOTE: A single sticker no larger than 20 square inches in area, if such sticker is totally contained within the lower five inches of the glass in the rear window if a vehicle has only one outside mirror, a single sticker or decal no larger than 10 square inches located in an area not more than three inches above the bottom and not more than eight inches from the rearmost edge of either front side window, is permissible and should not be rejected.

A single sticker issued by the Department of Transportation to identify a physically challenged driver, no larger than two inches by two inches, located not more than one inch to the rear of the front door post, or one inch to the rear of the front ventilator glass, if equipped with a ventilator glass~~,~~ and no higher than one inch from the bottom of the window opening, is permitted on the front driver's side window on a vehicle specially equipped for the physically challenged.

15. Rear window is clouded or distorted so that the driver does not have a view 200 feet to the rear.

EXCEPTIONS: The following are permissible if the vehicle is equipped with a mirror on each side:

a. There is attached to one rear window of such motor vehicle one optically grooved clear plastic right angle rear view lens, not exceeding 18 inches in diameter in the case of a circular lens or not exceeding 11 inches by 14 inches in the case of a rectangular lens, which enables the operator of the motor vehicle to view below the line of sight as viewed through the rear window.

b. There is affixed to the rear side windows, rear window, or windows of such motor vehicle any sticker or stickers, regardless of size.

c. There is affixed to the rear side windows, rear window, or windows of such motor vehicle a single layer of sunshading material.

d. Rear side windows, rear window, or windows is clouded or distorted.

VA.R. Doc. No. R18-5339; Filed November 28, 2017, 4:23 p.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

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

Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-90, 21VAC5-20-110, 21VAC5-20-155, 21VAC5-20-160, 21VAC5-20-180).**

21VAC5-30. Securities Registration (amending 21VAC5-30-80).

21VAC5-40. Exempt Securities and Transactions (repealing 21VAC5-40-30).

21VAC5-45. Federal Covered Securities (adding 21VAC5-45-40).

21VAC5-80. Investment Advisors (amending 21VAC5-80-70, 21VAC5-80-90).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Jude C. Richnafsky, Senior Examiner, Division of Securities and Retail Franchising, State Corporation Commission, 1300 East Main Street, 9th Floor, Richmond, VA 23219, mailing address: P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email jude.richnafsky@scc.virginia.gov.

Summary:

The regulatory action pertains to the administration and enforcement of the Virginia Securities Act and affects several regulatory chapters. Amendments to 21VAC5-20, Broker-dealers, Broker-dealer Agents and Agents of the Issuer, and 21VAC5-80, Investment Advisors, increase the registration and annual renewal filing fee to $40 for broker-dealer agents, agents of the issuer, and investment advisor representatives. Amendments to 21VAC5-30, Securities Registration, update the Oil and Gas Programs statements of policy and add four statements of policy of the North American Securities Administrators Association, as follows: Promotional Shares, Loans & Other Material Transactions, Impoundment of Proceeds, and Electronic Offering Documents and Electronic Signatures. The action repeals the section of 21VAC5-40, Exempt Securities and

Transactions, regarding the Regulation D, Rule 505 exemption due to the repeal of Rule 505 by the U.S. Securities and Exchange Commission (SEC) in October 2016. A new section in 21VAC5-45, Federal Covered Securities, establishes a notice filing requirement for issuers conducting a federal crowdfunding securities offering. In May of 2016, the SEC adopted the final rules for federal crowdfunding that preempted the requirement of the registration of these offerings. However, a state that is home to the principal place of business of the issuer or in which residents have purchased 50% or more of the offering amount may require a notice filing that contains all documents filed with the SEC together with a consent to service of process.

AT RICHMOND, NOVEMBER 20, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2017-00034

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on September 26, 2017,[1] all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 20, 30, 40, 45, and 80 of Title 21 of the Virginia Administrative Code. On October 2, 2017, the Division of Securities and Retail Franchising ("Division") mailed and emailed the Order of the proposed rules to all interested persons pursuant to the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia.[2] The Order described the proposed revisions and afforded interested persons an opportunity to file comments and request a hearing on or before November 1, 2017, with the Clerk of the Commission. The Order provided that requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments.

