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 Virginia Register of Regulations website (http://register.dls.virginia.gov).

October 2018 through August 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Initial Agency Notice

Title of Regulation: **18VAC65-30. Regulations for Preneed Funeral Planning.**

Statutory Authority: § 54.1-2400 and Chapter 28 of Title 54.1 of the Code of Virginia.

Name of Petitioner: Jessica Watkins.

Nature of Petitioner's Request: To amend regulations for preneed contracts to prevent circumstances, such as the closure of a funeral establishment, that result in the loss of funding for a family member's funeral.

Agency Plan for Disposition of Request: The petition will be published on September 3, 2018, in the Virginia Register of Regulations and posted on the Virginia Regulatory Town Hall to receive public comment ending October 2, 2018. The matter will be on the board's agenda for its first meeting after the comment period, which is scheduled for October 16, 2018. The petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: October 2, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, or email fanbd@dhp.virginia.gov.

VA.R. Doc. No. R19-02; Filed August 6, 2018, 11:23 a.m.

TITLE 1. ADMINISTRATION

COMMISSION ON LOCAL GOVERNMENT

Fast-Track Regulation

Title of Regulation: **1VAC50-20. Organization and Regulations of Procedure (amending 1VAC50-20-5, 1VAC50-20-40, 1VAC50-20-50, 1VAC50-20-140, 1VAC50-20-142, 1VAC50-20-150, 1VAC50-20-180, 1VAC50-20-230, 1VAC50-20-270, 1VAC50-20-310, 1VAC50-20-350, 1VAC50-20-382, 1VAC50-20-384, 1VAC50-20-390, 1VAC50-20-540, 1VAC50-20-560, 1VAC50-20-570, 1VAC50-20-590, 1VAC50-20-605, 1VAC50-20-614, 1VAC50-20-620, 1VAC50-20-630).**

Statutory Authority: § 15.2-2903 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 2018.

Agency Contact: David Conmy, Local Government Policy Administrator, Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-8010, FAX (804) 371-7090, or email david.conmy@dhcd.virginia.gov.

Basis: Section 15.2-2903 of the Code of Virginia authorizes the Commission on Local Government to promulgate regulations, including rules of procedure for the conducting of hearings.

Purpose: All of the proposed amendments to the regulations are minor in nature and include items such as (i) updating definitions and regulations to correspond to changes in the Code of Virginia, including removal of references to "Commonwealth Calendar" and addition of the right to counsel in rulemaking proceedings (Chapter 795 of the 2012 Acts of Assembly), (ii) updating terminology to be gender-neutral, (iii) generalizing the commission's regular meeting regulations to allow more meeting flexibility but remaining consistent with § 15.2-2904 of the Code of Virginia, and (iv) other minor changes. None of the proposed amendments to the regulations are substantive in nature.

The regulations are essential to protect the health, safety, and welfare of citizens because they support the commission's purpose to ensure that all of the Commonwealth's "localities are maintained as viable communities in which their citizens can live" (§ 15.2-2900 of the Code of Virginia).

The goal of this action is to update the regulations for greater clarity and consistency based upon a review by the commission and its staff at the conclusion of the periodic review.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because the proposed amendments are minor in nature and include items such as (i) updating definitions and regulations to correspond to changes in the Code of Virginia, including removal of references to "Commonwealth Calendar" and adding the right to counsel in rulemaking proceedings (Chapter 795 of the 2012 Acts of Assembly), (ii) adding Oxford commas for greater clarity, (iii) updating terminology to be gender-neutral, (iv) generalizing the commission's regular meeting regulations to allow more meeting flexibility but remaining consistent with § 15.2-2904 of the Code of Virginia, and (v) making other minor changes. None of the proposed amendments to the regulations are substantive in nature, nor do they have an impact on small businesses or individual citizens.

Furthermore, this rulemaking is expected to be noncontroversial because no comments were received during the opportunity for public comment period, which ran from June 12, 2017, to July 3, 2017, and was published in the Virginia Register of Regulations on June 12, 2017 (Volume 33, Issue 21).

Substance: None of the proposed amendments to the regulations are substantive in nature.

Issues: The advantages of the amendments to the regulations are that they are all minor in nature but, overall, allow for greater clarity and consistency with recent changes to the Code of Virginia, which is advantageous for the public and the Commonwealth.

There are no anticipated disadvantages to the public or the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review, the Commission on Local Government (Commission) proposes to amend its public participation guidelines and its regulation that sets procedure

for the operation of the Commission. The Commission proposes many clarifying and updating changes as well as one change to give the Commission greater flexibility in the scheduling of public meetings.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Many of the changes that are proposed by the Commission in this action are meant to update regulatory language to account for statutory changes and to make the language in these regulations gender neutral. For instance, the Commission proposes to change references to "the Commonwealth Calendar" to "a calendar maintained by the Commonwealth" because that language more closely resembles relevant statutory language. The Commission also proposes to change references to "chairman" to "chair" because it is gender neutral. Changes such as these do not add any extra requirements for regulated entities. Consequently, no affected entities are likely to incur costs on account of these changes. To the extent that these changes remove language that is different from what is in statute, they provide the benefit of eliminating possible confusion.

Current regulation requires that the Commission's meetings be held in January, March, May, July, September and November each year. Relevant statute, however, only mandates that the Commission meet at least six times each year. In order to have greater flexibility in setting meetings, the Commission now proposes to change this language so that meetings are held at least once every two months without specifying when they will be held. As all meetings will still be subject to notification requirements, no affected entities are likely to incur costs or suffer any harm on account of this change. The Commission will benefit from the additional flexibility that this proposed change will provide.

Businesses and Entities Affected. This regulatory action will affect all localities as well as the Commission. Commission staff reports that there are there are 95 counties, 190 towns and 38 cities in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this regulatory action.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

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. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

Agency's Response to Economic Impact Analysis: The Commission on Local Government staff concurs with the economic impact analysis.

Summary:

The amendments include (i) permitting greater meeting flexibility while remaining consistent with the Code of Virginia, (ii) updating definitions and regulatory language to reflect the Code of Virginia, and (iii) updating terminology to be gender-neutral.

1VAC50-20-5. Definitions.

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

~~"Chairman"~~ "Chair" means the ~~Chairman~~ Chair of the Commission on Local Government.

"Commission" means the Commission on Local Government.

"County~~ or counties~~" means ~~one or more than one~~ a county in the Commonwealth of Virginia.

"Local government~~ or local governments~~" means ~~one or more than one~~ a county, city, or town in the Commonwealth of Virginia.

"Locality~~ or localities~~" means ~~one or more than one~~ a county, city, or town in the Commonwealth of Virginia.

"Municipality" means a city or town in the Commonwealth of Virginia.

"Party~~ or parties~~" means ~~a local government or~~ local governments, voters, or property owners initiating a proposed annexation, voters of any community requesting that their community be incorporated as a town, voters petitioning for the transition of a city to town status, or a committee appointed by the circuit court to act for and in lieu of a local government to perfect a consolidation agreement.

1VAC50-20-40. Officers.

The commission shall elect from its membership at its regular January meeting, or as soon thereafter as possible, a ~~chairman~~ chair and a vice ~~chairman~~ chair, who shall serve terms of one year, or until their successors are elected. In the event of a vacancy occurring in the office of ~~chairman~~ chair or vice ~~chairman~~ chair, for any cause, the commission shall fill the same by election for the unexpired term. The ~~chairman~~ chair shall preside at all meetings, presentations, and public hearings held by the commission unless absent. In the absence of the ~~chairman~~ chair, the vice ~~chairman~~ chair shall preside at any meeting or other assembly of the commission and shall exercise all powers and duties of the ~~chairman~~ chair. In the event that ~~neither~~ the ~~chairman~~ chair ~~nor~~ and vice ~~chairman~~ chair ~~is present~~ are absent for a meeting or other assembly of the commission, the remaining members of the commission shall elect a temporary ~~chairman~~ chair who shall exercise all powers and duties of the ~~chairman~~ chair for the duration of the meeting or assembly.

1VAC50-20-50. Powers and duties of ~~chairman~~ chair.

In addition to any other powers or duties placed upon the ~~chairman~~ chair by law, ~~these regulations~~ this chapter, or other action of the commission, the ~~chairman~~ chair shall be authorized to:

1. Request one or more members of the commission or its staff to represent the commission before local governing bodies, before state agencies and legislative committees, or before any other entity where the representation of the commission is requested or where the ~~chairman~~ chair deems appropriate;

2. Select or change sites for oral presentations and public hearings;

3. Defer and reschedule issues the ~~chairman~~ chair deems appropriate upon consultation with the commission;

4. Act on behalf of the commission in efforts to resolve disputes between the parties to an issue relative to the production and sharing of data, or with respect to related concerns bearing on the commission's review of an issue; and

5. Establish upon consultation with the parties an equitable distribution of time for public presentations and to make other arrangements the ~~chairman~~ chair deems appropriate and consistent with the requirements of law and ~~these regulations~~ this chapter for the conduct of the commission's oral presentations and public hearings.

Part II
General Administration

1VAC50-20-140. Regular meetings.

The ~~commission's regular meetings~~ commission shall ~~be held in January, March, May, July, September, and November in Richmond~~ fix the time and place for holding regular meetings, which shall be held at least once every two months. Changes in the schedule and location of the regular meetings may be made by the commission, but the changes shall be duly announced in the Virginia Register of Regulations published by the Virginia Code Commission and posted on the Virginia Regulatory Town Hall.

1VAC50-20-142. Special meetings.

Special meetings of the commission may be called by any member on such occasions as may be reasonably necessary to carry out the duties of the commission. Except in instances where a special meeting is scheduled at a regular meeting, the ~~chairman~~ chair shall cause to be mailed - including by electronic means - to all members, at least five days in advance of a special meeting, a written notice specifying the time, place, and purpose of the special meeting. Notice of special meetings shall be announced appropriately on the Virginia Regulatory Town Hall and on a calendar maintained by the Commonwealth ~~Calendar~~.

1VAC50-20-150. Minutes of meetings and hearings.

Minutes shall be recorded for each public meeting held by the commission. The minutes shall include a brief summary of comments on major issues under consideration and concise and specific statements of all action taken by the commission. The minutes shall be provided to each commission member for reading and editing prior to approval at a subsequent commission meeting. There need be no actual reading of the minutes at the meeting, but a vote shall be taken for the formal approval of the minutes as written or amended. Copies of the minutes of public meetings shall be made available to any interested party at a price sufficient to cover the expense incurred or on the Virginia Regulatory Town Hall and the commission's Internet ~~website~~ webpage.

Part III
Mandatory Commission Reviews

1VAC50-20-180. Notice to commission of proposed action as required by § 15.2-2907 of the Code of Virginia.

A. Notice of a proposed action as required by § 15.2-2907 of the Code of Virginia to the commission shall be accompanied by resolution of the governing body of the locality providing the notice evidencing its support of such action. Notice to the commission shall indicate the name, title, address, phone number, and, where available, fax number and email address

of the individual who shall serve as designated contact with the commission regarding the issue presented. All notices required to be given the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

1. Notice of a proposed annexation initiated by voters or property owners shall be accompanied by the original or certified petition signed by 51% of the voters of any territory adjacent to any municipality or 51% of the owners of real estate in number and land area in a designated area. Notice to the commission shall indicate the name, title, address, and phone number, and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue presented. All notices required to be given to the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

2. Notice of a petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § 15.2-4102 of the Code of Virginia shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the issue referred. All notices required to be given the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

3. Notice to the commission by a committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § 15.2-3531 of the Code of Virginia shall indicate the name, title, address, phone number, and, where available, fax number and email address of the individual who shall serve as designated contact with the commission regarding the proposed consolidation. All notices required to be given to the commission under the provisions of § 15.2-2907 of the Code of Virginia shall also indicate the other local governments given notice of the proposed action pursuant to subsection C of this section.

B. Any party giving notice to the commission of a proposed action pursuant to § 15.2-2907 of the Code of Virginia may submit with the notice as much data, exhibits, documents, or other supporting materials as it deems appropriate; however, the submissions should be fully responsive to all relevant elements of the applicable section of Part IV (1VAC50-20-540 et seq.) of this chapter.

C. Any party giving notice to the commission of a proposed action as required by § 15.2-2907 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local government proposing the action. All notices to the local governments shall include an annotated listing of all documents, exhibits, and other material submitted to the commission in support of the proposed action.

1. Any voters or property owners giving notice to the commission of a proposed annexation as required by § 15.2-2907 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the municipality to which annexation is sought. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, an annotated listing of the material.

2. Any voters whose petition for the proposed transition of a city to town status that has been referred to the commission pursuant to § 15.2-4102 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the city proposed for town status. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, an annotated listing of the material.

3. A committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § 15.2-3531 of the Code of Virginia shall also give notice to each Virginia local government located within or contiguous to, or sharing functions, revenue, or tax sources with the local governments that are proposed to be consolidated. All notices to the immediately affected local governments shall include copies of all documents, exhibits, and other material submitted to the commission in support of the proposed action, and notice to other localities may include, in lieu of copies of the submissions, an annotated listing of the material.

D. Any local government receiving notice pursuant to subsection C of this section or any other affected party may submit data, exhibits, documents, or other material for commission review and consideration as it deems appropriate. The submissions should, however, be responsive to all relevant elements of the applicable section of Part IV (1VAC50-20-540 et seq.) of this chapter. Any party submitting material to the commission for review pursuant to this section shall also designate an individual as principal contact for the commission and shall furnish the individual's

title, address, phone number, and, where available, fax number and email address. An annotated listing of all documents, exhibits, or other material submitted to the commission pursuant to this section shall be provided to the party initiating the proceeding before the commission. The commission may establish a time by which all submissions by respondent parties must be received.

E. Upon its receipt of notice of a proposed action pursuant to subsection A of this section, the commission shall, subsequent to discussion with representatives of the party submitting the notice and other appropriate parties, schedule a review of the proposed action. The commission shall also concurrently extend the services of its office to the parties in an endeavor to promote a negotiated settlement of the issue and, further, may designate, with the agreement of the parties, an independent mediator to assist in the negotiations.

The commission's review of a notice of a proposed annexation as required by § 15.2-2907 of the Code of Virginia filed by voters or property owners shall be terminated upon receipt of an ordinance, duly adopted by a majority of the elected members of the governing body of the affected city or town, rejecting the annexation proposed by the notice.

1VAC50-20-230. Referral to commission of proposed voluntary settlement agreements.

A. Referral of a proposed voluntary settlement agreement to the commission under the provisions of § 15.2-3400 of the Code of Virginia shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting the commission to review the agreement. The ~~resolution or~~ resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, title, address, ~~and~~ phone number, and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § 15.2-3400 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. Any party ~~or parties~~ referring a proposed voluntary settlement agreement to the commission for review pursuant to § 15.2-3400 of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of 1VAC50-20-610.

C. Whenever a proposed voluntary settlement agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which any of the parties is contiguous, or with which any of the parties shares any function, revenue, or tax source. All such notices of referral shall be accompanied by a copy of the proposed voluntary settlement agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.

D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, the submissions should be responsive to all relevant elements of 1VAC50-20-610. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the material to the parties to the proposed voluntary settlement agreement.

1VAC50-20-270. Referral to commission of proposed town-county agreement defining annexation rights.

A. Referral to the commission of a proposed town-county agreement defining annexation rights pursuant to § 15.2-3231 of the Code of Virginia shall be accompanied by resolutions, joint~~,~~ or separate, of the governing bodies of the town and county requesting the commission to review the agreement. The ~~resolution or~~ resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, title, address, ~~and~~ phone number, and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § 15.2-3231 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of such referral under subsection C of this section.

B. Any party ~~or parties~~ referring a proposed agreement to the commission for review pursuant to § 15.2-3231 of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, submissions should be fully responsive to all relevant elements of 1VAC50-20-560.

C. Whenever a proposed agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which either party is contiguous or with which either party shares any function, revenue, or tax source. All notices of referral shall be accompanied by a copy of the

proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.

D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, the submissions should be responsive to all relevant elements of 1VAC50-20-560. Any party submitting materials to the commission pursuant to ~~these regulations~~ this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review~~,~~ and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the material to the parties to the proposed agreement.

1VAC50-20-310. Referral to commission of town petition for order establishing annexation rights.

A. Any town unable to reach an agreement with its county as to future annexation rights may, pursuant to § 15.2-3234 of the Code of Virginia, adopt an ordinance petitioning the commission for an order establishing its rights to annex territory in such county. The petition to the commission shall include the terms of a proposed order establishing the town's annexation rights and shall indicate the name, title, address, ~~and~~ phone number, and, where available, fax number and email address of the individual who shall serve as the town's principal contact with the commission. Petitions to the commission pursuant to § 15.2-3234 of the Code of Virginia shall also be accompanied by a copy of the ordinance and by a listing of all local governments being served or receiving notice of the town's petition pursuant to subsection C of this section.

B. Any town petitioning the commission under the authority of § 15.2-3234 of the Code of Virginia may submit with the petition as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of 1VAC50-20-616.

C. Any town petitioning for an order establishing its annexation rights under the authority of § 15.2-3234 of the Code of Virginia shall serve a copy of the petition and ordinance on the Commonwealth's attorney, or the county attorney if there be one, and on the chairman of the board of supervisors of the county whose territory would be affected by the town's proposed annexation order. The town shall also give notice of its petition to all other towns located within the affected county and to each Virginia local government adjoining such county. The service in the county and the notice to other localities shall be accompanied by an annotated listing of all materials submitted to the commission pursuant to subsection B of this section.

D. A county served with a copy of a town's petition pursuant to subsection C of this section shall file its response to such petition with the commission within 60 days after receipt of the service. Any other party receiving notice pursuant to subsection C of this section, may also submit materials to the commission for consideration with respect to the town's petition within 60 days of their receipt of the notice. Responses and submissions to the commission pursuant to this chapter may include data, exhibits, documents, or other materials as the submitting party deems appropriate; however, such responses and submissions should be responsive to all relevant elements of 1VAC50-20-616. Any party submitting materials to the commission for review pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission~~,~~ and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the material to the town petitioning the commission.

1VAC50-20-350. Referral to commission of boundary line adjustment.

A. Whenever a court refers a proposed boundary line adjustment to the commission pursuant to § 15.2-3109 of the Code of Virginia, the localities proposing the boundary line adjustment shall, upon receipt of notification of the referral, provide the commission with a copy of their petition to the court and shall designate an individual for each locality who shall serve as principal contact with the commission and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. Referrals to the commission pursuant to § 15.2-3109 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. The two localities proposing a boundary line adjustment pursuant to § 15.2-3109 of the Code of Virginia may, jointly or independently, submit to the commission with their petition as much data, exhibits, documents, or other supporting materials as they deem appropriate; however, such submissions should be fully responsive to all relevant elements of 1VAC50-20-600.

C. Whenever a proposed boundary line adjustment is referred to the commission for review pursuant to § 15.2-3109 of the Code of Virginia, the localities proposing the adjustment shall concurrently give notice of the proposed adjustment as well as notice of the referral of the issue to the commission to each Virginia local government with which either party is contiguous and to any other Virginia local government deemed by the localities proposing the

adjustment to be potentially affected by the proposed adjustment. The notice shall include a copy of the petition requesting the boundary line adjustment, or an informative summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission for review pursuant to subsection B of this section.

D. Any local government receiving notice of a proposed boundary line adjustment pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as they deem appropriate; however, such submissions should be responsive to all relevant elements of 1VAC50-20-600. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review~~,~~ and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. The commission may establish a time by which all submissions by respondent parties must be received. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the materials to the localities proposing the boundary line adjustment.

1VAC50-20-382. Referral to commission of proposed economic growth-sharing agreements.

A. Referral of a proposed economic growth-sharing agreement to the commission under the provisions of § 15.2-1301 of the Code of Virginia shall be accompanied by resolution, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting the commission to review the agreement. The ~~resolution or~~ resolutions shall also state the intention of the governing bodies to adopt the agreement subsequent to the commission's review and shall indicate the name, title, address, ~~and~~ phone number, and, where available, fax number and email address of the individual who shall serve as each locality's principal contact with the commission during the period of its review. Referrals to the commission pursuant to § 15.2-1301 of the Code of Virginia shall also be accompanied by a listing of local governments receiving notice of the referral under subsection C of this section.

B. Any party ~~or parties~~ referring a proposed economic growth-sharing agreement to the commission for review pursuant to § 15.2-1301 of the Code of Virginia may submit with the proposed agreement as much data, exhibits, documents, or other supporting materials as deemed appropriate; however, the submissions should be fully responsive to all relevant elements of 1VAC50-20-612.

C. Whenever a proposed economic growth-sharing agreement is referred to the commission for review pursuant to subsection A of this section, the parties to the proposed agreement shall concurrently give notice of the referral to each Virginia local government with which any of the parties is contiguous, or with which any of the parties shares any function, revenue, or tax source. All notices of referral shall be accompanied by a copy of the proposed agreement, or a descriptive summary thereof, and an annotated listing of all documents, exhibits, and other materials submitted to the commission in support of the proposed agreement.

D. Any local government receiving notice of referral pursuant to subsection C of this section, or any other party, may submit data, exhibits, documents, or other supporting materials relevant to the commission's review as it deems appropriate; however, the submissions should be responsive to all relevant elements of 1VAC50-20-612. Any party submitting materials to the commission pursuant to this chapter shall also designate an individual who shall serve as principal contact with the commission during the period of its review, and shall furnish the individual's title, address, phone number, and, where available, fax number and email address. Any party submitting materials to the commission pursuant to this chapter shall also provide an annotated listing of the material to the parties to the proposed agreement.

1VAC50-20-384. Determination of continued eligibility for city status.

A. The commission shall review each decennial census of population released by the United States Bureau of the Census to determine whether any city has failed to meet the criteria for city status established by Article VII, Section 1 of the Constitution of Virginia. In any instance where the census indicates that a city may not meet the constitutional criteria, the commission shall conduct an investigation of the city's population, assets, liabilities, rights, and obligations and shall certify its findings to the governing body of such city.

B. In the conduct of its investigation, the commission shall request the assistance of the city in the provision of relevant data and information. The city may submit as much data, exhibits, documents, or other material as it deems appropriate; however, the submissions should be responsive to all relevant elements of 1VAC50-20-614.

1VAC50-20-390. General provisions applicable to mandatory commission reviews.

A. Any local government or other party appearing before the commission relative to any mandatory review may be represented by counsel.

B. The commission shall generally schedule for consideration issues in the order in which received; however, the commission reserves the right to consider issues in other sequence where it deems appropriate. Where notices are received of related or competitive actions affecting the same ~~locality or~~ localities, the commission may, where appropriate, consider the issues and render the reports or a consolidated report concurrently.

C. Subsequent to its receipt of an issue for a mandatory review the commission shall meet, or otherwise converse, with representatives of the principally affected parties for purposes of establishing a schedule for its review of the issue. The schedule shall include dates (i) for the submission of responsive materials from affected jurisdictions, (ii) for tours of affected areas and oral presentations if any are desired by the commission, (iii) for a public hearing, and (iv) for the issuance of the commission's report, as well as other dates the commission deems appropriate.

D. The commission may continue or defer its proceedings with respect to an issue at any time it deems appropriate; however, no continuance or deferral shall result in an extension of the commission's reporting deadline beyond any time limit imposed by law, except by agreement of the parties or in accordance with other statutory procedures. The commission shall also accept requests for continuances or deferrals from any party at any time during its proceedings but shall not grant or deny any such requests until all parties have had an opportunity to comment on the requests. In any instance where the commission grants a continuance or a deferral, the continuance or deferral may be conditioned upon an appropriate extension of the commission's reporting deadline with respect to the issue under review.

E. The commission may confront the necessity of continuing or deferring its proceedings as a result of statutory requirement or court order. In such instances, the commission shall reschedule its proceedings, upon consultation with the parties, in a manner that permits an expeditious conclusion of its review. The parties should anticipate, however, that the duration of the continuance or stay shall result in a commensurate delay in the issuance of the commission's report.

F. In addition to any meeting, presentation, public hearing, or other gathering of the parties specified by this chapter, the commission may, where it deems necessary for an analysis of material or for a discussion or clarification of the issues before it, schedule other meetings of appropriate parties.

G. No party ~~or parties~~ to a proceeding before the commission for mandatory review shall communicate in any manner with any member of the commission with respect to the merits of the issue under review except as is authorized by this chapter, or as may be otherwise authorized by the commission or its ~~chairman~~ chair.

H. In addition to the submissions authorized by 1VAC50-20-180 through 1VAC50-20-384, the commission may allow supplemental submissions deemed necessary or appropriate by the commission for the provision of current and complete data. Where supplemental submissions are authorized pursuant to this subsection, copies of all submissions shall be provided by the submitting party to all principal parties. The commission shall endeavor to establish dates for the filing of all supplemental submissions which will allow an opportunity for their review and critical analysis by other affected parties. However, the commission may accept supplemental submissions filed after any established dates if, in the commission's judgment, the submissions assist the commission in the discharge of its statutory responsibilities.

I. Any material submitted to the commission by the parties in conjunction with or relative to any notice filed pursuant to any mandatory review covered by 1VAC50-20-180 through 1VAC50-20-384, except materials presented in the context of negotiations or mediation of a confidential nature as authorized by law, shall be considered public documents and made available by the submitting party for review by any other interested party or by the public. Any interested party or member of the public may request copies of any such material which shall be provided promptly by the party submitting the material to the commission at a price sufficient to cover the expense incurred.

J. Each document, exhibit, or other material submitted to the commission shall bear a title, the date of preparation, a detailed citation of the sources from which all data are obtained, and the name of the entity which submitted the document, exhibit, or other material. All material submitted to the commission by a local government shall be, as nearly as practicable, in the same form as the material would subsequently be submitted to the courts. The commission may refuse to accept for review and consideration any exhibit, document, or other material unless the person preparing it, or a representative of the entity responsible for its submission, shall be willing to appear before the commission for purposes of answering questions concerning the material.

K. Unless otherwise requested, wherever the regulations of the commission call for the projection of data, the projections should be made for a 10-year period. In each instance where projections are given, the method and bases of the projections should be indicated.

L. All data, exhibits, documents, or other material submitted to the commission on the initiative of a party or pursuant to a request from the commission shall be certified by the submitting party (i) as to source and (ii) as to the fact that the material is correct within the knowledge of the submitting party.

M. Any party ~~or parties~~ filing notice or making submissions to the commission shall provide at least eight copies of all submissions, unless the commission agrees that a lesser number would be sufficient for its review and analysis. The commission may make provisions for the electronic filing of submissions, including facsimile.

N. At any time during the course of the commission's review of any issue, the commission's staff may solicit additional data, documents, records, or other materials from the parties as is deemed necessary for proper analysis of any issue.

Where such materials are solicited from a party, the commission's staff, where practicable, shall make the request in writing, with copies of the request being provided to other principal parties. Copies of all materials submitted to the commission pursuant to this chapter shall concurrently be provided to each principal party~~,~~ or shall be made available to the parties in a manner acceptable to the commission. The commission shall be given written notification by the submitting party of each principal party provided a copy of the material or of arrangements proposed for making the material available to the principal parties.

O. The commission shall not be limited in its analysis of any issue to the materials submitted by the parties but shall undertake independent research as it deems appropriate in order to assure a full and complete investigation of each issue.

P. The commission shall request all parties to cooperate fully in the development and timely sharing of data relative to the issue under review. The commission considers the cooperation among parties vital to the discharge of its responsibilities.

Q. The commission may allow the parties to correct the data, exhibits, documents, or other material submitted to the commission prior to the date established for the closing of the record pursuant to 1VAC50-20-640 B. Where corrections are authorized pursuant to this chapter, copies of all corrections shall be provided by the submitting party to all principal parties. If, in the commission's judgment, the corrections are of a substantive nature as to significantly alter the scope or character of the issue under review, the commission may delay its proceedings for an appropriate amount of time to provide an opportunity for other parties to respond to the corrected data, exhibits, documents, or other material.

R. Following the receipt of a notice, the commission may request the party initiating the proposed action to prepare and file testimony in support of the proposed action. The testimony of the party initiating the proposed action may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. In all proceedings in which the initiating party files testimony, the affected party ~~or parties~~ shall be permitted and may be requested by the commission to file, on or before a date established by the commission, testimony in response to the proposed action. The testimony of the affected party ~~or parties~~ may refer to all data, exhibits, documents, or other material previously submitted to the commission or filed with the testimony. Any affected party ~~or parties that~~ who chooses not to file testimony by the date established by the commission may not thereafter present testimony except by permission of the commission, but may otherwise fully participate in the proceeding and engage only in cross-examination of the testimony of other parties. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony by the commission. The commission may permit the parties to correct or supplement any prepared testimony before or during the oral presentations as called for in 1VAC50-20-620. Eight copies of prepared testimony shall be filed unless otherwise specified by the commission.

Part IV
Information, Data, and Factors Relative to Mandatory Commission Reviews

1VAC50-20-540. Annexation.

In developing its findings of fact and recommendations with respect to a proposed annexation, the commission shall consider the information, data, and factors listed in this section. Any city or town filing notice with the commission that it proposes to annex territory shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed annexation. Any voters or property owners filing notice pursuant to § 15.2-2907 of the Code of Virginia with the commission seeking annexation to a municipality shall submit with the notice data and other evidence responsive to each element listed in this section that they deem relevant to the proposed annexation, except that subdivision 1 of this section is required to be included in the notice filed with the commission.

1. A written metes and bounds description of the boundaries of the area proposed for annexation having, as a minimum, sufficient certainty to enable a layman to identify the proposed new boundary. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map ~~or maps~~ showing (i) the boundaries of the area proposed for annexation and their geographic relationship to existing political boundaries; (ii) identifiable unincorporated communities~~,~~; (iii) major streets, highways, schools, and other major public facilities~~,~~; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property within the area sought for annexation.

3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the municipality, the county, and the area proposed for annexation.

4. The past, the estimated current, and the projected population of the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

5. The past, the estimated current, and the projected future number of public school students enrolled in the public

schools and the number of school-age children living in the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

6. The assessed property values, by major classification, and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the municipality~~,~~ and the county affected by the proposed annexation, and similar data for the current year for the area of the county proposed for annexation.

7. The current local property and nonproperty tax rates and the tax rates for the preceding 10 years, applicable within the municipality, the county affected by the proposed annexation, and the area of the county proposed for annexation.

8. The estimated current local revenue collections and intergovernmental aid, the collections and aid for the previous 10 years, and projections of the collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes) within the municipality, and the county affected by the proposed annexation, and similar data for the past year for the area of the county proposed for annexation.

9. The amount of long-term indebtedness and the purposes for which all long-term debt has been incurred by the municipality and the county affected by the proposed annexation.

10. The need in the area proposed for annexation for urban services, including ~~but not limited to~~ those listed ~~below~~ in this subdivision, the level of services provided by the municipality and by the county affected by the proposed annexation, and the ability of the municipality and the county to provide the services in the area proposed for annexation:

a. Sewage treatment;

b. Water;

c. Solid waste collection and disposal;

d. Public planning;

e. Subdivision regulation and zoning;

f. Crime prevention and detection;

g. Fire prevention and protection;

h. Public recreational facilities;

i. Library facilities;

j. Curbs, gutters, and sidewalks;

k. Storm drains;

l. Street lighting;

m. Snow removal;

n. Street maintenance;

o. Schools;

p. Housing; and

q. Public transportation.

11. Efforts made by the municipality and the county affected by the proposed annexation to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies promulgated by the General Assembly.

12. The community of interest which (i) may exist between the municipality and the area proposed for annexation and its citizens and ~~which~~ (ii) may exist between that area and its citizens and the rest of the county; the term "community of interest" may include~~, but not be limited to,~~ consideration of natural neighborhoods, natural and manmade boundaries, the similarity of service needs, and economic and social bonds.

13. Any arbitrary prior refusal to cooperate by the governing body of the municipality or of the county affected by the proposed annexation, if such has occurred, to enter into cooperative agreements providing for joint activities ~~which~~ that would have benefited citizens of both localities.

14. The need for the municipality to expand its tax resources, including its real estate and personal property tax base.

15. The need of the municipality to obtain land for industrial, commercial, and residential development.

16. The adverse effect on the county affected by the proposed annexation resulting from the loss of areas suitable and developable for industrial, commercial, or residential use.

17. The adverse effect on the county of the loss of tax resources and public facilities necessary to provide services to those persons in the remaining areas of the county after the proposed annexation.

18. The adverse impact of the proposed annexation on agricultural operations located in the area proposed for annexation.

19. The terms and conditions upon which the municipality proposes to annex, its plans for the improvement of the annexed territory during the 10-year period following annexation, including the extension of public utilities and

other services, and the means by which the municipality shall finance the improvements and extension of services.

20. Data pertinent to a determination of the appropriate financial settlement between the municipality and the affected county as required by § 15.2-3211 of the Code of Virginia and other applicable provisions of the Code of Virginia.

21. The commission's staff shall endeavor to assist parties contemplating or involved in annexation proceedings by identifying additional data elements considered by the commission to be relevant in the disposition of annexation issues.

1VAC50-20-560. Town-county agreements defining annexation rights.

In developing its findings of fact and recommendations with respect to a proposed town-county annexation agreement, the commission shall consider the information, data, and factors listed in this section. Any town or county presenting proposed annexation agreements to the commission under the provisions of § 15.2-3231 of the Code of Virginia shall submit with the proposed agreement data and other evidence responsive to each element listed in this section that it deems relevant.

1. A written metes and bounds description of those areas of the county made eligible for annexation under the proposed agreement having as a minimum, sufficient certainty to enable a layman to identify those areas. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

2. A map ~~or maps~~ showing~~:~~ (i) the boundaries of the various areas eligible for annexation under the proposed agreement and their relationship to existing political boundaries; (ii) identifiable unincorporated communities; (iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; (v) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vi) information deemed relevant as to the possible future use of the property in the areas affected by the proposed agreement.

3. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the town, the county, and the areas of the county affected by the agreement.

4. The past, the estimated current, and the projected population of the town, the county, and those areas of the county affected by the proposed agreement.

5. The past, the estimated current, and the projected number of public school students enrolled in the public schools and the number of school-age children living in the town, the county, and those areas of the county affected by the proposed agreement.

6. The assessed property values, by major classification and, if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current and preceding 10 years for the town, and the county, and similar data for the current year in those areas of the county affected by the proposed agreement.

7. The need of the municipality to expand its tax resources, including its real estate and personal property tax base.

8. The need of the municipality to obtain land for industrial, commercial, and residential development.

9. The current and prospective need for additional urban services in the areas of its county subject to annexation under the agreement.

10. Plans for the immediate and future improvement of areas annexed under the terms of the agreement, including the extension of public utilities and other services.

11. The commission's staff shall endeavor to assist localities contemplating or involved in town-county agreements defining annexation rights by identifying additional data elements considered by the commission to be relevant in the disposition of the issues.

1VAC50-20-570. Town incorporation.

In developing its findings of fact and recommendations with respect to a proposed town incorporation, the commission shall consider the information, data, and factors listed in this section. ~~Any party or parties~~ Parties filing notice with the commission that they propose to have a community incorporated as a town, or whose petition for incorporation has been referred to the commission by the court pursuant to § 15.2-3601 of the Code of Virginia, shall submit with such notice or subsequent to the court referral data and other evidence responsive to each element listed in this section that they deem relevant to the proposed incorporation.

1. A petition signed by not ~~less~~ fewer than 100 duly qualified voters residing within the boundaries of the proposed town supporting the proposed incorporation.

2. A written metes and bounds description of the area proposed for incorporation as a town having, as a minimum, sufficient certainty to enable a layman to identify the proposed town boundary. The description may make reference to readily identifiable monuments such as public roads, rivers, streams, railroad rights of way, and similar discernible physical features.

3. A map ~~or maps~~ showing~~:~~ (i) the boundaries of the proposed town and their relationship to existing political boundaries; (ii) identifiable unincorporated communities;

(iii) major streets, highways, schools, and other major public facilities; (iv) significant geographic features, including mountains and bodies of water; and (v) existing uses of the land, including residential, commercial, industrial, and agricultural.

4. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the area proposed for incorporation.

5. The ~~estimated~~ past, the estimated current, and the projected population of the area proposed for incorporation and the county within which the town would be situated.

6. Information indicating~~:~~ (i) why the proposed incorporation is desired and in the interest of the inhabitants; (ii) how the general good of the community is served by the incorporation; and (iii) why the services needed within the proposed town cannot be provided by the establishment of a sanitary district, through the extension of existing county services, or by other arrangements provided by law.

7. The commission shall endeavor to assist communities contemplating or involved in proposed town incorporations by identifying additional data elements considered by the commission to be relevant in the disposition of incorporation issues.

1VAC50-20-590. County-city transitions.

In developing its findings of fact and recommendations with respect to a proposed county to city transition, the commission shall consider the information, data, and factors listed in this section. Any county filing notice with the commission that it proposes to become a city shall submit with the notice data and other evidence responsive to each element listed in this section that it deems relevant to the proposed transition.

1. A map~~, or maps,~~ showing~~:~~ (i) the location of all towns situated within the county; (ii) all adjoining and adjacent localities; (iii) identifiable unincorporated communities within the county; (iv) the population density of the various areas of the county; (v) the areas of the county served by urban services; (vi) major streets, highways, schools, and other major public facilities; (vii) significant geographic features, including mountains and bodies of water; (viii) existing uses of the land, including residential, commercial, industrial, and agricultural; and (ix) information deemed relevant as to the possible future use of the property within the county.

2. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the county.

3. The past, the estimated current, and the projected future population of the county, each town within the county, and of the major densely populated unincorporated communities within the county.

4. The past, the estimated current, and the projected future number of public school students enrolled in the public schools and the number of school-age children living in the county and in each town ~~therein~~ within the county.

5. The assessed values, by major classification and if appropriate, the ratios of assessed values to true values for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and each town within the county.

6. The current local property and nonproperty tax rates, and the tax rates for the preceding 10 years, within the county and all towns within the county.

7. The estimated current local revenue collections and intergovernmental aid, the collections and aid for the previous 10 years, and projections of the collections and aid (including tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes) within the county and within each town within the county.

8. The amount of long-term indebtedness of the county and each town within the county and the amount and purpose for which that debt has been incurred.

9. Data regarding~~:~~ (i) the urban-type services presently provided by the county; (ii) the level of those services; (iii) the areas of the county served by those services; (iv) the additional services to be provided and the additional cost to be borne by the proposed city; and (v) the means by which the proposed city shall finance the additional services and costs.

10. The fiscal capacity of the county to function as an independent city and to provide appropriate services.

11. The impact of the proposed transition on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.

12. The commission's staff shall endeavor to assist localities contemplating or involved in proposed county-city transitions by identifying additional data elements considered by the commission to be relevant in the disposition of county to city transition issues.

1VAC50-20-605. County-city consolidations.

In developing its findings of fact and recommendations with respect to a proposed consolidation of a county and a city that would establish an independent city, the commission shall consider the information, data, and factors listed in this section. Local governments filing notice proposing the

consolidation of a city and a county to establish an independent city, or any committee of citizens that has been appointed by the circuit court to act for and in lieu of a governing body to perfect a consolidation agreement pursuant to § 15.2-3531 of the Code of Virginia shall, separately or jointly, submit to the commission data and other evidence responsive to each element listed in this section that they deem relevant to the proposed consolidation.

1. Copy of the consolidation agreement.

2. A map ~~or maps~~ showing (i) the location of all municipalities situated within the proposed consolidated city; (ii) all adjoining and adjacent localities; (iii) identifiable unincorporated communities within the proposed consolidated city; (iv) major streets, highways, schools, and other major public facilities; (v) significant geographic features, including mountains and bodies of water; (vi) existing uses of the land, including residential, commercial, industrial, and agricultural; and (vii) information deemed relevant as to the possible future use of the property within the proposed consolidated city and as to its future viability.

3. The past, the estimated current, and the projected population of each locality proposing to consolidate.

4. The population density of the proposed consolidated city based on the most recent ~~U.S.~~ United States decennial census or as estimated by the Weldon Cooper Center for Public Service at the University of Virginia.

5. A land-use table showing both the acreage and percentage of land currently devoted to the various categories of land use in the proposed consolidated city.

6. The estimated current and a five-year projection of the future number of public school students enrolled in the public schools in each locality proposing to consolidate and the number of school-age children living in the proposed consolidated city.

7. The assessed values, by major classification for real property, personal property, machinery and tools, merchants' capital, and public service corporation property for the current year and the preceding 10 years for the county and the city proposing to consolidate and the proposed consolidated city.

8. The estimated local property and nonproperty tax rates that will be applicable within the proposed consolidated city.

9. The estimated local revenue collections including~~, but not limited to,~~ tax receipts from real property, personal property, machinery and tools, merchants' capital, business and professional license, consumer utility, and sales taxes and intergovernmental aid, such collections and aid for the preceding 10 years, and projections of the collections and aid within each of the localities proposing to consolidate.

10. The amount of long-term indebtedness of each of the localities proposing to consolidate and the amount and purpose for which that debt has been incurred.

11. Data regarding~~:~~ (i) the urban-type services presently provided by each of the localities proposing to consolidate, (ii) the level of those services to be provided in the proposed consolidated city, (iii) the additional services to be provided and the additional cost to be borne by the proposed consolidated city, and (iv) the means by which the proposed consolidated city shall finance the additional services and costs.

12. The fiscal capacity of the proposed consolidated city to function as an independent city and to provide appropriate services.

13. The impact of the proposed consolidation on compliance with and the promotion of applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, and other state service policies declared by the General Assembly.

14. The impact of the proposed consolidation on the interest of the Commonwealth in promoting strong and viable units of government in the area.

15. The commission's staff shall endeavor to assist the parties involved in proceedings for the consolidation of a county and a city that would establish an independent city by identifying additional data elements considered by the commission to be relevant in the disposition of city-county consolidation issues.

1VAC50-20-614. Determination of continued eligibility for city status.

In undertaking its investigation with respect to whether a city continues to meet the requirements for city status as prescribed by Article VII, Section 1 of the Constitution of Virginia, the commission shall consider the information and data listed in this section. Any city subject to investigation as prescribed by Chapter 40 (§ 15.2-4000 et seq.) of Title 15.2 of the Code of Virginia shall be requested to submit information and data responsive to each element listed in this section and any other information and data as the city deems relevant to the continued eligibility for city status.

1. Any official correspondence with the United States Bureau of the Census regarding the accuracy of the most recent United States decennial census of the population of the city under investigation.

2. Any data or other evidence produced by the city under investigation or any other entity bearing on the accuracy of the most recent United States decennial census of the population of the city under investigation.

3. Any data or other evidence produced by the city under investigation or any other entity indicating the current population and projected future population of the city under investigation.

4. Contingent upon the commission's findings with respect to the population of the city under investigation, a listing of all of the city's assets, liabilities, rights, and obligations.

5. The commission's staff shall endeavor to assist the city under investigation by identifying additional data elements considered by the commission to be relevant to the continued eligibility for city status.

Part V
Formal Commission Reviews

1VAC50-20-620. Oral presentations by parties.

A. In the course of its analysis of any issue the commission may schedule oral presentations for purposes of permitting the parties to amplify their submissions, to critique and to offer comment upon the submissions and evidence offered by other parties, and to respond to questions relative to the issue from the commission. The presentations, if scheduled, shall extend for a period of time as the commission may deem appropriate.

B. If oral presentations are scheduled by the commission, the ~~chairman~~ chair shall select, subsequent to the receipt of recommendations from the parties, an appropriate site for the presentations. Recommendations by the parties regarding the sites should be based upon the adequacy of space for the display and movement of exhibits; the adequacy of seating arrangements for the commission, its staff, representatives of the parties, a court reporter, and the public; the adequacy of security at the site to permit materials to be left unattended during recesses; and the adequacy of the acoustical characteristics of the site to facilitate communications or the availability of a public address system.

C. Local governments or other parties desiring to present exhibits or data requiring special equipment should be prepared to provide such.

D. The commission may, where it deems appropriate, consolidate two or more interlocal issues before it for purpose of oral presentations.

E. The commission shall, within the requirements of law, conduct the oral presentations in the manner it considers best suited for reaching a decision in the best interest of the parties and in the best interest of the Commonwealth.

F. The ~~chairman~~ chair, or other member the commission designated to preside during any oral presentations, may allocate time to the various parties as the ~~chairman~~ chair or presiding member deems appropriate. The allocation of time shall be based upon the needs of the commission to review data, to examine witnesses, and to obtain an understanding of the relevant factors affecting the issue under review.

G. The sequence in which testimony will be received by the commission during any oral presentations shall be established by the ~~chairman~~ chair or presiding member but shall generally be as follows:

1. A brief opening statement by each party, if desired;

2. Presentation by the party initiating the issue before the commission;

3. Presentations by the local governments immediately affected by the action proposed by the initiating party, in an order established by the ~~chairman~~ chair or presiding member;

4. Presentations by other parties, in an order established by the ~~chairman~~ chair or presiding member;

5. Rebuttal where requested by a party and agreed to by the ~~chairman~~ chair or presiding member.

H. The ~~chairman~~ chair or presiding member may, to the extent ~~he~~ the chair or presiding member deems appropriate, permit parties to question witnesses regarding submissions, their testimony, or other facts relevant to the issues before the commission. Where a party is represented by counsel, such questioning may be conducted by counsel.

Where the parties have prefiled testimony at the commission's request pursuant to 1VAC50-20-390 R, the questioning of individuals whose testimony has been prefiled shall be limited to a cross-examination of such testimony. The commission may accept additional oral testimony from individuals whose testimony has been prefiled during the presentations where good cause is shown. Where additional oral testimony is accepted by the commission, the commission shall provide an opportunity for other parties to respond to the testimony and to cross-examine the individual offering such testimony.

I. The ~~chairman~~ chair or presiding member may, during or at the conclusion of the oral presentations, permit or request oral argument on the issues before the commission.

J. The commission, and its staff, may question any witness or representative of any party during the oral presentations regarding any submission, testimony, or other fact which the commission considers relevant to the issues before it. The ~~chairman~~ chair or presiding member shall endeavor to call for commission questioning in a manner designed to expedite the presentations.

K. The commission may accept depositions from persons unable to attend an oral presentation. Depositions shall only be accepted under conditions deemed acceptable by the commission, including conditions assuring an opportunity for all affected local governments to be present and to examine adequately the witness during the taking of depositions.

L. The parties or their counsel shall be expected to confer in advance of the time and date set for presentations in order to inform one another of their prospective witnesses and the order of their anticipated appearance. All material, data, or exhibits proposed for presentation to the commission during the oral presentations and not previously made available to the other parties shall be exchanged or made available to the parties prior to presentation to the commission, subject to the qualifications in subsection M of this section.

M. The commission requires that all materials, data, and exhibits be presented to it and made available to other parties in advance of the commencement of the onsite component of the commission's review. The commission may accept additional materials, data, and exhibits during the onsite component of its review upon unanimous consent of the members present. Where late submissions are accepted by the commission, the commission shall provide an opportunity for other parties to respond to the filings.

N. The commission may record by mechanical device, unless other recording arrangements are made by the parties, all testimony given during the oral presentations but shall prepare a transcript of the recording only when deemed appropriate. The commission shall provide, upon request, any party a duplicate copy of the transcript or recording, if made, at a price sufficient to cover the expense incurred. In lieu of recording by the commission, the parties may arrange to provide a court reporter at their expense. Where a court reporter is utilized, the commission shall receive one copy of the transcript.

1VAC50-20-630. Public hearing.

A. In all cases where a public hearing is required by law, the commission shall conduct the public hearing at which any interested person or party may testify. The commission shall generally schedule the public hearing in conjunction with the oral presentations held, if any, with respect to the issue; however, public hearings regarding proposed town incorporations required pursuant to § 15.2-3601 of the Code of Virginia shall be held no sooner than 30 days after receipt of the court request for commission review.

B. Prior to holding the public hearing the commission shall publish notice of the pending hearing as required by law.

In addition to the notice of public hearing required by this subsection, a town that is a party to an agreement defining annexation rights negotiated pursuant to § 15.2-3231 of the Code of Virginia shall give written notice of the commission's hearing at least 10 days before the hearing to the ~~owner,~~ owners~~,~~ or their agent of each parcel of land included in the area proposed for annexation under the terms of the agreement. One notice sent by first-class mail to the last known address of the ~~owner,~~ owners~~,~~ or their agent as shown on the current county real estate tax assessment books or current county real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that the clerk of the town shall make an affidavit that the mailings have been made and file the affidavit with the commission.

C. The commission shall request the party initiating the issue before it and the other principally affected parties to place on public display in or adjacent to the office of the chief administrative officer of each principally affected local government copies of all materials which are available to them and which have been submitted to the commission for consideration with respect to the issue. The material should be made conveniently available to the public during normal working hours. The commission also encourages the parties to make available to the public other copies of the material at libraries, educational facilities, or other public places in order that the public might have ample opportunity to study the material prior to the public hearing. The commission's advertisements published under subsection B of this section shall announce the availability of the material at the offices of the administrators and at other facilities as may be selected by the parties for display purposes.

D. The commission shall request the chief administrative officer (or other official) of each jurisdiction ~~or jurisdictions~~ principally affected by the issue before the commission to make suitable arrangements in or adjacent to their offices for the registration of speakers at the public hearing. The commission shall furnish appropriate registration forms for that purpose. The commission's advertisements under subsection B of this section shall advise the public that registration to speak at the public hearing may be accomplished at the offices of the local administrators or, alternatively, through the offices of the commission in Richmond. The commission may also permit speakers to register at the site and at the time of the public hearing and shall request the assistance of the local administrative officers in making suitable arrangements for such registration.

E. The ~~chairman~~ chair or other member of the commission designated to preside over the proceedings shall select the site for the public hearing subsequent to the receipt of recommendations from the parties. Recommendations from the parties should be based upon a site's accessibility to residents of the areas and jurisdictions principally affected, its seating capacity, the adequacy of parking facilities, the availability of a public address system, and seating arrangements permitting the commission to have proper visual contact with the public.

F. The commission shall request the parties to cooperate in the preparation of the site for the public hearing and shall request that a minimum number of maps and exhibits be placed on display at the site in order that persons testifying may identify their residences, property, businesses, or other concerns in relation to the proposed issue.

G. The commission shall request the local jurisdiction within which the site for the public hearing is situated to make appropriate arrangements in order to assure the security and the orderliness of the proceedings.

H. The ~~chairman~~ chair or the presiding member shall determine the sequence of speakers at a public hearing, but the sequence shall ordinarily conform to the sequence of their registration. The ~~chairman~~ chair or presiding member may, however, vary the sequence of speakers in order that persons from all affected jurisdictions and areas, and those representing different perspectives, might have equal opportunity for the timely presentation of their comments.

I. The commission shall endeavor to allow any person or party wishing to speak at a public hearing an opportunity to do so. The ~~chairman~~ chair or presiding member may establish time limits for the presentation of testimony as ~~he~~ the chair or presiding member deems appropriate. The ~~chairman~~ chair or presiding member may also rule testimony irrelevant, immaterial, or unduly repetitious. Proponents and opponents of a proposed action are encouraged to designate a chief spokesman for economy of time and for the avoidance of repetitious comment.

J. Any person or party testifying before the commission at the public hearing may extend their remarks in written form for subsequent submission. During the course of the public hearing, the commission shall establish a date by which the extended written comment must be received for consideration.

K. The commission may record by mechanical device, unless other arrangements are made, all testimony given during the public hearing but shall prepare a transcript of the recording only when it deems appropriate. The commission shall provide any person or party with a copy of the transcript or recording, if made, at a price sufficient to cover the expense incurred. The parties may arrange to provide a court reporter, at their expense. Where a court reporter is utilized, the commission shall receive one copy of the transcript.

L. The commission may, where it deems appropriate, consolidate two or more interlocal issues for purposes of a public hearing.

VA.R. Doc. No. R19-5291; Filed August 9, 2018, 9:37 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Fast-Track Regulation

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers (amending 3VAC5-10-160).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 22, 2018.

Agency Contact: LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Basis: Section 4.1-101 of the Code of Virginia establishes the Virginia Alcoholic Beverage Control Authority and the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

Section 4.1-103 of the Code of Virginia enumerates the powers of the board, which include the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Subdivision 7 of § 4.1-103 of the Code of Virginia permits board to delegate or assign any duty or task to be performed by the authority to any officer or employee of the authority. Subdivision 24 of § 4.1-103 permits the board to promulgate regulations in accordance with the Administrative Process Act and § 4.1-111 of the Code of Virginia.

Section 4.1-111 A provides the board with the authority to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 and to amend or repeal such regulations.

Purpose: As the Department of Alcoholic Beverage Control transitions into an authority, it was necessary to make amendments to the regulations dealing with procedural rules of the conduct of hearings before the board and hearings officers to make the process more efficient and not overburden the new part-time board. Approvals that were once subject to board approval have been delegated to the chief hearing officer. Additionally, extending the time in which an offer can be submitted is an effort to decrease the number of hearings and appeals and foster more resolutions through settlement.

Rationale for Using Fast-Track Rulemaking Process: The amendments favor licensees and simplify the offer in the compromise process while extending the time that the licensee has to make an offer in compromise.

Substance: Approvals once subject to board approval have been delegated to the chief hearing officer thereby accommodating the new part-time board while not hampering the process for licensees. Also, extending the time in which offers can be made increases the likelihood that the matter will be resolved without further hearings or appeals.

Issues: The primary advantage is that the amendment will make the process for offers in compromise more efficient by allowing the board to delegate the responsibility of approving the offer instead of having to wait for board approval, which could delay the settlement as the board will meet much less frequently under the authority. There are no disadvantages to the agency or the Commonwealth. Pertinent matters to the regulated community, government officials, and the public are that offers in compromise will not always have oversight from the board; however, they will be delegated to chief hearing officer who may have more intimate knowledge of the case and the significance of the settlement terms.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to: 1) direct that offers in compromise be addressed to the chief hearing officer, 2) no longer require Board approval for acceptance of offers in compromise, 3) remove the limit on the number of offers in compromise that licensees may make, and 4) allow licensees more time to present an offer in compromise.