The Commission received one comment with regard to the proposed revisions. The comment did not provide a reference to the specific regulation being amended but generally was supportive of the registration fee increase (found in the revisions to Chapters 20 and 80). The Commission received no other comments to the proposed revisions.

No one requested a hearing on the proposed regulation revisions.

NOW THE COMMISSION, upon consideration of the proposed amendments to the proposed rules, the recommendation of the Division, and the record in this case, finds that the proposed amendments should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed rules are attached hereto, made a part of hereof, and are hereby ADOPTED effective December 1, 2017.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted rules, shall be sent by the Clerk of the Commission in care of Ronald W. Thomas, Director of the Division, who forthwith shall give further notice of the adopted rules by mailing or emailing a copy of this Order, to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket, and the papers herein shall be placed in the filed for ended causes.

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[1]Doc. Con. Cen. No 170920181.

[2]The notice was published by the Virginia Registrar of Regulations on October 16, 2017. Doc. Con. Cen. No. 171040210.

Part II
Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a FINRA member shall be filed on and in compliance with all requirements of CRD and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.

2. The statutory fee made payable to FINRA in the amount of ~~$30~~ $40.

3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the commission may require.

B. Application for registration for non-FINRA member broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.

2. The statutory fee in the amount of ~~$30~~ $40. The check must be made payable to the Treasurer of Virginia.

3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-110. Renewals.

A. To renew the registration or registrations of its broker-dealer agent or agents, a FINRA member broker-dealer will be billed by CRD the statutory fee of ~~$30~~ $40 per broker-dealer agent. A renewal of registration or registrations shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of ~~$30~~ $40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).

3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

21VAC5-20-155. Limited Canadian broker-dealer agent registration.

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.

2. Statutory fee payable to the Treasurer of Virginia in the amount of ~~$30~~ $40 United States currency pursuant to § 13.1-505 G of the Act.

3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.

4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;

2. Immediately notify the commission of any criminal action taken against him or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of ~~$30~~ $40 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except the anti-fraud provisions of the Act and the requirements set out in this section.

Part III
Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for registration as an agent of the issuer unless the following executed forms, fee, and information are submitted:

1. Form U4.

2. The statutory fee in the amount of ~~$30~~ $40. The check must be made payable to the Treasurer of Virginia.

3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional examinations for any individual found to have violated any federal or state securities laws.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-180. Renewals.

An issuer, on behalf of its agent or agents, shall file with the commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration a registration renewal form (Form S.D.4) accompanied by the statutory fee of ~~$30~~ $40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

21VAC5-30-80. Adoption of ~~NASAA~~ North American Securities Administration Association, Inc. statements of policy.

The commission adopts the following ~~NASAA~~ North American Securities Administration Association, Inc. (NASAA) statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.

2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.

3. Real Estate Programs, as amended May 7, 2007.

4. Oil and Gas Programs, as amended May ~~7, 2007~~ 6, 2012.

5. Cattle-Feeding Programs, as adopted September 17, 1980.

6. Unsound Financial Condition, as amended March 31, 2008.

7. Real Estate Investment Trusts, as amended May 7, 2007.

8. Church Bonds, as adopted April 29, 1981.

9. Small Company Offering Registrations, as adopted April 28, 1996.

10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.

11. Corporate Securities Definitions, as amended March 31, 2008.

12. Church Extension Fund Securities, as amended April 18, 2004.

13. Promotional Shares, as amended March 31, 2008.

14. Loans and Other Material Transactions, as amended March 31, 2008.

15. Impoundment of Proceeds, as amended March 31, 2008.

16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

21VAC5-40-30. ~~Uniform limited offering exemption.~~ (Repealed.)