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

Estimated Economic Impact. Following notice of a disciplinary proceeding, a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license. The current regulation specifies that such an offer be summited to the secretary of the Board and be subject to Board approval.

As of January 15, 2018, the Virginia Alcoholic Beverage Control Authority (ABCA) became successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board.[1] ABCA consists of the Virginia Alcoholic Beverage Control Board of Directors (Authority Board), the Chief Executive Officer, and the agents and employees of the Authority.

Members of the Board prior to the establishment of ABCA worked full time. Positions on the Authority Board are considered part time; the Authority Board meets much less frequently than the Board has historically. Consequently, the Board proposes to amend the regulation to specify that offers in compromise be submitted to the chief hearing officer, and acceptance is not subject to Board (or Authority Board) approval. The proposal to have offers in compromise be submitted to the chief hearing officer and to allow the chief hearing officer to approve such offers without waiting for Board approval would help prevent significant delays. This would be beneficial for regulated entities and the public.

The current regulation limits licensees to two offers of compromise. The Board proposes to remove this limitation and extend the timeframe within which licensees may submit offers in compromise. Since these proposed changes are potentially beneficial for affected licenses, and do not produce significant cost for ABCA, they would likely produce a net benefit.

Businesses and Entities Affected. All 13,000+ licensees could potentially be subject to disciplinary proceedings, and thus could be affected by the proposed amendments.[2] ABCA issues: licenses for manufacturers, wholesalers and shippers of alcoholic beverages; retail licenses for the sale of alcohol at restaurants, hotels, convenience stores, grocery stores, etc.; and banquet licenses to allow persons or groups to host events such as wedding receptions, tastings or fundraisers, where alcohol is served in an unlicensed location or club premise.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not significantly affect 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 Virginia Code § 4.1-101 B

[2]Data source: Department of Alcoholic Beverage Control

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with

the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments (i) require that offers in compromise be addressed to the chief hearing officer, (ii) remove the board approval requirement for acceptance of offers, (iii) remove the limit on the number of offers that licensees may make, and (iv) extend the time in which an offer can be made.

3VAC5-10-160. Offers in compromise.

Following notice of a disciplinary proceeding, a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the ~~secretary to the board~~ chief hearing officer. ~~Upon approval by the board, acceptance~~ Acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted~~, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15 calendar days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing~~. Offers in compromise may be submitted anytime following notice of a disciplinary proceeding and before the conclusion of an appeal hearing. Any such offer may not be accepted at the informal conference and no offer shall be submitted after the conclusion of the appeal hearing. The board may waive any provision of this section for good cause shown.

VA.R. Doc. No. R19-5363; Filed August 9, 2018, 8:31 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers (amending 3VAC5-10-220).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 22, 2018.

Agency Contact: LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Basis: Section 4.1-101 of the Code of Virginia establishes the Virginia Alcoholic Beverage Control Authority and the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

Section 4.1-103 of the Code of Virginia enumerates the powers of the board, which include the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Subdivision 7 of § 4.1-103 of the Code of Virginia permits the board to delegate or assign any duty or task to be performed by the authority to any officer or employee of the authority. Subdivision 24 of § 4.1-103 permits the board to promulgate regulations in accordance with the Administrative Process Act and § 4.1-111 of the Code of Virginia.

Section 4.1-111 A authorizes the board to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 and to amend or repeal such regulations.

Purpose: The purpose of this regulatory action is to clarify that the authority has the ability, including through alternate dispute resolution options, to agree to license suspensions or revocations prior to a formal hearing and to update a citation to the Code of Virginia. The advantage to the public welfare is that the change to the regulation corrects an out-of-date reference to the Code of Virginia and ensures that the public is receiving up-to-date guidance.

Rationale for Using Fast-Track Rulemaking Process: The regulatory action updates the Code of Virginia reference and provides clarity that the authority has the ability, including through alternate dispute resolution options, to agree to license suspensions or revocations prior to a formal hearing.

Substance: The changes update a citation to the Code of Virginia, remove the requirement that license suspension or revocation be preceded by a formal hearing, and remove the language referencing an offer of settlement. The amendments also provide that any initial decision will include a summary of the informal conference.

Issues: The primary advantage to this regulatory action is that it corrects the statutory reference and provides additional clarity on the powers of the authority. There are no disadvantages to the agency or the Commonwealth. Pertinent matters to the regulated community, government officials, and the public are that the most up to date references to the Code of Virginia will be included in the regulation and there will not be any confusion to the powers of the authority as it relates to informal conferences.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to: 1) update a citation to the Code of Virginia, 2) remove obsolete language, and 3) amend language for improved clarity.

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

Estimated Economic Impact. The regulation states that an "informal conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference." Section 220 of the regulation further describes attributes and requirements related to informal conferences.

The Board proposes amendments that would update a Code of Virginia citation, eliminate obsolete language, and change text to improve clarity. None of the proposed amendments change requirements in practice; nevertheless, the proposals would be beneficial in that they may reduce the likelihood of misunderstandings among readers of the regulation.

Businesses and Entities Affected. All 13,000+ licensees could potentially be subject to disciplinary proceedings, and thus could be affected by the proposed amendments.[1] ABC issues: licenses for manufacturers, wholesalers and shippers of alcoholic beverages; retail licenses for the sale of alcohol at restaurants, hotels, convenience stores, grocery stores, etc.; and banquet licenses to allow persons or groups to host events such as wedding receptions, tastings or fundraisers, where alcohol is served in an unlicensed location or club premise.

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

Projected Impact on Employment. The proposed amendments do not 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 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]Data source: Department of Alcoholic Beverage Control

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

Summary:

The amendments (i) clarify that an agreement for license suspension or revocation may be made prior to a formal hearing, (ii) provide that any initial decision include a summary of the informal conference, and (iii) update citations to the Code of Virginia.

3VAC5-10-220. Informal conferences.

A. An informal conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the agency will automatically waive the informal conference when the applicant or licensee does so. When the applicant or licensee is offered an informal conference and fails to respond within 10 calendar days after the date of such offer, the informal conference will be deemed to be waived.

B. The informal conference will be conducted for the reasons set forth in § ~~9-6.14:11~~ 2.2-4019 of the Code of Virginia~~; however, inasmuch as the Code of Virginia continues to require that license suspension or revocation be preceded by a formal hearing (see § 4.1-227 of the Code of Virginia), the~~. The informal conference may not be used for purposes of agreement fixing a period of suspension or license revocation~~, although an offer of settlement shall be received for board consideration~~. The informal conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections, the evidence in support thereof and to hear any matters relevant thereto presented by the interested parties and to explore whether (i) administrative proceedings or objections should be terminated or (ii) the case should proceed to formal hearing and stipulations can be reached. The conference will be open to the public, but participation will be limited to the interested parties, their attorneys-at-law or other qualified representatives, and designated board representatives. The conference will be held, when practical, at the county or city

in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the informal conference. The informal proceeding will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. ~~At the conclusion of the informal conference, the designated board representative will complete a disposition form to be included in the case file or will announce the results at the beginning of the formal hearing to be included in the record.~~ Any initial decision will include a summary of the informal conference.

VA.R. Doc. No. R19-5364; Filed August 9, 2018, 8:29 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers (amending 3VAC5-10-290).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 22, 2018.

Agency Contact: LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Basis: Section 4.1-101 of the Code of Virginia establishes the Virginia Alcoholic Beverage Control Authority and the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

Section 4.1-103 of the Code of Virginia enumerates the powers of the board, which include the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Subdivision 7 of § 4.1-103 of the Code of Virginia permits the board to delegate or assign any duty or task to be performed by the authority to any officer or employee of the authority. Subdivision 24 of § 4.1-103 permits the board to promulgate regulations in accordance with the Administrative Process Act and § 4.1-111 of the Code of Virginia.

Section 4.1-111 A authorizes the board to adopt reasonable regulations that it deems necessary to carry out the provisions of Title 4.1 and to amend or repeal such regulations.

Purpose: The purpose of this action is to accommodate the new part-time board. As the Department of Alcoholic Beverage Control transitions into an authority, it was necessary to make amendments to the regulations dealing with procedural rules to make the process more efficient and not overburden the new part-time board. Previously the appeal panel consisted solely of members of the board, but with the transition to an authority and the switch from a full-time board to a part-time board, the appeal panel may consist of board members or other officers or employees. As such, the regulation needed to be changed to reflect the possibility that there may or may not be a board member on the appeal panel.

Rationale for Using Fast-Track Rulemaking Process: The amendments are expected to be noncontroversial because the licensees' responsibilities are not changed, and there is no monetary impact.

Substance: Additional evidence may be introduced at an appeal hearing upon unanimous consent of the appeal panel.

Issues: The primary advantage to the amendment is that it contemplates the possibility that an appeal panel may not consist solely of board members (a likely scenario given the new part-time board) and allows the introduction of new evidence upon the unanimous consent of the appeal panel. There are no disadvantages to the agency or the Commonwealth. The pertinent matter to the regulated community, government officials, and the public is that the introduction of additional evidence will require the consent of the appeal panel, which may or may not have board representation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to amend the regulation to indicate that an appeal panel will make evidentiary decisions at appeal hearings rather than a board.

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

Estimated Economic Impact. Section 290 of the regulation concerns evidence for hearings. Under current language in Section 290, the Board determines at appeal hearings whether it is necessary or desirable that additional evidence be taken. If it decides that such additional evidence should be taken, it may: 1) direct that a hearing officer fix a time and place for the taking of such evidence, and 2) upon unanimous agreement of the Board members permit the introduction of after-discovered or new evidence at the appeal hearing.

Chapters 38[1] and 730[2] of the 2015 Virginia Acts of Assembly eliminated, with a delayed effective date of July 1, 2018, the Board and the Department of Alcoholic Beverage Control (ABC) and replaced them with the newly created Virginia Alcoholic Beverage Control Authority. The legislation also, with the delayed effective date, created a Board of Directors of the Authority (Authority Board).

Members of the current Board work full time. Positions on the Authority Board will be considered part time, and the full Authority Board will often not be present for hearings.[3] Instead, there will be an appeal panel. The appeal panel will usually include a portion of the Authority Board members, but may include non-Authority Board members as well.[4] Consequently, the Board proposes to amend the regulation to indicate that the appeal panel will make the evidentiary decisions at the appeal hearings.

Requiring the full Authority Board to make the evidentiary decisions would likely delay the occurrence of hearings and potentially delay results. The proposal to allow the appeal panel to make these decisions is thus beneficial in that it prevents these potential delays.

Businesses and Entities Affected. All 13,000+ licensees could potentially be subject to disciplinary proceedings, and thus could be affected by the proposed amendments.[5] ABC issues: licenses for manufacturers, wholesalers and shippers of alcoholic beverages; retail licenses for the sale of alcohol at restaurants, hotels, convenience stores, grocery stores, etc.; and banquet licenses to allow persons or groups to host events such as wedding receptions, tastings or fundraisers, where alcohol is served in an unlicensed location or club premise.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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

Small Businesses:

Definition

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

Costs and Other Effects. Requiring the full Authority Board to make the evidentiary decisions would likely delay the occurrence of hearings and potentially delay results. The proposed amendments eliminate these potentially delays, and consequently eliminate potential costs that the delays may create for small businesses licensed by ABC.

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 http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0038

[2]See http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0730

[3]Source: Department of Alcoholic Beverage Control

[4]Ibid

[5]Data source: Department of Alcoholic Beverage Control

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

Summary:

The amendments permit the introduction of additional evidence at an appeal hearing upon unanimous consent of the appeal panel.

3VAC5-10-290. Evidence.

A. Generally. Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

B. Additional evidence. Should the ~~board~~ appeal panel determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the ~~board~~ appeal panel may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with 3VAC5-10-180; and

2. Upon unanimous ~~agreement~~ consent of the ~~board members~~ appeal panel, permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the hearing officer.

C. ~~Board examination~~ Examination. Any ~~board~~ appeal panel member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination. The right to cross-examine and the submission of rebuttal evidence as provided in 3VAC5-10-90 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

VA.R. Doc. No. R19-5367; Filed August 9, 2018, 8:27 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-421. Food Regulations (amending 12VAC5-421-10, 12VAC5-421-1380, 12VAC5-421-2830, 12VAC5-421-3310, 12VAC5-421-3560, 12VAC5-421-4035).**

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Effective Date: October 3, 2018.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

Summary:

Pursuant to Chapter 450 of the 2018 Acts of Assembly, the amendments update the regulatory definition of a "bed and breakfast operation" and expand the times during which a bed and breakfast operation may offer food service to its guests without a food establishment permit by removing the requirement that breakfast be the only meal offered.

Part I
Definitions, Purpose and Administration

12VAC5-421-10. Definitions.

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

"Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards that certify individuals. "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline and grievance procedures; and test development and administration. "Accredited program" does not refer to training functions or educational programs.

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170.3(e)(1) or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.3(f).

"Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

"Agent" means a legally authorized representative of the owner.

"Agent of the commissioner" means the district or local health director, unless otherwise stipulated.

"Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Approved water system" means a permitted waterworks constructed, maintained, and operated pursuant to 12VAC5-590; or a private well constructed, maintained, and operated pursuant to 12VAC5-630.

"Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

"a_w" means water activity that is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"Bed and breakfast operation" means a ~~tourist home that serves meals~~ residential-type establishment that provides (i) two or more rental accommodations for transient guests and food service to a maximum of 18 transient guests on any single day for five or more days in any calendar year or (ii) at least one rental accommodation for transient guests and food service to a maximum of 18 transient guests on any single day for 30 or more days in any calendar year.

"Beverage" means a liquid for drinking, including water.

"Board" means the State Board of Health.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Building official" means a representative of the Department of Housing and Community Development.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Catering operation" means a person who contracts with a client to prepare a specific menu and amount of food in an approved and permitted food establishment for service to the client's guests or customers at a service location different from the permitted food establishment. Catering may also include cooking or performing final preparation of food at the service location.

"Catering operation" does not include:

1. A private chef or cook who, as the employee of a consumer, prepares food solely in the consumer's home.

2. Delivery service of food by an approved and permitted food establishment to an end consumer.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CFR" means Code of Federal Regulations. Citations in this chapter to the CFR refer sequentially to the title, part, and section number, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Commingle" means:

1. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or

2. To combine shucked shellfish from containers with different container codes or different shucking dates.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. "Comminuted" includes (i) fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage and (ii) a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

"Commissary" means a catering establishment, food establishment, or any other place in which food, food containers, or supplies are kept, handled, prepared, packaged, or stored for distribution to satellite operations.

"Commissioner" means the State Health Commissioner, his duly designated officer, or his agent.

"Conditional employee" means a potential food employee to whom a job offer is made with employment dependent upon responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism or chemical and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

"Core item" means a provision in this chapter that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

"Corrosion-resistant materials" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach,

cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program and is listed in the U.S. Food and Drug Administration's Interstate Certified Shellfish Shippers List, updated monthly (U.S. Food and Drug Administration).

"Delicatessen" means a store where ready to eat products such as cooked meats, prepared salads, etc. are sold for off-premises consumption.

"Department" means the Virginia Department of Health.

"Director" means the district or local health director.

"Disclosure" means a written statement that clearly identifies the animal derived foods that are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not time/temperature control for safety food and dry goods such as single-service items.

"Easily cleanable" means a characteristic of a surface that:

1. Allows effective removal of soil by normal cleaning methods;

2. Is dependent on the material, design, construction, and installation of the surface; and

3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified above to different situations in which varying degrees of cleanability are required such as:

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

1. Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratite, or turkey. Egg does not include a balut; egg of the reptile species such as alligator; or an egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs. Egg product does not include food that contains eggs only in a relatively small proportion such as cake mixes.

"Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of a food establishment. "Equipment" includes~~, but is not limited to,~~ items such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. Equipment does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

"°F" means degrees Fahrenheit.

"FDA" means the U.S. Food and Drug Administration.

"Fish" means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals and all mollusks, if such animal life is intended for human consumption and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means (i) a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for

use or for sale in whole or in part for human consumption or (ii) chewing gum.

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact, or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means an operation that (i) stores, prepares, packages, serves, or vends food directly to the consumer or otherwise provides food to the public for human consumption, such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food bank, and (ii) relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

"Food establishment" includes (i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; (ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises and regardless of whether there is a charge for the food; and (iii) a facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a facility that meets the exemption requirements but chooses to be regulated under this chapter.

For the purpose of implementing this chapter, the following places are also included in the definition of a "food establishment" as defined in ~~subdivision 9 of~~ § 35.1-1 of the Code of Virginia:

1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served~~. Examples of such places include but are not limited to~~, including lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68 of the Code of Virginia.

2. Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public~~. Examples of such places or operations include but are not limited to~~, including operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. ~~Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.~~

3. Mobile points of service to which food is distributed by a place or operation described in subdivision 2 of this definition, unless the point of service and of consumption is in a private residence.

"Food establishment" does not include:

1. An establishment that offers only prepackaged food that is not time/temperature control for safety food;

2. A produce stand that only offers whole, uncut fresh fruits and vegetables;

3. A food processing plant, including those that are located on the premises of a food establishment;

4. A kitchen in a private home if only food that is not time/temperature control for safety food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

5. An area where food that is prepared as specified in subdivision 4 of this definition is sold or offered for human consumption;

6. A kitchen in a private home, such as, but not limited to, a family day-care provider or a home for adults, serving 12 or fewer recipients~~; or a bed-and-breakfast operation that prepares and offers food only to guests if the premises of the home is owner or owner-agent occupied, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is, by this chapter, exempt from this chapter;~~

7. A private home that receives catered or home-delivered food; or

8. Places manufacturing packaged or canned foods that are distributed to grocery stores or other similar food retailers for sale to the public.