~~A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.~~

~~In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.~~

~~Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.~~

~~Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 of this section.~~

~~B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia.~~

~~Any securities offered or sold in compliance with the Securities Act of 1933, Regulation D (Reg. D), Rules 230.501-230.503 and 230.505 and which satisfy the following further conditions and limitations:~~

~~1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision 2 of this subsection.~~

~~2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):~~

~~a. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.~~

~~b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.~~

~~c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.~~

~~d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.~~

~~e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.~~

~~f. The prohibitions of subdivisions a, b, c and e of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.~~

~~g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.~~

~~3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:~~

~~a. A notice on Form D (17 CFR 239.500), as filed with the SEC.~~

~~b. A filing fee of $250 payable to the Treasurer of Virginia.~~

~~4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.~~

~~5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.~~

~~6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.~~

~~C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

21VAC5-45-40. Federal crowdfunding offerings.

A. An issuer that offers and sells securities in the Commonwealth in an offering exempt under federal Regulation Crowdfunding (17 CFR 227.100 through 17 CFR 227.503) and §§ 4(a)(6) and 18(b)(4)(c) of the Securities Act of 1933 (15 USC § 77a), and that either (i) has its principal place of business in the Commonwealth or (ii) sells 50% or greater of the aggregate amount of the offering to residents of the Commonwealth, shall file the following with the commission:

1. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission (SEC); and

2. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding form.

B. If the issuer has its principal place of business in the Commonwealth, the filing required under subsection A of this section shall be filed with the commission when the issuer makes its initial Form C filing concerning the offering with the SEC. If the issuer does not have its principal place of business in the Commonwealth but residents of the Commonwealth have purchased 50% or greater of the aggregate amount of the offering, the filing required under subsection A of this section shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

C. The initial notice filing is effective for 12 months from the date of the filing with the commission.

D. For each additional 12-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing on or before the expiration of the notice filing a completed Uniform Notice of Federal Crowdfunding Offering form marked "renewal" or a cover letter or other document requesting renewal.

E. An issuer may increase the amount of securities offered in the Commonwealth by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked "amendment" or other document describing the transaction.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (21VAC5-45)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)

Uniform Consent to Service of Process, Form U-2 (rev. 7/2017)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Form NF - Uniform Investment Company Notice Filing (4/1997)

Uniform Notice of Federal Crowdfunding Offering, Form U-CF (undated, filed 9/2017)

Part II
Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination, and Changing Connection from One Investment Advisor to Another

21VAC5-80-70. Application for registration as an investment advisor representative.

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of CRD and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor representative unless the following executed forms, fee, and information are submitted:

1. Form U4.

2. The statutory fee made payable to FINRA in the amount of ~~$30~~ $40.

3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-90. Renewals.

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by IARD the statutory fee of ~~$30~~ $40 per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

VA.R. Doc. No. R18-5046; Filed November 21, 2017, 2:47 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL 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 State Board of Behavioral Health and Developmental Services is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

12VAC35-46, Regulations for Children's Residential Facilities

Contact Information: Emily Bowles, Legal Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-3281, FAX (804) 692-0066, or email emily.bowles@dbhds.virginia.gov.

12VAC35-230, Operation of the Individual and Family Support Program

Contact Information: Erika Jones-Haskins, Community Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-5813, FAX (804) 692-0077, or email erika.jones-haskins@dbhds.virginia.gov.

The comment period begins December 25, 2017, and ends February 8, 2018.

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.

Proposed 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)

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part IV Variances (12VAC35-115-220) of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on the following application for renewal of existing variances to the Human Rights Regulations that are presently before the State Human Rights Committee (SHRC) for consideration. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs licensed, funded, or operated by DBHDS.

After considering all available information, including comments, the SHRC will issue a written decision deferring, disapproving, modifying, or approving each renewal application. The decision and reasons behind it will be published in a later issue of the Virginia Register of Regulations.

Purpose of notice: DBHDS is seeking comment on the applications for renewal of the following existing variances to the Human Rights Regulations at the DBHDS Virginia Center for Behavioral Rehabilitation (VCBR). The variance applications for renewal demonstrate compliance with the general requirements of Part IV Variances (12VAC35-115-220) of the Human Rights Regulations.

Variance to complaint procedure:

The Human Rights Regulations provide a comprehensive complaint resolution process that includes access to a local human rights committee (LHRC) and the SHRC, articulated in the regulation sections specified below:

- 12VAC35-115-150: General Provisions
- 12VAC35-115-170: Formal Complaint Process
- 12VAC35-115-180: Local Human Rights Committee Hearing and Review Procedures
- 12VAC35-115-190: Special Procedures for Emergency Hearing by LHRC
- 12VAC35-115-200: Special Procedures for LHRC Reviews Involving Consent and Authorization
- 12VAC35-115-210: State Human Rights Committee Appeals Procedure

VCBR Facility Instruction No. 202, Resident Complaint Resolution, provides alternative procedures for addressing resident complaints to be followed in lieu of those specified in the above regulatory sections. VCBR's variances to these regulations are reviewed by the SHRC at least annually, with VCBR providing reports to the SHRC regarding the variances as requested.

Variance for rooms within medical unit with no windows:

VCBR has four bedrooms in its medical unit that do not meet the requirement of the italicized portion of the following regulation:

• 12VAC35-115-50 C 3 (d): Live in a humane, safe, sanitary environment *that gives each individual, at a minimum, windows or skylights in all major areas used by individuals.*

VCBR requests a variance to this regulation to enable it to utilize these bedrooms if a bedroom that meets the requirement is not available on a unit that meets an individual's needs. VCBR currently provides a monthly report to the SHRC on how many times rooms with no windows within the medical unit of VCBR are used during the previous month and will continue to do so.

Variance for double-bunking:

Following the mandate by the General Assembly (Chapter 806 of the 2011 Acts of Assembly), VCBR implemented double-bunking (two individuals residing in a single room). Although VCBR has attempted to maintain residents' privacy and a physical environment free from bad odors, this is not always possible. For this reason, VCBR requests a variance to the regulations listed below:

12VAC35-115-50 C 3 (a) and (e):

a) Reasonable privacy and private storage space

e) Clean air, free of bad odors

VCBR Facility Instruction No. 124, Resident Housing Assignment, describes how residents' housing assignments are determined and shall substitute for these regulations. VCBR provides a monthly report to the SHRC on how many residents are double-bunked, complaints received by residents regarding double-bunking, and any medication sessions treatment staff hold with roommates to resolve concerns related to double-bunking.

Public comment period: December 25, 2017, through January 25, 2018.

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: The applications for variance and any supporting documents 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, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, TDD (804) 371-8977, or email deb.lochart@dbhds.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Dominion Energy Virginia Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Westmoreland County

Dominion Energy Virginia has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (Montross Solar) in Westmoreland County. The project will be located on approximately 230 acres at 150 Nelson Street, Westmoreland County. The solar facility will be comprised of ground-mounted fixed-tilt photovoltaic arrays and auxiliary equipment to provide approximately 20 megawatts alternating current of nameplace capacity.

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

Grasshopper Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Mecklenburg County

A Notice of Intent from Grasshopper Solar LLC was previously published in the Virginia Register of Regulations on December 12, 2016, for a proposed small renewable solar energy project in Mecklenburg to be located north of Chase City. Grasshopper Solar LLC has provided the Department of Environmental Quality a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project. The revised notice is proposing a 115-megawatt solar farm to be located across roughly 950 acres on one parcel in Mecklenburg County north of Chase City with borders along Routes 49 and 671. There is an existing transmission line bisecting the property, and a new substation is proposed to be built to connect to the grid.

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

Spring Grove Solar II LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Surry County

Spring Grove Solar II LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project (solar). The proposed project will be located to the northeast of the intersection of Colonial Trail (Route 10) and Swanns Point Road (Route 610) in Surry

County. This project will have a maximum generating capacity of 150 megawatts alternating current across approximately 1338 acres on multiple parcels. The project will interconnect into the transmission line that bisects the site by way of a substation built on an adjacent parcel.