For the purpose of implementing this chapter, the following are also exempt from the definition of a "food establishment"

in this chapter, as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:

1. Boarding houses that do not accommodate transients;

2. Cafeterias operated by industrial plants for employees only;

3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;

4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;

5. Churches that serve meals for their members as a regular part of their religious observance; ~~and~~

6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax; and

7. Any bed and breakfast operation that prepares food for and offers food to guests, regardless of the time the food is prepared and offered, if (i) the premises of the bed and breakfast operation is a home that is owner occupied or owner-agent occupied, (ii) the bed and breakfast operation prepares food for and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by the bed and breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is prepared and to whom food is offered are informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to the regulations governing restaurants.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or food establishments. Food processing plant does not include a food establishment.

"Game animal" means an animal, the products of which are food, that is not classified as (i) livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2; (ii) poultry; or (iii) fish.

"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.

"Game animal" does not include ratites such as ostrich, emu, and rhea.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

"Grade A standards" means the requirements of the Grade "A" Pasteurized Milk Ordinance, 2013 Revision, (U.S. Food and Drug Administration), with which certain fluid and dry milk and milk products comply.

"HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handwashing sink includes an automatic handwashing facility.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

1. Immunocompromised, preschool age children, or older adults; and

2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Injected" means manipulating meat to which a solution has been introduced into its interior by processes such as "injecting," "pump marinating," or "stitch pumping."

"Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P.L. 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 2 and A 3.

"Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device. "Mechanically tenderized" does not include processes by which solutions are injected into meat.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Mobile food unit" means a food establishment mounted on wheels (excluding boats in the water) readily moveable from place to place at all times during operation and shall include~~, but not be limited to,~~ pushcarts, trailers, trucks, or vans. The unit, all operations, and all equipment must be integral to and be within or attached to the unit.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Noncontinuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. "Noncontinuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

"Permit" means a license issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person, and possesses a valid permit to operate a food establishment.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7.0 indicate acidity and values between 7.0 and 14 indicate alkalinity. The value for pure distilled water is 7.0, which is considered neutral.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains,

including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

1. Cleaners and sanitizers, that include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

2. Pesticides, except sanitizers, that include substances such as insecticides and rodenticides;

3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, paints, and personal care items that may be deleterious to health; and

4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Potable water" means water fit for human consumption that is obtained from an approved water supply and that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia). Potable water is traditionally known as drinking water and excludes such nonpotable forms as "boiler water, "mop water," "rainwater," "wastewater," and "nondrinking water."

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1, and any migratory waterfowl, game bird, pheasant, partridge, quail, grouse, or pigeon whether live or dead, as defined in 9 CFR 362.1.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

"Priority foundation item" means a provision in this chapter whose application supports, facilitates, or enables one or more priority items. "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling and is denoted in this regulation with a superscript Pf^{Pf}.

"Priority item" means a provision in this chapter whose application contributes directly to the elimination, prevention or reduction to an acceptable level of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing and is denoted in this chapter with a superscript P^{P}.

"Private well" means any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Pure water" means potable water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see §§ 32.1-167 and 32.1-176.1 of the Code of Virginia and 12VAC5-590 and 12VAC5-630-370). Potable water is traditionally known as drinking water, and excludes such nonpotable forms as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking water."

"Pushcart" means any wheeled vehicle or device other than a motor vehicle or trailer that may be moved with or without the assistance of a motor and that does not require registration by the department of motor vehicles.

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

"Ready-to-eat food" means food that:

1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A, B, and C, 12VAC5-421-710 or 12VAC5-421-730;

2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421- 700 D 1 and 3; or

3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 4.

Ready-to-eat food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or 12VAC5-421-710 or frozen as specified under 12VAC5-421-730;

2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;

3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;

4. All time/temperature control for safety food that is cooked to the temperature and time required for the specific food under 12VAC5-421-700 and cooled as specified in 12VAC5-421-800;

5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

6. Substances derived from plants such as spices, seasonings, and sugar;

7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

9. Food manufactured according to 21 CFR Part 113.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and a process as specified in this definition that involves a food for which the hazards Clostridium botulinum or Listeria monocytogenes require control in the final packaged form. Reduced oxygen packaging includes:

1. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

2. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air, but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

3. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement oxygen, nonrespiring food, and impermeable packaging material;

4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

5. Sous vide packaging, in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Reservice" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR Part 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means an article manufactured from or composed of materials that shall not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in § 409 of the Federal Food, Drug, and Cosmetic Act (21 USC § 348); or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when

evaluated for efficacy, yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution. Sewage includes water-carried and non-water-carried human excrement or kitchen, laundry, shower, bath, or lavatory waste separately or together with such underground surface, storm, or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Shellfish control authority" means a state, federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce such as the Virginia Department of Health Division of Shellfish Sanitation.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing Escherichia coli" or "STEC" means any E. coli capable of producing Shiga toxins (also called verocytotoxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild nonbloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea) to hemolytic uremic syndrome (HUS), which is a type of kidney failure~~)~~. Examples of serotypes of STEC include E. coli 0157:H7, E. coli 0157:NM, E. coli 026:H11; E. coli 0145NM, E. coli 0103:H2, and E. coli 0111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic E. coli) or as EHEC (Enterohemorrhagic E. coli). EHEC are a subset of STEC that can cause hemorrhagic colitis or HUS.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"Smooth" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel; a non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Substantial compliance" means equipment or structure design or construction; food preparation, handling, storage, transportation; or cleaning procedures that will not substantially affect health consideration or performance of the facility or the employees.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"Time/temperature control for safety food" or "TCS food" means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation:

1. TCS food includes an animal food that is raw or heat treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and except as specified in subdivision 2 d of this definition, a food that because of the interaction of its A_w and pH values is designated as product assessment required (PA) in Table A or B of this definition:

Table A. Interaction of pH and A_w for control of spores in food heat treated to destroy vegetative cells and subsequently packaged.

A_w values	pH values		
	4.6 or less	>4.6 - 5.6	>5.6
≤0.92	non-TCS food*	non-TCS food	non-TCS food
>0.92 - 0.95	non-TCS food	non-TCS food	PA**
>0.95	non-TCS food	PA	PA

*TCS food means time/temperature control for safety food

**PA means product assessment required

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat treated or heat treated but not packaged.

A_w values	pH values			
	< 4.2	4.2 - 4.6	> 4.6 - 5.0	> 5.0
<0.88	non-TCS food*	non-TCS food	non-TCS food	non-TCS food
0.88 - 0.90	non-TCS food	non-TCS food	non-TCS food	PA**
>0.90 - 0.92	non-TCS food	non-TCS food	PA	PA
>0.92	non-TCS food	PA	PA	PA

*TCS food means time/temperature control for safety food

**PA means product assessment required

2. TCS food does not include:

a. An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

b. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

c. A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-TCS food in Table A or B of this definition;

d. A food that is designated as PA in Table A or B of this definition and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(1) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;

(2) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf-life and use, or temperature range of storage and use; or

(3) A combination of intrinsic and extrinsic factors; or

e. A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the subdivisions 2 a through 2 d of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single service, or single use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment, and distribution of potable water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

12VAC5-421-1380. Warewashing machines, flow pressure device.

A. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

B. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch or 6.4 millimeter Iron Pipe Size (IPS) valve.

C. Subsections A and B of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

D. Subsections A and B of this section shall not apply to home model dishwashers used in bed and breakfast ~~facilities~~ operations serving 18 or fewer ~~customers~~ guests.

12VAC5-421-2830. Floor and wall junctures, coved, and enclosed or sealed.

A. In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1/32 inch (1 mm). However, this subsection shall not apply to floor wall junctures in bed and breakfast ~~facilities~~ operations serving 18 or fewer ~~customers~~ guests.

B. The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

12VAC5-421-3310. Prohibiting animals.

A. Except as specified in subsections B and C of this section, live animals shall not be allowed on the premises of a food establishment.[Pf]

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person if a health or safety hazard will not result from the presence or activities of the service animal;

4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, residential care facilities, and ~~food establishment~~ bed and breakfast ~~facilities~~ operations at times other than during meals if:

a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;

5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals; and

6. Dogs in outdoor dining areas if:

a. The outdoor dining area is not fully enclosed with floor to ceiling walls and is not considered a part of the interior physical facility.

b. The outdoor dining area is equipped with an entrance that is separate from the main entrance to the food establishment and the separate entrance serves as the sole means of entry for patrons accompanied by dogs.

c. A sign stating that dogs are allowed in the outdoor dining area is posted at each entrance to the outdoor dining area in such a manner as to be clearly observable by the public.

d. A sign within the outdoor dining area stating the requirements as specified in subdivisions 6 e, 6 f, and 6 g of this subsection is provided in such a manner as to be clearly observable by the public.

e. Food and water provided to dogs is served using equipment that is not used for service of food to persons or is served in single-use articles.

f. Dogs are not allowed on chairs, seats, benches, or tables.

g. Dogs are kept on a leash or within a pet carrier and under the control of an adult at all times.

h. Establishment provides effective means for cleaning up dog vomitus and fecal matter.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

D. In bed and breakfast ~~facilities~~ operations serving 18 or fewer ~~customers~~ guests, live animals shall be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

12VAC5-421-3560. Exemptions to regulations.

A. The following are exempt from this chapter as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia.

1. Boarding houses that do not accommodate transients;

2. Cafeterias operated by industrial plants for employees only;

3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads which hold dinners and bazaars of not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;

4. Grocery stores, including the delicatessen ~~which~~ that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;

5. Churches ~~which~~ that serve meals for their members as a regular part of their religious observance; ~~and~~

6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax; and

7. Any bed and breakfast operation that prepares food for and offers food to guests, regardless of the time the food is prepared and offered, if (i) the premises of the bed and breakfast operation is a home that is owner occupied or owner-agent occupied, (ii) the bed and breakfast operation prepares food for and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by the bed and breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is prepared and to whom food is offered are informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to regulations governing restaurants.

B. The governing body of any county, city or town may provide by ordinance that this chapter shall not apply to food booths at fairs and youth athletic activities~~,~~ if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof. The ordinance shall provide that the director of the county, city, or town in which the fair and youth athletic activities are held, or a qualified person designated by the director, shall exercise such supervision of the sale of food as the ordinance may prescribe.

12VAC5-421-4035. Exempt facilities that choose to be regulated.

Exempt facilities, as defined in subdivision 6 of 12VAC5-421-10 of the definition of a "food establishment~~,~~" and subdivision A 7 of 12VAC5-421-3560, that choose to be regulated by this chapter, shall be exempt from the following requirements:

1. In lieu of 12VAC5-421-1200 ~~A~~, home model dishwashers may be used in lieu of manual cleaning and drying of utensils;

2. 12VAC5-421-1340, the requirement for internal baffles in warewashing machines does not apply to home model dishwashers;

3. 12VAC5-421-1350, the requirement for temperature measuring devices does not apply to home model dishwashers;

4. 12VAC5-421-1360, manual warewashing equipment, heaters and baskets are not required but manual warewashing shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

5. 12VAC5-421-1370, the requirement for a sanitizer level indicator does not apply to home model dishwashers;

6. 12VAC5-421-1380, the requirement for flow pressures device does not apply to home model dishwashers;

7. 12VAC5-421-1460, the requirement for sink compartments does not apply to exempt facilities. It shall include thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

8. 12VAC5-421-1520, temperature measuring devices for manual warewashing are not required;

9. 12VAC5-421-1530, sanitizing solutions testing devices are not required;

10. 12VAC5-421-1620, warewashing sinks in exempt facilities may be used for handwashing, however, approved dispensers, soap, and single-use paper towels are provided;

11. 12VAC5-421-1640, clean solutions in warewashing equipment is not required for exempt facilities. It shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

12. 12VAC5-421-1660, minimum wash solution temperature for mechanical warewashing equipment shall not be required for home model dishwashers;

13. 12VAC5-421-1670, minimum hot water sanitization temperatures for manual warewashing equipment shall not be required;

14. 12VAC5-421-1680, minimum hot water sanitization temperatures for mechanical warewashing equipment shall not be required for home model dishwashers;

15. 12VAC5-421-1690, sanitization pressure for mechanical warewashing equipment shall not be required;

16. 12VAC5-421-1700, minimum and maximum pressure, pH, sanitizer concentration, and hardness levels shall not be required for home model dishwashers;

17. 12VAC5-421-1710, chemical sanitization for manual warewashing using detergent sanitizers shall not be required;

18. 12VAC5-421-1720, determination of chemical sanitizer concentration shall not be required;

19. ~~12VAC5-421-1880~~ 12VAC5-421-1885, food-contact surfaces and utensils shall not be required to be sanitized;

20. 12VAC5-421-1890, before use after cleaning, utensils and food-contact surfaces shall not be required to be sanitized;

21. 12VAC5-421-1900, hot water and chemical sanitizing shall not be required;

22. 12VAC5-421-2790, floors, walls, and ceilings shall be in good repair and kept clean;

23, 12VAC5-421-2810, floors, walls, and ceilings in exempt facilities shall not be required to meet the cleanability requirements but shall be in good repair and kept clean;

24. 12VAC5-421-2820, the prohibition of exposed utility service lines and pipes shall not apply;

25. 12VAC5-421-2840, floor carpeting in exempt facilities may be installed in food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, refuse storage rooms or other areas, however they shall be kept in good repair and kept clean;

26. 12VAC5-421-2850, floor covering, mats and duckboards may be used in exempt facilities, however, they shall be kept clean and in good repair.

27. 12VAC5-421-2870, attachments to walls and ceilings in exempt facilities shall be kept in good repair and kept clean;

28. ~~12VAC5-421-3120~~ 12VAC5-421-3130, approved dispensers, soap and single-use paper towels shall be made available to accommodate hand washing;

29. 12VAC5-421-3310, live animals may be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

VA.R. Doc. No. R19-5439; Filed August 3, 2018, 4:23 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (adding 12VAC30-70-411).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396) provides governing authority for payments for services.

In addition, authority for these changes is provided in Item 306 RRR 1 of Chapter 836 of the the 2017 Acts of Assembly, which states: "The Department of Medical Assistance Services shall promulgate regulations to make supplemental

Medicaid payments to the primary teaching hospitals affiliated with a Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME accredited medical school located in Planning District 5 that has a partnership with a public university. The amount of the supplemental payment shall be based on the reimbursement methodology established for such payments in Attachments 4.19-A and 4.19-B of the State Plan for Medical Assistance and/or the department's contracts with managed care organizations. The department shall have the authority to implement these reimbursement changes consistent with the effective date in the State Plan amendment or the managed care contracts approved by the Centers for Medicare and Medicaid Services (CMS) and prior to completion of any regulatory process in order to effect such changes. No payment shall be made without approval from CMS."

Approval was received from CMS on December 13, 2017, for an effective date of July 1, 2017, in State Plan Amendment Transmittal Number 17-006.

Purpose: The purpose of this action is to add a new section regarding supplemental payments for certain teaching hospitals.

A Liaison Committee on Medical Education (LCME) affiliated teaching hospital, known as Sentara Norfolk General, and a LCME affiliated teaching hospital, known as Carilion Medical Center, will receive quarterly supplemental payments effective July 1, 2017, for inpatient services.

Sentara Norfolk General is located in Planning District 23 and Carilion Medical Center is located in Planning District 5. The implementation of these supplemental payments is essential to protect the health, safety, and welfare of citizens by increasing access to care for the citizens of the Commonwealth. These two primary teaching hospitals are affiliated with public medical schools that will transfer the funds to the department for the state share for these payments.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial as it increases access to medical care without increasing state costs. These changes have already been approved by CMS and comply with the state Appropriations Act.

Substance: Effective July 1, 2017, supplemental payments to Sentara Norfolk General and Carilion Medical Center will be made quarterly. The supplemental payments shall be calculated based on inpatient services rendered during the quarter equal to the difference between the hospital's Medicaid payments and the hospital's disproportionate share hospital (DSH) payment limit for the most recent year for which the DSH payment has been calculated divided by four. The maximum aggregate payments to all qualifying hospitals shall not exceed the available upper payment limit per state fiscal year.

Issues: The primary advantage of this regulatory action is that it increases access to medical care without increasing state costs. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapter 836, Item 306.RRR.6.a, of the 2017 Acts of Assembly[1] requires that the Department of Medical Assistance Services (DMAS) "promulgate regulations to make supplemental Medicaid payments to the primary teaching hospitals affiliated with a Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME accredited medical school located in Planning District 5 that has a partnership with a public university."

Thus, on behalf of the Board of Medical Assistance Services, the Director of DMAS proposes to add a section to this regulation that specifies qualifying criteria, reimbursement methodology, and maximum aggregate payments for such supplemental Medicaid payments.

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

Estimated Economic Impact. The primary teaching hospital affiliated with an LCME accredited medical school located in Planning District 23 is Sentara Norfolk General, which is affiliated with Eastern Virginia Medical School. The primary teaching hospital affiliated with an LCME accredited medical school located in Planning District 5 is Carilion Medical Center in Roanoke, which is affiliated with Virginia Tech.

According to DMAS, the two hospitals are considered safety net hospitals for their area, and serve a disproportionate number of patients without insurance and ability to pay. The supplemental payments are not tied to providing specific services, but help pay unreimbursed costs such as for indigent patients.

The proposed action would help Sentara Norfolk General and Carilion Medical Center obtain approximately $41 million of federal funds annually without increasing costs for the Commonwealth. As these funds help provide healthcare services for Virginians without increasing costs for the state, the proposed action would create a net benefit for the Commonwealth.

Businesses and Entities Affected. The proposed amendments primarily affect two hospitals: Sentara Norfolk General and Carilion Medical Center.

Localities Particularly Affected. The proposed amendments particularly affect hospitals located in Norfolk and Roanoke. Thus, the proposals particularly affect those localities and other nearby localities.

Projected Impact on Employment. The proposed action would help the two hospitals gain significant federal funding that could be used in part to hire additional staff.

Effects on the Use and Value of Private Property. The two hospitals are private. The proposed action would increase their funding, and would likely increase their value.

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 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://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/306/

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments add language pertaining to supplemental payments made to primary teaching hospitals affiliated with Liaison Committee on Medical Education (LCME) accredited medical schools in Planning Districts 5 and 23 effective July 1, 2017.