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

VIRGINIA FIRE SERVICES BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Fire Services Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

19VAC15-20, Regulations Establishing Certification Standards for Fire Inspectors

19VAC15-30, Regulations Establishing the Certification Standards for Fire Investigators

Contact Information: Erin Rice, Community Risk Reduction Coordinator, Virginia State Fire Marshal's Office, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23059, telephone (804) 249-1975, or email erin.rice@vdfp.virginia.gov.

The comment period begins December 25, 2017, and ends January 25, 2018.

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 Virginia Regulatory 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 December 6, 2017. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Sixty-Three (17)

Virginia Lottery "Publix March Madness, Scratcher Madness" Retailer Incentive Promotion (This Director's Order becomes effective on March 6, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Sixty-Four (17)

Virginia Lottery "Debit Lunch Bag" Retailer Incentive Promotion (This Director's Order becomes effective on January 1, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Sixty-Seven (17)

Virginia Lottery "Fas Mart April Scratch Growth Contest" (This Director's Order becomes effective on April 3, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Sixty-Eight (17)

Virginia Lottery "Fas Rewards Double Points" Retailer Incentive Promotion (This Director's Order becomes effective on April 3, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Seventy-Two (17)

Virginia Lottery "Beats® This Sales Contest" Retailer Incentive Promotion (This Director's Order becomes effective on April 3, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Seventy-Five (17)

Virginia Lottery "Murphy USA Playbook Gas Discount" Retailer Incentive Promotion (This Director's Order becomes effective on February 6, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Seventy-Six (17)

Virginia Lottery "$20 Playbook Dispenser Placement and Sales Contest" Retailer Incentive Promotion (This Director's Order becomes effective on February 1, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Seventy-Eight (17)

Virginia Lottery "Sheetz Progressive Mystery Shop" Retailer Incentive Promotion (This Director's Order becomes effective on February 1, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Eighty-Five (17)

Virginia Lottery's Scratch Game 1847 "2018" Final Rules for Game Operation (effective November 17, 2017)

Director's Order Number One Hundred Eighty-Six (17)

Virginia Lottery "Fog Dispenser" Retailer Incentive Promotion (This Director's Order becomes effective on April 1, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Eighty-Seven (17)

Certain Virginia Print 'n Play Game - Virginia Lottery's Print 'n Play Bullseye Bingo (184 2017) (effective November 7, 2017)

Director's Order Number One Hundred Eighty-Eight (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bonus Bingo" Final Rules for Game Operation (effective November 8, 2017)

Director's Order Number One Hundred Ninety (17)

Virginia Lottery's Scratch Game 1817 "Chocolate" Final Rules for Game Operation (effective November 17, 2017)

Director's Order Number One Hundred Ninety-One (17)

Virginia Lottery's Scratch Game 1814 "EZ $1,040" Final Rules for Game Operation (effective November 17, 2017)

Director's Order Number One Hundred Ninety-Five (17)

Virginia Lottery's Scratch Game 1863 "$30 Million Cash Out" Final Rules for Game Operation (effective November 27, 2017)

Director's Order Number One Hundred Ninety-Six (17)

Virginia Lottery's "Food Lion MVP Kiosk Coupon Promotion" Final Rules for Operation (This Director's Order becomes effective on December 6, 2017, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Ninety-Seven (17)

Virginia Lottery's Scratch Game 1870 "Super Cash" Final Rules for Game Operation (effective November 27, 2017)

Director's Order Number One Hundred Ninety-Eight (17)

Certain Virginia Game: Ticket Quantity Update - Virginia's New Year's Millionaire Raffle (182 2017) (This Director's Order is effective nunc pro tunc to November 20, 2017, and shall remain in full force and effect unless amended or rescinded by further Director's Order

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)))

Updated Dental Procedure Codes

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Jimeequa Williams, Policy and Research Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at jimeequa.williams@dmas.virginia.gov.

This notice is available for public review on the Virginia Regulatory Town Hall (www.townhall.virginia.gov), on the General Notices page, found at https://townhall.virginia.gov/L/generalnotice.cfm.

Reimbursement Changes Affecting Other Types of Care (12VAC30-80) 12VAC30-80-30 is being amended as follows: The agency's fee schedule is being updated on December 20, 2017, to include updated dental procedure codes.

There is no expected increase or decrease in aggregate annual expenditures.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Enforcement Action for ASI Constructors Inc.

An enforcement action has been proposed for ASI Constructors Inc. for violations of the State Water Control Law and regulations associated with the Lunga Dam Safety Project at Marine Corps Base-Quantico, in Stafford County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Lunga Dam Safety Project. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 26, 2017, through January 25, 2018.

Proposed Consent Special Order for Dickeys Auto Recyclers Inc.

An enforcement action has been proposed for Dickeys Auto Recyclers Inc. for violations at the site located at 9243 George Washington Highway, Gloucester County, Virginia. The State Water Control Board proposes to issue a special order by consent to Dickeys Auto Recyclers Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from December 25, 2017, to January 26, 2018.

Enforcement Action for the Kinder Morgan Operating L.P. "C" Elizabeth River Terminals LLC

An enforcement action has been proposed for the Kinder Morgan Operating L.P. "C" Elizabeth River Terminals LLC facility for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from December 25, 2017, to January 24, 2018.

Enforcement Action for Lane-Corman Construction Joint Venture (Lane-Corman)

An enforcement action has been proposed for Lane-Corman Construction Joint Venture (Lane-Corman) for violations at the Berkmar Extension construction site in Charlottesville, Virginia. The State Water Control Board proposes to issue a consent order to Lane-Corman for noncompliance with State Water Control Law. The proposed consent order requires Lane-Corman to pay a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from December 25, 2017, to January 24, 2018.

Enforcement Action for the County of Powhatan Fighting Creek Wastewater Treatment Plant

An enforcement action has been proposed for the County of Powhatan Fighting Creek Wastewater Treatment Plant for violations of the State Water Control Law in Powhatan, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from December 25, 2017, to January 24, 2018.

Proposed Consent Order for the Town of Purcellville

An enforcement action has been proposed for The Town of Purcellville for violations of the State Water Control Law and regulations at the Basham Simms Wastewater Treatment Facility located in Loudoun County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Basham Simms Wastewater Treatment Facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 26, 2017, through January 25, 2018.

Enforcement Action for the Stafford County Board of Supervisors

An enforcement action has been proposed for the Stafford County Board of Supervisors. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations regarding the Sanitary Sewer Collection Systems associated with the Little Falls Run Wastewater Treatment Plant and the Aquia Wastewater Treatment Facility. A description of the proposed action is

available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 26, 2017, through January 25, 2018.

Proposed Consent Order for Robert D. and Angela S. Walk (Walk Residence Sewage Treatment Plant)

An enforcement action has been proposed for Robert D. and Angela S. Walk for violations of the State Water Control Law and regulations at the Walk Residence Sewage Treatment Plant located in Stafford County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Walk Residence Sewage Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 26, 2017, through January 25, 2018.

Total Maximum Daily Load for Rudee Inlet Watershed

Public meeting: A final public meeting will be held Wednesday, January 10, 2018, at 6 p.m. at W.T. Cooke Elementary located at 1501 Mediterranean Avenue, Virginia Beach, VA 23451. This meeting will be open to the public and all are welcome to participate. In the case of inclement weather, an alternate meeting will occur on Thursday, January 11, 2018, at 6 p.m. at the same location. For more information, please contact Rachel Hamm, telephone (757) 518-2024 or email rachel.hamm@deq.virginia.gov.

Purpose of meeting: The Department of Environmental Quality (DEQ) and its contractors, the Virginia Institute of Marine Science, have developed a draft water quality report on the bacteria impairments in the Rudee Inlet watershed located in Virginia Beach, Virginia. A public meeting will be held to introduce the local community to the total maximum daily loads (TMDLs) for bacteria and gather public comment on the draft report. A public comment period on the draft TMDL report will follow the meeting (January 11, 2018, through February 9, 2018).