12VAC30-70-411. Supplemental payments for certain teaching hospitals.

A. Effective for dates of service on or after July 1, 2017, quarterly supplemental payments will be issued to qualifying private hospitals for inpatient services rendered during the quarter.

B. Qualifying criteria. The primary teaching hospitals affiliated with a Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME accredited medical school located in Planning District 5 that has a partnership with a public university.

C. Reimbursement methodology. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter equal to the difference between the hospital's Medicaid payments and the hospital's disproportionate share limit (Omnibus Budget Reconciliation Act 93 disproportionate share hospital limit) for the most recent year for which the disproportionate share limit has been calculated divided by four. The supplemental payment amount will be determined prior to the beginning of the fiscal year.

D. Limit. Maximum aggregate payments to all qualifying hospitals shall not exceed the available upper payment limit per state fiscal year.

VA.R. Doc. No. R19-5393; Filed August 9, 2018, 8:51 a.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396) provides governing authority for payments for services.

In addition, authority for this change is provided in Item 306 B 4 of Chapter 836 of the the 2017 Acts of Assembly, which states: "The Department of Medical Assistance Service shall have the authority to increase Medicaid payments for Type One hospitals and physicians consistent with the appropriations to compensate for limits on disproportionate share hospital (DSH) payments to Type One hospitals that the department would otherwise make."

Purpose: The purpose of this action is to update the physician supplemental payments for Type One physicians. The supplemental payment calculation amount in the current regulatory text was effective April 8, 2014. This change allows for updated supplemental payments to Type One physicians, which are expected to improve access to services for Medicaid recipients.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial. The fiscal or budgetary impacts to DMAS are already provided in the agency's appropriations. These changes have been mandated by the Appropriations Act and the Centers for Medicare and Medicaid Services (CMS).

Substance: This regulatory action updates the physician supplemental payments for physician practice plans affiliated with Type One hospitals (state academic health systems). A Type One physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, which has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10. These payments are calculated as the difference between the maximum payment allowed and regular payments. CMS has determined that the maximum allowed is the average commercial rate (ACR).

This action will update the maximum rate to 256% of the Medicare rate effective April 1, 2017, and 258% effective May 1, 2017, based on the most recent information on the ACR furnished by the state academic health systems and consistent with appropriate prior public notices.

Issues: Updating supplemental payment amounts for Type One physicians is expected to be advantageous as it will improve access to services.

These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community. The changes all implement directives in the state budget and update existing regulations to conform with the State Plan for Medical Assistance.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation revises the maximum reimbursement for Type One physicians to 256% of Medicare rates effective April 1, 2017 and 258% of Medicare rates effective May 1, 2017.

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

Estimated Economic Impact. Federal regulations allow Virginia Medicaid to make supplemental payments for Type One physicians. A Type One physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under state authority. Type One physicians affected by this change are the physicians affiliated with the University of Virginia (UVA) and the Virginia Commonwealth University (VCU).

Supplemental payments are calculated as the difference between the maximum payment allowed and regular payments. The maximum payment allowed by the Centers for Medicare and Medicaid (CMS) is the average commercial rate (ACR). As the payments made by commercial providers change over time so does the ACR. The ACR has increased from 143% of the Medicare rate in 2002, to 181% in 2012, to 197% of the Medicare rate in 2013, and to 201% of the Medicare rate in 2014. The current regulation reflects 201% of the Medicare rate. However, the ACR went up to 256% of the Medicare rate effective April 1, 2017 and 258% of the Medicare rate effective May 1, 2017 and CMS approved these changes. Pursuant to the 2017 Acts of Assembly, Chapter 836, Item 306.B (4), the new ACRs have already been applied. The proposed change will incorporate the new ACRs in the regulations.

The proposed ACRs equate to an $8.4 million increase that affects what hospitals receive for Type One physicians. Since one-half of Virginia Medicaid is funded by federal matching funds, the state's share of this amount is $4.2 million. However, the increase in the supplemental payments to Type One physicians is offset by an equivalent reduction in the need for the Disproportionate Share Hospital (DSH) payments Medicaid makes to the teaching hospitals. In other words, while the composition of the payments made to the Type One hospitals changes because of the new ACRs, the overall total payment received by them from Medicaid remains the same absent any other changes. Thus, the proposed ACRs do not cause an increase in overall payments to the teaching hospitals.

Even though the new ACRs do not increase the total payment to the teaching hospitals, the proposed regulation is beneficial in the sense that it more accurately reflects the components of the total payment Type One hospitals receive from Medicaid.

Businesses and Entities Affected. The proposed new ACRs apply to two physician practice plans: one for UVA and one for VCU.

Localities Particularly Affected. The proposed changes apply to two teaching hospitals which are located in the City of Richmond and the City of Charlottesville.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

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. The proposed amendments do not impose costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an impact on non-small businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments update the supplemental payment amounts for Type I physicians effective April 1, 2017, and May 1, 2017.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. Fee schedules and any annual or periodic adjustments to the fee schedules are published on the DMAS website at http://www.dmas.virginia.gov/.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public).

2. Dentists' services.

3. Mental health services including: (i) community mental health services, (ii) services of a licensed clinical psychologist, (iii) mental health services provided by a physician, or (iv) peer support services.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency

website at http://lis.virginia.gov/000/noc/www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group, organized by or under the control of a state academic

health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

~~b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. Effective January 3, 2012, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 181% of Medicare rates. Effective January 1, 2013, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 197% of Medicare rates. Effective April 8, 2014, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 201% of Medicare rates.~~

~~c.~~ b. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

~~d.~~ c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

~~e. Payment will not be made to the extent that the payment would duplicate payments based on physician costs covered by the supplemental payments.~~ d. Effective April 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 256% of Medicare rates. Effective May 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 258% of Medicare rates.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital~~,~~ or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation described in the Medicare equivalent of the average commercial rate methodology (see 12VAC30-80-300), subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective October 1, 2015, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than $551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in ~~the regulations~~ this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at http://www.dmas.virginia.gov/.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R19-5218; Filed August 9, 2018, 10:13 a.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396) provides governing authority for payments for services.

Amended regulations (12VAC30-80-30 A 21) were required by Item 301 DDD 4 of Chapter 665 of the 2015 Acts of Assembly, Item 306 RRR 4 of Chapter 780 of the 2016 Acts of Assembly, and Item 306 RRR 4 of Chapter 836 of the 2017 Acts of Assembly, which state that DMAS shall have the authority to "amend the State Plan for Medical Assistance Services to implement a supplemental payment for clinic services furnished by the Virginia Department of Health (VDH) effective July 1, 2015. The total supplemental Medicaid payment shall be based on the Upper Payment Limit approved by the Centers for Medicare and Medicaid Services and all other Medicaid payments. VDH is required to transfer funds to the department funds already appropriated to VDH to cover the non-federal share of the Medicaid payments."

Purpose: The purpose of this action is to implement the provider reimbursement changes required by Item 301 of Chapter 665 of the 2015 Acts of Assembly, Item 306 of Chapter 780 of the 2016 Acts of Assembly, and Item 306 of Chapter 836 of the 2017 Acts of Assembly.

This action also brings state regulations into line with federal rules and current Virginia practice. The action is essential to protect the health, safety, and welfare of citizens of the Commonwealth in that these reimbursement rules help to ensure the continued financial viability of the Virginia Medicaid Program.

All of the changes have been reviewed and approved by the Centers for Medicare and Medicaid Services (CMS).

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial. The fiscal or budgetary impact to DMAS is already provided in the agency's appropriations.

The reimbursement changes initially were implemented through the Appropriations Act. Additionally, the changes are expected to improve access to services, and members of the public are expected to support these regulatory changes that may positively impact a disadvantaged population.

Substance: These changes affect supplemental payments for qualifying state-owned or state-operated clinics. A clinic is a facility that provides medical care to outpatients but is not part of a hospital. Currently, a regulation does not exist for supplemental payments to state-owned or state-operated clinics. This action will allow for supplemental payments for clinic services provided by the Virginia Department of Health. The funds for these changes were provided in the 2017 Acts of Assembly.

Issues: Implementing supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients is expected to be advantageous as it will improve access to services.

These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community. The changes all implement directives in the state budget or make changes required by CMS.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 665, Item 301.DDD.4, of the 2015 Acts of the Assembly; Chapter 780, Item 306.RRR.4, of the 2016 Act of the Assembly; and Chapter 836, Item 306 RRR.4, of the 2017 Acts of the Assembly, the Director of the Department of Medical Assistance Services (Director) proposes to amend the State Plan for Medical Assistance (State Plan). Specifically, this amendment will set parameters for supplemental Medicaid payments for outpatient clinical services furnished by the Virginia Department of Health (VDH).

Result of Analysis. Benefits likely outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. In the last three appropriations acts, the General Assembly (GA) has authorized supplemental Medicaid payments for state-owned clinics operated under the auspices of VDH and directed the Department of Medical Assistance Services (DMAS) to amend the State Plan to implement those supplemental payments effective July 1, 2015. The GA further directed that "(t)he total supplemental payment shall be based on the Upper Payment Limit approved by the Centers for Medicare and Medicaid Services and all other Medicaid payments. VDH is required to transfer funds to the department [DMAS] funds already appropriated to VDH to cover the non-federal share of the Medicaid payments." The Director now proposes an action to harmonize this regulation with the changes made to the State Plan and already approved by the Centers for Medicare and Medicaid Services.

This change will allow VDH to receive greater reimbursement for clinic services they provide. DMAS staff reports that VDH received $394,723 in supplemental Medicaid payments during the last year and further reports that they expect annual payments going forward would be roughly similar. Half of these supplemental payments are state funds from existing VDH allocations and half are federal matching funds. This regulatory change will benefit any interested party who chooses to read the regulations as it conforms the regulation with federal rules and Virginia statute and, therefore, eliminates the possibility that discrepancies may cause confusion.

Businesses and Entities Affected. This proposed regulatory action will affect all state-owned and VDH-operated clinics in the Commonwealth. DMAS staff reports that VDH currently operates 130 such clinics.

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

Projected Impact on Employment. Employment in the Commonwealth is unlikely to be significantly affected by this proposed regulation.

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. No small businesses are likely to be affected by this regulatory action.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to be affected by this regulatory action.

Adverse Impacts:

Businesses. No businesses are likely to suffer adverse impacts on account of this proposed regulatory action.

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

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

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments implement supplemental payments to state-owned or state-operated clinics.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. Fee schedules and any annual or periodic adjustments to the fee schedules are published on the DMAS website at http://www.dmas.virginia.gov/.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public).

2. Dentists' services.

3. Mental health services including: (i) community mental health services, (ii) services of a licensed clinical psychologist, (iii) mental health services provided by a physician, or (iv) peer support services.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at http://www.dmas.virginia.gov/.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group, organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. Effective January 3, 2012, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 181% of Medicare rates. Effective January 1, 2013, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 197% of Medicare rates. Effective April 8, 2014, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 201% of Medicare rates.

c. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

d. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

e. Payment will not be made to the extent that the payment would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation described in the Medicare equivalent of the average commercial rate methodology (see 12VAC30-80-300), subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective October 1, 2015, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than $551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in ~~the regulations~~ this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at http://www.dmas.virginia.gov/.

22. Supplemental payments to state-owned or state-operated clinics.

a. Effective for dates of service on or after July 1, 2015, DMAS shall make supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2015. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual.

b. The amount of the supplemental payment made to each qualifying state-owned or state-operated clinic is determined by calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 19 b of this subsection and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section shall be made annually in lump sum payments to each clinic.

d. To determine the upper payment limit for each clinic referred to in subdivision 19 b of this subsection, the state payment rate schedule shall be compared to the Medicare resource-based relative value scale nonfacility fee schedule per Current Procedural Terminology code for a base period of claims. The base period claims shall be extracted from the Medical Management Information System and exclude crossover claims.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R19-5282; Filed August 9, 2018, 10:19 a.m.

TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Proposed Regulation

Title of Regulation: **13VAC6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (amending 13VAC6-20-10, 13VAC6-20-30, 13VAC6-20-50, 13VAC6-20-60, 13VAC6-20-80, 13VAC6-20-90, 13VAC6-20-100, 13VAC6-20-170, 13VAC6-20-320).**

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public Hearing Information:

October 1, 2018 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060

Public Comment Deadline: November 2, 2018.

Agency Contact: Kyle T. Flanders, Senior Policy Analyst, Policy Office, Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-3090, or email kyle.flanders@dhcd.virginia.gov.

Basis: The legal authority for amendments to the regulation is found in § 36-85.18 of the Code of Virginia. Section 36-85.18 directs the board to promulgate regulations for the licensing of manufactured home manufacturers, dealers, brokers, and salespersons; the establishment and administration of a recovery fund; the resolution of complaints; making case decisions in accordance with the Administrative Process Act; and the levying and collection of fees sufficient to cover the expenses for the administration of the program.

Purpose: Administration and enforcement of the regulations by the Virginia Manufactured Housing Board and department has resulted in the identification of sections that need to be clarified, are out of date, or contain unnecessary restrictions. The board proposes to review issues related to licensing requirements for the manufactured housing industry members that will provide better protection to consumers without imposing unnecessary regulatory burdens on the licensees. The amended regulations will better define the parameters for warranties on homes and when and what disclosures must be given to buyers.

Substance: This regulatory action will (i) add "date of delivery" as a defined term to clarify the warranty period for a manufactured home and for easy reference; (ii) eliminate unnecessary biographical information of individuals applying for dealer, sales person, and broker licenses, such as weight, height, eye color, and sex; (iii) replace "Virginia Department of Motor Vehicles" with "Virginia Motor Vehicle Dealer Board"; (iv) replace the nondefined term "noncompliance" with the defined term "defect"; and (v) eliminate the requirement for a dealer to inspect "furniture" supplied with a home.

The action will also amend the list of prohibited conduct by regulants; identify specific items to be included on a sales contract, including the total cost of the contract, if the home is new or used, and the nominal house size; and require manufacturers to advise consumers that the dealer may retain damages and to notify consumers of the dispute resolution program.

Issues: The proposed revisions provide enhanced consumer protection by adding three additional items to the list of prohibited conduct by regulants. The revisions add specific items to be included on a sales contract, which lack clarity in the current regulations. These items include the total cost of the contract, specify if the home is new or used, and specify the nominal house size. The revisions assist in protecting consumers by requiring manufacturers to provide statements to the consumer indicating that the dealer may retain damages and notifying them of the dispute resolution program.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Manufactured Housing Board (Board) proposes to amend its

regulation to: 1) add a clarifying definition, 2) update obsolete references in regulatory text, 3) eliminate unnecessary requirements that manufactured housing salesmen provide biographical information, and 4) add failure to perform a written contract[1] as grounds for disciplinary action.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. The Board last updated this regulation in an action that was initiated in 2008. The Board now proposes a clarifying amendment to add a definition for "date of delivery," proposes to remove requirements that biographical information such as weight, height and eye color be provided on applications for licensure and also proposes to replace obsolete references to the Virginia Department of Motor Vehicles with references to the Virginia Motor Vehicle Dealer Board.[2] Changes such as these do not add any new regulatory requirements and, so, no regulated entity is likely to incur additional costs. Removing obsolete and now incorrect information from this regulation will benefit readers as this will eliminate any possible confusion about who registers manufactured housing dealers and brokers.

The Board also proposes to add failure to perform a written contract containing enumerated minimum requirements to the list of grounds for disciplining regulated entities. This change will likely benefit manufactured housing buyers as it will allow the Board to take action, up to and including license revocation, if a licensee defrauds a customer by failing to deliver on a contract.

Businesses and Entities Affected. This regulatory action will affect all Board licensees as well as their customers. Board staff reports that the Board currently licenses 27 manufacturers, 15 brokers, 178 dealers and 317 salespeople

Localities Particularly Affected. No locality is likely to be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

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. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

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[1]Such contracts must contain specified minimum requirements to include: 1) a statement of the total cost of the contract, 2) a listing of specified materials and work to be performed as well as specification as to who will supply materials and who will perform the work, 3) the name, address and phone number of the Board licensee performing the contract, 4) the make and model of the home to be delivered, 5) a statement indicating whether the home is new or used, 6) a listing of the length and width of the home to be delivered under the contract, 7) the date of manufacture and the serial number of the home except when that information is not known because the home has not been built yet, 8) a statement notifying consumers of the limitations on liability for damages to the home and 9) a statement notifying consumers of the available dispute resolution program.

[2]The Virginia Motor Vehicle Dealer Board now registers manufactured housing dealers and brokers.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis.

Summary:

The proposed amendments include (i) clarifying the parameters for warranties on manufactured homes, (ii) eliminating unnecessary individual biographical information of license applicants, (iii) expanding the list of specific items that must be included on a sales contract, and (iv) providing when and what disclosures must be given to buyers.

Part I
General

13VAC6-20-10. Definitions.

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

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code (13VAC5-63) and the Manufactured Home Safety Regulations (13VAC5-95) adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC § 5401 et seq.) for manufactured homes.

"Controlling financial interest" means the direct or indirect ownership or control of a firm.

"Date of delivery" means the date on which all terms or conditions of the sales contract agreed to or required of the regulant have been completed.

"Dealer/manufacturer sales agreement" means a written contract or agreement between a manufactured housing manufacturer and a manufactured housing dealer whereby the dealer is granted the right to engage in the business of offering, selling, and servicing new manufactured homes of a particular line or make of the stated manufacturer of such line or make. The term shall include any severable part or parts of such sales agreement which separately provides for selling or servicing different lines or makes of the manufacturer.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or ~~his~~ the director's designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"HUD" means the ~~United States~~ U.S. Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Licensed" means the regulant has met all applicable requirements of this chapter, paid all required fees, and been authorized by the board to manufacture or offer for sale or sell manufactured homes in accordance with this chapter.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode is eight feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person engaged in the business of buying, selling, or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer to sell or offer to sell; or to buy or offer to buy; or to negotiate the purchase, sale or exchange; or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia to be licensed by the board.

"Regulations" or "these regulations" means this chapter, the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed or license has been revoked or not renewed by the board.

"Relevant market area" means the geographical area established in the dealer/manufacturer sales agreement and agreed to by both the dealer and the manufacturer in the agreement.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Standards" means the Federal Manufactured Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development.

"Statement of Compliance" means the statement found on the initial license application and on the renewal application, that the regulant licensed by the board will comply with the Manufactured Housing Licensing and Transaction Recovery Fund Law, this chapter, and the orders of the board.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board.

"Supplier" means the original producers of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

"Warranty" means any written assurance of the manufacturer, dealer, or supplier or any promise made by a regulant in connection with the sale of a manufactured home that becomes part of the basis of the sale. The term "warranty" pertains to the obligations of the regulant in relation to materials, workmanship, and fitness of a manufactured home for ordinary and reasonable use of the home for the term of the promise or assurance.

13VAC6-20-30. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 1.

2. Licensing fee required by 13VAC6-20-200 A 1.

3. Copy of the manufacturer's homeowner and installation ~~manual or~~ manuals.

4. Statement of ~~Compliance~~ compliance.

5. List of salespeople licensed in Virginia ~~with the following biographical information for each:~~.

~~Date of birth~~

~~Sex~~

~~Weight~~

~~Height~~

~~Eye/hair color~~

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 2.

2. If revised, a copy of the revised homeowner and installation ~~manual or~~ manuals.

3. Statement of ~~Compliance~~ compliance.

4. Updated list of salespeople employed.

Article 2
Dealers

13VAC6-20-50. License required; annual renewal.

A. Any person located in or outside of the Commonwealth buying or selling or offering or displaying manufactured homes for sale in Virginia and meeting the definition of a dealer in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed dealer shall apply for license renewal annually~~,~~ by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Should the department fail to receive a licensed dealer's renewal form and appropriate fee within 30 days of the license expiration date, the dealer shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.

D. For licensing purposes, a dealer operating more than one retail location shall have each location treated as a separate entity and shall adhere to all requirements for dealer licensing including posting a license at each location.

E. Each dealer licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia ~~Department of~~ Motor ~~Vehicles~~ Vehicle Dealer Board (MVDB). The certificate of registration shall be renewed annually and shall be maintained in effect with the ~~Department of Motor Vehicles~~ MVDB as long as the dealer is licensed under this chapter.

13VAC6-20-60. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 2.

2. Licensing fee required by 13VAC6-20-200 A 3.

3. Statement of ~~Compliance~~ compliance.

4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.

5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.

6. List of salespeople employed ~~with the following biographical information for each:~~.

~~Date of Birth~~

~~Sex~~

~~Weight~~

~~Height~~

~~Eye/hair color~~

7. Name of the owner, principal, manager, agent, or other person designated as the holder of the dealer's license for the specific location and the names of other partners or principals in the dealership.

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 4.

2. Statement of ~~Compliance~~ compliance.

3. Notification of any significant changes to the office or the business sign.

4. Updated list of salespeople employed.

5. Any changes of officers or directors of the company or corporation.

6. A copy of the dealer's current certificate of registration from the ~~Department of Motor Vehicles~~ Virginia Motor Vehicle Dealer Board.

D. Any change in the form of ownership of the dealer or any changes (deletions or additions) in the partners or principals of the dealer shall be submitted to the board with an application and fee for a new license. If the new owner ~~or owners~~ assume the liabilities of the previous owner ~~or owners~~, then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner ~~or owners do~~ does not assume the liabilities of the previous owner ~~or owners~~. The board shall be notified immediately by the dealer of any change in the operating name of the dealer. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the dealer of any change in the location of the dealer. The dealer shall pay a fee of $50 for the change of location on the license~~,~~ but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

13VAC6-20-80. Dealer responsibility for inspections; other items.

A. The dealer shall inspect every new manufactured home unit upon delivery from a manufacturer. If a dealer becomes aware of a noncompliance or an imminent safety hazard in a manufactured home, the dealer shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer. No dealer shall sell a new manufactured home if he becomes aware that it contains a ~~noncompliance~~ defect or an imminent safety hazard.

B. The dealer shall inspect every new manufactured home unit prior to selling to determine that all ~~items of furniture,~~ appliances, fixtures, and devices are not damaged and are in place and operable.

C. A dealer shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

D. If the dealer provides for the installation of any manufactured home ~~he~~ the dealer sells, the dealer shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

E. On each home sold by the dealer, the dealer shall collect the applicable title fees and title tax for the manufactured home, to include an additional $30 inspection/administrative fee, and forward such fees and taxes to the Virginia Department of Motor Vehicles.

The above fees shall be submitted to the Virginia Department of Motor Vehicles within 30 days from the completion date of the sale.

F. On each home sold by the dealer, the dealer shall provide the owner with information to file a claim supplied by the department.

Article 3
Brokers

13VAC6-20-90. License required; annual renewal.

A. Any person located in or outside of the Commonwealth (i) buying or selling, negotiating the purchase or sale or exchange of, or leasing used manufactured homes and (ii) meeting the definition of broker in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed broker shall apply for license renewal annually~~,~~ by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Should the department fail to receive a licensed broker's renewal form and appropriate fee within 30 days of the license expiration date, the broker shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.

D. For licensing purposes, a broker operating more than one business location shall have each location treated as a separate entity and shall adhere to all requirements for broker licensing, including posting a license, at each location.

E. Each broker licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia ~~Department of~~ Motor ~~Vehicles~~ Vehicle Dealer Board (MVDB). The certificate of registration shall be renewed annually and shall be maintained in effect with the ~~Department of Motor Vehicles~~ MVDB as long as the broker is licensed under this chapter.

13VAC6-20-100. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 3.

2. Licensing fee required by 13VAC6-20-200 A 5.

3. Statement of ~~Compliance~~ compliance.

4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.

5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.

6. Name of the owner, principal, manager, agent or other person designated as the holder of the broker's license for the specific location and the names of the partners or principals in the broker's firm.

7. List of salespeople employed ~~with the following biographical information for each:~~.

~~Date of birth~~

~~Sex~~

~~Weight~~

~~Height~~

~~Eye/hair color~~

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 6.

2. Statement of ~~Compliance~~ compliance.

3. Notification of any significant changes to the office or the business sign.

4. Any changes of officers or directors of the company or corporation.

5. A copy of the broker's current certificate of registration from the ~~Department of Motor Vehicles~~ Virginia Motor Vehicle Dealer Board.

6. Updated list of salespeople employed.

D. Any change in the form of ownership of the broker or any changes (deletions or additions) in the partners or principals of the broker shall be submitted to the board with an application and fee for a new license. If the new ~~owner(s)~~ owner assume the liabilities of the previous ~~owner(s)~~ owner, then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new ~~owner(s) do~~ owner does not assume the liabilities of the previous ~~owner(s)~~ owner.

The board shall be notified immediately by the broker of any change in the operating name of the broker. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the broker of any change in location of the broker. The broker shall pay a fee of $50 for the change of location on the license~~,~~ but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

Article 6
Violations and Hearings

13VAC6-20-170. Prohibited conduct; grounds for denying, suspending or revoking license.

A. The following acts by regulants are prohibited and may be considered by the board as grounds for action against the regulant:

1. Engaging in business as a manufactured home manufacturer, dealer, or broker without first obtaining a license from the board.

2. Engaging in business as a manufactured home salesperson without first applying to the board for a license.

3. Making a material misstatement in an application for license.

4. Failing to pay a required assessment to the Transaction Recovery Fund.

5. Failing to comply with the warranty service obligations and claims procedures required by this chapter.

6. Failing to comply with the set-up and tie-down requirements of the Code.

7. Knowingly failing or refusing to account for or pay over money or other valuables belonging to others which have come into the regulant's possession due to the sale of a manufactured home.

8. Using unfair methods of competition or unfair or deceptive commercial acts or practices.

9. Failing to comply with the advertising provisions in Part IV ~~of this chapter~~ (13VAC6-20-270 et seq.) of this chapter.

10. Defrauding any buyer to the buyer's damage, and any other person in the conduct of the regulant's business.

11. Employing an unlicensed salesperson.

12. Knowingly offering for sale a manufactured home produced by a manufacturer ~~which~~ that is not licensed as a manufacturer under this chapter.

13. Knowingly selling a manufactured home to a dealer who is not licensed as a dealer under this chapter.

14. Failing to appear before the board upon due notice.

15. Failing to comply with orders issued by the board pursuant to this chapter.

16. Failing to renew a license and continuing to engage in business as a manufacturer, dealer, broker, or salesperson after the expiration of any license.

17. A salesperson selling, exchanging, or offering to sell or exchange a manufactured home for any dealer or broker other than the licensed dealer or broker employing the salesperson.

18. A salesperson offering, transferring, or assigning any negotiated sale or exchange of a manufactured home to another dealer, broker, manufacturer, or salesperson.

19. Failing to comply with the ~~Statement~~ statement of ~~Compliance~~ compliance.

20. Failing to notify the board of a change of location or address of the business office.

21. Failing to comply with any provisions of this chapter.

a. The board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer, or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the board.

b. Any person whose license is revoked or not renewed for cause by the board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the board pursuant to § 36-85.18 of the Code of Virginia.

22. Failing to comply with the regulations of state or federal agencies regarding the financing, titling, taxation, or transporting of manufactured homes.

23. Failing to perform a written contract between the regulant and seller or buyer that contains the following minimum requirements:

a. A statement of the total cost of the contract and the amounts, including specific statement on the cost of the home, any additional costs for work to be performed, and the amount of the down payment, taxes, and titling fees.

b. A listing of specified materials and work to be performed and who is to supply the materials and perform that work.

c. Contract to identify the business name as shown on the license issued per this chapter and to include the address and the phone number of the business.

d. Specify the make and model of the home.

e. Specify if the home is new or used.

f. Specify the length and width of the home as defined by the HUD Standards.

g. Specify the date of manufacture and the serial number, except when the home is specially ordered from the manufacturer for the buyer and this information is not known.

24. Failing to provide a statement notifying consumers of the limitations on damages retained by dealer disclosure to the buyer.

25. Failing to provide a statement notifying consumers of the dispute resolution program available to resolve disputes concerning defects in manufactured homes.

B. The board may deny, suspend, revoke, or refuse to renew or reinstate the license of a regulant because of, but not limited to, one or more of the following grounds:

1. Having had a license previously denied, revoked, or suspended under this chapter.

2. Having a license denied, suspended, or revoked by a similar licensing entity in another state.

3. Engaging in conduct in another state ~~which~~ that would have been a violation of this chapter if the actions were committed in Virginia.

4. Failing to obtain a required certification of registration from the ~~Department of~~ Motor ~~Vehicles~~ Vehicle Dealer Board (MVDB), failing to renew the annual certificate of registration from the MVDB, or having the certificate of registration suspended or revoked by the ~~Department of Motor Vehicles~~ MVDB.

5. Having been convicted or found guilty in any jurisdiction of a felony.

13VAC6-20-320. Duration of warranties.

All warranties provided by regulants as required by 13VAC6-20-310 shall be for a period of not less than 12 months~~,~~ measured from the date of delivery of the home to the buyer. ~~The date of delivery shall be the date on which all terms or conditions of the sales contract agreed to or required of the regulant have been completed.~~

NOTICE: The 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 accompanying web address to access the online forms. 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 (13VAC6-20)

Complete license registration application forms for broker, dealer, manufacturer, salesperson, and special licensing online at https://dmz1.dhcd.virginia.gov/BFR/Main/LogOn.aspx.

VA.R. Doc. No. R17-5104; Filed August 14, 2018, 4:35 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Fast-Track Regulation

Title of Regulation: **18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-40).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 2018.

Agency Contact: Rebekah E. Allen, Enforcement Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23223, telephone (804) 367-2006, FAX (804) 527-4207, or email rebekah.allen@boa.virginia.gov.

Basis: Subdivision 3 of § 54.1-4403 of the Code of Virginia grants authority to the board to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.

Purpose: This amendment is intended to remove duplicative definitional information because the information was added to § 54.1-4400 of the Code of Virginia by Chapter 403 of the 2017 Acts of Assembly. The board's rationale is to ensure that its regulations are not duplicative of information already found in statute and to reduce confusion about which definition should be used.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because the information being removed now exists in statute. This change is also supported by the Virginia Society of Certified Public Accountants.

Substance: The amendment removes the existing definition and replaces it with a citation to the correct statute.

Issues: The primary advantages to the public and the agency are reduced confusion by removing duplicative material from the regulation that is also found in statute. There are no primary disadvantages to the public, the board, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Definitions in the regulation of "providing services to the public" and "providing services to an employer" are repetitious of definitions listed in Code of Virginia § 54.1-4400. The Board proposes to replace the definitions with a citation to § 54.1-4400.

Result of Analysis. The proposed amendment will not have a significant impact.

Estimated Economic Impact. The proposed amendment would not affect requirements or interpretations. It may add a small amount of time for readers of the regulation seeking to understand the law.

Businesses and Entities Affected. The proposed regulation affects CPA firms and CPAs. As of September 30, 2017, there were 27,842 persons who held Virginia CPAs licenses, and 1,179 entities or sole proprietors that held Virginia CPA firm licenses.[1] All or most CPA firms would qualify as small businesses.

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

Projected Impact on Employment. The proposed amendment does not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments does not 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 significantly adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not significantly adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

[1]Data source: Board of Accountancy

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

Summary:

The amendments replace definitions with a citation to § 54.1-4400 of the Code of Virginia.

18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title.

For the purpose of determining whether a person who holds a Virginia license is providing services to the public ~~using the CPA title~~ or to an employer ~~using the CPA title~~, ~~as~~ those terms are to be defined in accordance with § 54.1-4400 of the Code of Virginia~~, because of the written information readily available to the public through the board's Internet postings, holding a Virginia license constitutes using the CPA title. Accordingly, a person who holds a Virginia license:~~

~~1. Is providing services to the public using the CPA title if he provides services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3 of the Code of Virginia.~~

~~2. Is providing services to an employer using the CPA title if he provides to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the board~~.

VA.R. Doc. No. R19-5259; Filed August 15, 2018, 8:29 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-170).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 3, 2018.

Effective Date: October 18, 2018.

Agency Contact: Rebekah E. Allen, Enforcement Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23223, telephone (804) 367-2006, FAX (804) 527-4207, or email rebekah.allen@boa.virginia.gov.

Basis: Subdivision 3 of § 54.1-4403 of the Code of Virginia grants authority to the board to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.

Purpose: The action is intended to make the occasions in which a licensee or applicant must respond to the board match the language of § 54.1-4425 of the Code of Virginia and to give the board discretion in determining whether a delay or failure to respond is a violation. Currently, there is no discretion for the board, and the intent is to give the board more latitude in determining whether a delay or failure to respond is a willful violation of the regulation. The board's rationale is to ensure that its regulations match statutory language to reduce confusion about when a licensee or applicant is to respond to the board. The action also allows the board to waive purported violations of the regulation if warranted and removes a citation to the Code of Virginia that is no longer accurate.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because its requirements are identical to those currently placed on licensees and applicants when responding to the board. The proposed amendments match the language of current provisions in § 54.1-4425 and allow the board to waive violations of the requirement to respond, if warranted. This action is supported by the Virginia Society of Certified Public Accountants.

Substance: The amendments (i) remove the list of occasions upon which a licensee or applicant has to respond to the board and replaces it with a sentence that matches language found in § 54.1-4425, (ii) give the board discretion in determining whether a delay or failure to respond is a violation, and (iii) remove a citation to the Code of Virginia in the last subsection that is no longer accurate.

Issues: The primary advantage to the public is reduced confusion between the differing language of the regulation and the statute regarding the occasions requiring a response by a licensee. There are no primary disadvantages to the public. The primary advantages to the board and the Commonwealth is the ability to waive purported failures to respond to the board if warranted. There are no primary disadvantages to the board or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Accountancy (Board) proposes to amend the regulation to: 1) allow itself discretion in determining whether a delay or failure to respond is a violation, 2) match the text to that of the Code of Virginia (Code) concerning when a licensee or applicant has to respond to the Board, and 3) remove an out-of-date citation to the Code.

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

Estimated Economic Impact. Code of Virginia § 54.1-4413.4(B)(1) states that the Board may impose penalties on persons using the CPA title in Virginia or firms providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia for "Violation of the provisions of this chapter or violation of any regulation,[1] subpoena, or order of the Board." The current regulation allows 30 calendar days for licensees to respond to Board inquiries. Under the current regulation, licensees who fail to respond within 30 days receive a $100 monetary penalty.

According to Board staff, the Board is aware that there may be extenuating facts and circumstances, such as illness, death in the family, or deployment, which would warrant non-timely responses to not be deemed a violation. Thus the Board proposes to add the following sentence to the regulation: "When the requested response is not produced by the licensee or applicant within 30 calendar days, this nonproduction shall be deemed a violation of this rule, unless otherwise determined by the board."[2] The proposed amendment is beneficial in that it allows the Board to waive the late fee when there are reasonable extenuating circumstances.

Matching the regulatory text to that of the Code and removing an out-of-date citation to the Code would also be beneficial in that it would reduce the likelihood of confusion amongst readers.

Businesses and Entities Affected. The proposed regulation potentially affects CPA firms and CPAs, and CPA licensure applicants. As of September 30, 2017, there were 27,842 persons who held Virginia CPAs licenses, and 1,179 entities or sole proprietors that held Virginia CPA firm licenses. Annually, there are on average 1,360 total applicants for licensure.[3] All or most CPA firms would qualify as small businesses.

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

Projected Impact on Employment. The proposed amendments do not 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]Bold added.

[2]Ibid.

[3]Data source: Board of Accountancy

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

Summary:

The amendments (i) modify the occasions in which a licensee or applicant has to respond to the board to match the language found in § 54.1-4425 of the Code of Virginia, (ii) allow the board discretion in determining whether a delay or failure to respond is a violation, and (iii) remove an out-of-date citation to the Code of Virginia.

18VAC5-22-170. Communication ~~between~~ with the board ~~and licensees~~.