Description of study: Portions of the Rudee Inlet watershed including Lake Rudee, Lake Wesley, and Owl Creek were identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the State's water quality standards for Enterococci and Fecal Coliform and do not support the Designated Uses of "Primary Contact (recreational or swimming)" and "Shellfishing." Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. Reductions and TMDLs for the causes of the impairments have been developed and are available for community review in the TMDL report located online at the following link on January 10, 2018: http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

How to comment and participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments will be accepted through February 9, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact Rachel Hamm, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2024, FAX (757) 518-2009, or email rachel.hamm@deq.virginia.gov.

Total Maximum Daily Load for Salt Management Strategy

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, the Interstate Commission for the Potomac River Basin (ICPRB), will announce the development of a Salt Management Strategy (SaMS) for the Northern Virginia region, which includes Arlington, Fairfax, Loudoun, and Prince William Counties and the Cities of Alexandria, Manassas, Manassas Park, Falls Church, and Fairfax. This is an opportunity for local residents to learn about the impacts and challenges of snow and ice management, share information and thoughts on snow and ice management, and get involved in the process of developing a SaMS.

Public Meeting: A public meeting will be held Wednesday, January 17, 2018, beginning at 6:30 pm at the Auditorium of the Arlington County Central Library, located at 1015 N. Quincy Street, Arlington, VA 22201. In case of inclement weather, the alternate meeting date will be Wednesday, January 31, 2018, and will also be held at the Auditorium of the Arlington County Central Library. Please note that if Arlington County schools or the library are closed on January 17, 2018, due to inclement weather, the meeting will be postponed to this alternate date.

Meeting description: This meeting will be open to the public and all are welcome to attend. The first 30 minutes of the meeting will be an informal informational session where members of the public are invited to visit the various displays to learn more and ask questions of the experts staffing the displays. At 7 p.m. the formal portion of the meeting will begin. During the formal portion of the meeting a guest speaker will speak about challenges related to snow and ice management, and ICPRB will speak about a report they have

prepared on the impacts of salts on infrastructure, drinking water, and aquatic life. The meeting will conclude with DEQ describing the development process for the SaMS, and by informing the public how to participate in the development process. For more information, please contact Dave Evans at (703) 583-3835 or david.evans@deq.virginia.gov.

Description of study: In July 2017, DEQ completed a total maximum daily load (TMDL) study for the Accotink Creek watershed that identified chloride (salt) from snow and ice management as a contributing cause of a water quality impairment. To bring chloride loads down to acceptable levels that were identified in the TMDL report, DEQ is initiating the development of a SaMS that will among many things prescribe best management practices for more efficient and effective salt application. While the Accotink Creek watershed is located in Fairfax County and the City of Fairfax, snow and ice management practices are not confined to watershed boundaries. Therefore, the project area will include all of Northern Virginia as defined by Arlington, Fairfax, Loudoun, and Prince William Counties and the Cities of Alexandria, Manassas, Manassas Park, Falls Church, and Fairfax. For more information on the SaMS, visit http://www.deq.virginia.gov/SaMS.aspx.

How to comment and participate: This meeting is open to the public and all interested parties are welcome. A public comment period will begin on January 17, 2018, and end on February 16, 2018. Comments will be accepted on the SaMS project in general, on participating in the Stakeholder Advisory Committee (SAC) to help develop the SaMS, and on the report prepared by ICPRB on the impacts of salts on infrastructure, drinking water, and aquatic life. Persons interested in participating in the SAC that will help develop the SaMS should notify the DEQ contact person, Dave Evans, by the end of the comment period and provide their names, phone numbers, email addresses and the organizations they represent (if any). All comments must be written and submitted via e-mail or traditional mail by the end of February 16, 2018. They must include the name, address, and telephone number of the person submitting the comments. DEQ will notify all applicants of the composition of the SAC after the close of the comment period. For more information or to submit written comments, please contact Dave Evans, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court Woodbridge, VA 22193, telephone (703) 583-3835, or email david.evans@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 https://commonwealthcalendar.virginia.gov.

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.