A. ~~When requested by the board:~~

~~1. Persons or firms applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia shall provide the board with support for their conclusion that they have complied with applicable provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.~~

~~2. Firms shall provide the board with proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.~~

~~3. Persons or firms shall provide the board documents related to the board's investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or this chapter.~~

~~Each person or firm~~ Pursuant to § 54.1-4425 of the Code of Virginia, each licensee or applicant shall respond within 30

calendar days to any board request for information ~~by the board under this subsection~~ regarding compliance with any statutes or regulations pertaining to the board or any of the programs that may be in another title of the Code of Virginia for which the board has regulatory responsibility. When the requested response is not produced by the licensee or applicant within 30 calendar days, this nonproduction shall be deemed a violation of this rule, unless otherwise determined by the board.

B. Each holder of a Virginia license shall notify the board in writing within 30 calendar days of any change in the holder's name or in the postal and electronic addresses where the person or firm may be reached.

C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. ~~However, § 54.1-4413.2 of the Code of Virginia places the~~ The responsibility for renewing a Virginia license is on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.

VA.R. Doc. No. R19-5263; Filed August 15, 2018, 8:27 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Health Professions will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-10, 18VAC76-20-20, 18VAC76-20-70).**

Statutory Authority: § 54.1-2519 of the Code of Virginia.

Effective Date: October 3, 2018.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

Summary:

The amendments add (i) Schedule V controlled substances for which a prescription is required, (ii) naloxone, and (iii) cannabidiol oil or THC-A oil dispensed by a pharmaceutical processor in Virginia as covered substances that must be reported to the Prescription Monitoring Program.

18VAC76-20-10. Definitions.

The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2519 of the Code of Virginia unless the context clearly indicates otherwise:

"Covered substance"

"Department"

"Director"

"Dispense"

"Dispenser"

"Prescriber"

"Recipient"

In addition, the following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Program" means the Prescription Monitoring Program.

18VAC76-20-20. General provisions.

In accordance with Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia and this chapter, the Director of the Department of Health Professions shall establish and administer a program for monitoring the dispensing of ~~Schedules II, III, and IV controlled~~ covered substances, which means all controlled substances included in Schedules II, III, and IV; controlled substances included in Schedule V for which a prescription is required; naloxone; and any other drugs of concern identified by the Board of Pharmacy pursuant to § 54.1-3456.1 of the Code of Virginia. Covered substances also include cannabidiol oil or THC-A oil dispensed by a pharmaceutical processor in Virginia.

18VAC76-20-70. Notice of requests for information.

A. Any dispenser who intends to request information from the program for a recipient or prospective recipient of a ~~Schedule II, III, or IV controlled substance~~ covered substance shall post a sign that can be easily viewed by the public at the place where the prescription is accepted for dispensing and that discloses to the public that the pharmacist may access information contained in the program files on all ~~Schedule II, III or IV prescriptions~~ covered substances dispensed to a patient. In lieu of posting a sign, the dispenser may provide such notice in written material provided to the recipient, or may obtain written consent from the recipient.

B. Any prescriber who intends to request information from the program about a patient or prospective patient shall post a sign that can be easily viewed by the public that discloses to the public that the prescriber may access information contained in the program files on all ~~Schedule II, III or IV prescriptions~~ covered substances dispensed to a patient. In lieu of posting a sign, the prescriber may provide such notice

in written material provided to the patient, or may obtain written consent from the patient.

VA.R. Doc. No. R19-5571; Filed August 8, 2018, 9:29 a.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The 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 18VAC130-20-30).**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Date: November 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 (i) eliminate the requirement for a licensed residential real estate appraiser license applicant to have an associate's degree or complete 30 semester credit hours of accredited college-level education; (ii) eliminate the requirement for a certified residential real estate appraiser license applicant to have a bachelor's degree or higher; and (iii) reduce the appraisal experience requirement for a licensed residential real estate appraiser license applicant, a certified residential real estate appraiser license applicant, and a certified general real estate appraiser license applicant.

18VAC130-20-30. General qualifications for licensure.

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.

3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification that was suspended, revoked or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant shall possess a background that would not call into question the public trust. Each applicant shall submit to fingerprinting. A background investigation shall be conducted, which shall not reveal that he has been convicted, found guilty, or pled guilty or nolo contendere to a crime that would call into question his fitness or suitability to engage in the profession. The applicant must disclose the following:

a. All felony convictions; and

b. All misdemeanor convictions in any jurisdiction that occurred within five years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for purposes of this subdivision.

6. The applicant shall be at least 18 years old.

7. The applicant shall have successfully completed the following education:

a. Licensed residential classification - 150 hours ~~for the licensed residential classification, 200 hours for the certified residential classification, and 300 hours for the certified general classification~~ of approved real estate appraisal courses, including the 15-Hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, and junior and community colleges; adult distributive or marketing education programs; local, state, or federal government agencies, boards, or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified general or certified residential real estate appraiser is a bachelor's degree or higher from an accredited college or university. ~~The required core curriculum for the licensed residential real estate appraiser is an associate's degree or higher from an accredited college, junior college, community~~

~~college, or university. In lieu of the required degree, the licensed residential real estate appraiser applicant must complete 30 semester hours of college level education from an accredited college, junior college, community college, or university. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser. All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.~~ The classroom hours required for the licensed residential classification may include the classroom hours required for the appraiser trainee.

b. Certified residential classification - 200 hours of approved real estate appraisal courses, including the 15-Hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, and junior and community colleges; adult distributive or marketing education programs; local, state, or federal government agencies, boards, or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours required for the certified residential classification may include the classroom hours required for the appraiser trainee or the licensed residential classification. The applicant shall also meet one of the following options for the required core curriculum:

(1) A bachelor's degree in any field of study;

(2) An associate's degree in a field of study related to business administration, accounting, finance, economics, or real estate;

(3) Successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours: English composition (3 hours); microeconomics (3 hours); macroeconomics (3 hours); finance (3 hours); algebra, geometry, or higher math (3 hours); statistics (3 hours); computer science (3 hours); business law or real estate law (3 hours); and two elective courses in any of the topics described in this subdivision or in accounting, geography, agricultural economics, business management, or real estate (3 hours each);

(4) Successful completion of at least 30 hours of College Level Examination Program (CLEP) examinations that cover each of the specific topic areas in subdivision 7 b (3) of this section. For purposes of this option, the CLEP examination for college algebra (3 hours) may be applied to the topic area of algebra, geometry, or higher math; the CLEP examination for college composition (6 hours) may be applied to the topic area of English composition; the CLEP examination for college composition modular (3 hours) may be applied to the topic area of English composition; the CLEP examination for college mathematics (6 hours) may be applied to the topic area of algebra, geometry, or higher math or statistics; the CLEP examination for principles of macroeconomics (3 hours) may be applied to the topic area of macroeconomics or finance; the CLEP examination for principles of microeconomics (3 hours) may be applied to the topic area of microeconomics or finance; the CLEP examination for introductory business law (3 hours) may be applied to the topic area of business law or real estate law; and the CLEP examination for information systems (3 hours) may be applied to the topic area of computer science;

(5) Successful completion of at least 30 hours of any combination of college-level courses and CLEP examinations that includes all of the topics identified in subdivision 7 b (3); or

(6) No college-level education. This option applies only to applicants who have held a licensed residential credential for a minimum of five years and have no record of any adverse, final, and nonappealable disciplinary action affecting the licensed residential appraiser's legal eligibility to engage in appraisal practice within the five years immediately preceding the date of application for a certified residential credential.

c. Certified general classification - 300 hours of approved real estate appraisal courses, including the 15-Hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, and junior and community colleges; adult distributive or marketing education programs; local, state, or federal government agencies, boards, or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The applicant must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties. The classroom hours required for the certified general classification may include the classroom hours required for the appraiser trainee, the licensed residential classification, or the certified residential classification. The required core curriculum is a bachelor's degree or higher from an accredited college or university.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In

addition, all experience must be acquired within the five-year period immediately preceding the date application is made and be supported by adequate written reports or file memoranda, which shall be made available to the board upon request.

a. ~~Applicants~~ The applicant for a licensed residential real estate appraiser license shall have a minimum of ~~2,000~~ 1,000 hours appraisal experience, in no fewer than ~~12~~ six months. Hours may be treated as cumulative in order to achieve the necessary ~~2,000~~ 1,000 hours of appraisal experience.

b. ~~Applicants~~ The applicant for a certified residential real estate appraiser license shall have a minimum of ~~2,500~~ 1,500 hours of appraisal experience obtained during no fewer than ~~24~~ 12 months. Hours may be treated as cumulative in order to achieve the necessary ~~2,500~~ 1,500 hours of appraisal experience.

c. ~~Applicants~~ The applicant for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than ~~30~~ 18 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments that demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties that do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser that include the use of the income approach. The applicant must have substantially contributed to the development of the income approach in such reports and shall provide evidence or verification of such contribution.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

VA.R. Doc. No. R19-5621; Filed August 9, 2018, 8:10 p.m.

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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 19VAC30-70-3, 19VAC30-70-4, 19VAC30-70-5, 19VAC30-70-6, 19VAC30-70-9.1, 19VAC30-70-10, 19VAC30-70-11, 19VAC30-70-30, 19VAC30-70-50, 19VAC30-70-60, 19VAC30-70-90, 19VAC30-70-120, 19VAC30-70-160, 19VAC30-70-210, 19VAC30-70-290, 19VAC30-70-350, 19VAC30-70-360, 19VAC30-70-580, 19VAC30-70-660).**

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Effective Date: October 4, 2018.

Agency Contact: Kirk Marlowe, Agency Regulatory Coordinator, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

The amendments update the Motor Vehicle Safety Inspection Regulations by making technical corrections and other revisions to comply with changes in Virginia law, including (i) adjusting discipline for offenses; (ii) adding a financial stability requirement following change of ownership; (iii) in compliance with Chapter 400 of the 2018 Acts of Assembly, removing the requirement for first-come, first-served inspections; (iv) exempting nonresident military dependents from the requirement to have a Virginia driver's license for identification purposes during inspection; (v) requiring inspection stations to retain rejection sticker receipts for six months; (vi) in compliance with Chapter 72 of the 2018 Acts of Assembly, providing that vehicles with certain lighting devices under certain circumstances may leave those devices uncovered while operating the vehicle on the highway; (vii) providing that airbags cannot be disabled in a vehicle equipped with them; and (viii) in compliance with Chapter 763 of the 2018 Acts of Assembly, providing requirements for certain auxiliary lights on motorcycles or autocycles.

19VAC30-70-3. Class I offenses.

Class I offenses are unacceptable work performances less serious in nature, but which require correction in order to maintain an efficient and effective Official Motor Vehicle Inspection Program. A violation of any paragraph of the following sections of the Official Motor Vehicle Safety

Inspection Manual and rules and agreements not covered in the Official Motor Vehicle Safety Inspection Manual or those disseminated by other means shall constitute a Class I offense, unless designated otherwise:

19VAC30-70-10 A through D

19VAC30-70-10 F through I

19VAC30-70-10 K through O

19VAC30-70-10 U

19VAC30-70-20 in its entirety

19VAC30-70-30 in its entirety

19VAC30-70-40 in its entirety

19VAC30-70-50 in its entirety

19VAC30-70-60 in its entirety

19VAC30-70-70 in its entirety

19VAC30-70-80 B 3

19VAC30-70-160 in its entirety (except subdivisions I ~~10 and 11 g (2))~~ 12 and 13 f (2))

19VAC30-70-170 in its entirety

19VAC30-70-200 in its entirety

19VAC30-70-290 in its entirety

19VAC30-70-310 in its entirety

19VAC30-70-330 in its entirety

19VAC30-70-360 D 4 e and f

19VAC30-70-410 in its entirety

19VAC30-70-440 B

19VAC30-70-530 in its entirety (except subdivisions K 10 i and K 11 g (2))

19VAC30-70-540 in its entirety

19VAC30-70-570 in its entirety

19VAC30-70-660 in its entirety

Disciplinary action for Class I offenses shall be:

1st offense - Verbal counseling - Recorded on Form SP-164.

2nd offense - Written reprimand from the safety officer or his designee.

3rd offense - Suspension of not less than 15 or more than 30 days.

Offenses shall be cumulative in nature and shall remain active for 24 months from date of offense. When Class II, III, or IV offenses are active, discipline can be written reprimand or suspension of not more than 60 days.

19VAC30-70-4. Class II offenses.

Class II offenses shall be violations of any section of the Official Motor Vehicle Safety Inspection Manual considered very serious, but the consequence of such violation or omission is not likely to be an imminent cause or contributing factor to a traffic crash or other vehicle related injury. A violation of the following sections of the Official Motor Vehicle Safety Inspection Manual shall constitute a Class II offense unless designated otherwise:

19VAC30-70-150 in its entirety

19VAC30-70-180 in its entirety

19VAC30-70-210 in its entirety

19VAC30-70-230 in its entirety

19VAC30-70-240 in its entirety

19VAC30-70-250 in its entirety

19VAC30-70-260 in its entirety

19VAC30-70-270 in its entirety

19VAC30-70-280 in its entirety

19VAC30-70-300 in its entirety

19VAC30-70-320 in its entirety

19VAC30-70-360 A 7 and C

19VAC30-70-380 in its entirety

19VAC30-70-390 in its entirety

19VAC30-70-420 in its entirety

19VAC30-70-520 in its entirety

19VAC30-70-550 in its entirety

19VAC30-70-580 in its entirety

19VAC30-70-600 in its entirety

19VAC30-70-610 in its entirety

19VAC30-70-620 in its entirety

19VAC30-70-630 in its entirety

19VAC30-70-640 in its entirety

19VAC30-70-650 in its entirety

19VAC30-70-670 in its entirety

19VAC30-70-680 in its entirety

Disciplinary action for a Class II offense shall be:

1st Offense - Verbal counseling - Recorded on Form SP-164.

2nd Offense - Written reprimand from the safety officer or his designee.

3rd Offense - Suspension of not less than 30 or more than 60 days.

Offenses are cumulative in nature and shall remain active for a period of 24 months from date of offense.

~~A Class II offense in combination with three Class I offenses shall be grounds for no less than a 30 day or more than a 60 day suspension.~~ When Class I, III, or IV offenses are active, discipline can be written reprimand or suspension of not more than 90 days.

19VAC30-70-5. Class III offenses.

Class III offenses may be violations of those sections of the Official Motor Vehicle Safety Inspection Manual considered more severe in nature, and usually considered most critical from a safety or administrative viewpoint. They would include the omission of checking or improper approval of an item so critical to the safe operation of a motor vehicle as to have the potential of being the imminent cause or factor of a motor vehicle crash. A violation of the following sections of the Official Motor Vehicle Safety Inspection Manual shall constitute a Class III offense unless designated otherwise:

19VAC30-70-10 J and ~~P~~ Q

19VAC30-70-11 in its entirety

19VAC30-70-80 in its entirety (except subdivision B 3)

19VAC30-70-90 in its entirety

19VAC30-70-100 in its entirety

19VAC30-70-110 in its entirety

19VAC30-70-120 in its entirety

19VAC30-70-130 in its entirety

19VAC30-70-140 in its entirety

19VAC30-70-160 I ~~10 h and 11 f~~ 12 g and 13 e

19VAC30-70-160 I ~~10 g and 11 g (2)~~ 12 f and 13 f (2)

19VAC30-70-190 in its entirety

19VAC30-70-220 in its entirety

19VAC30-70-340 in its entirety

19VAC30-70-350 in its entirety

19VAC30-70-360 A and B

19VAC30-70-370 in its entirety

19VAC30-70-400 in its entirety

19VAC30-70-440 in its entirety

19VAC30-70-450 in its entirety

19VAC30-70-460 in its entirety

19VAC30-70-470 in its entirety

19VAC30-70-480 in its entirety

19VAC30-70-490 in its entirety

19VAC30-70-500 in its entirety

19VAC30-70-510 in its entirety

19VAC30-70-530 K 10 i and K 11 g (2)

19VAC30-70-560 in its entirety

19VAC30-70-590 in its entirety

19VAC30-70-690 in its entirety

Disciplinary action for a Class III offense shall be:

1st offense - Written reprimand from the safety officer or his designee.

2nd offense - Suspension for not less than 45 or more than 90 days.

3rd offense - Suspension for not less than 90 days or more than six months.

Offenses are cumulative in nature and will remain active for a period of 24 months from date of offense.

~~A Class III offense in combination with two Class II offenses or three Class I offenses shall be grounds for no less than a 60 day or more than a 90 day suspension.~~ When a Class I, II, or IV offense is active, discipline can be written reprimand or suspension of any duration less than one year.

19VAC30-70-6. Class IV offenses.

A. Class IV offenses are those violations considered so critically important to the integrity and credibility of the Official Annual Motor Vehicle Inspection Program as to require immediate and severe disciplinary action. Any Class IV offense is grounds for suspension or revocation. The following violations and actions shall be considered a Class IV offense:

1. Loss of driver's license, with the exception of an administrative court-ordered suspension that does not exceed seven days.

2. Obvious usage of either alcohol or drugs by an employee associated with the Annual Motor Vehicle Inspection Program.

3. Loss of inspection stickers through neglect or subsequent violations of subsection K of 19VAC30-70-10.

4. Improper use of inspection supplies such as placement on a vehicle that has not been inspected or failure to affix the inspection sticker to the vehicle in its proper location, after inspection.

5. Falsifying inspection receipts or inspection records.

6. Giving false information during an inspection complaint investigation.

7. Performing either an inspection or inspections at a station without authority from the safety officer.

8. The arrest of any person associated with the inspection program for a criminal offense or the institution of civil action of a nature that would tend to immediately reflect upon the integrity and reputation of the Department of State Police may be grounds for an immediate suspension until final court disposition. ~~The conviction of~~ A finding other than acquittal for any criminal offense or a civil judgment or bankruptcy may result in a suspension or revocation of the inspector or station appointment, or both.

9. The use of profanity or verbal abuse by station owners, managers, or safety inspectors toward each other or directed at customers presenting their vehicles for inspection ~~by inspectors, managers or business owners~~.

10. Illegal use of inspection supplies such as stealing, selling, mailing or giving away~~, shall be grounds for revocation~~.

11. Nonpayment of inspection fees.

12. Conduct displayed by station owners, managers, or safety inspectors that may be rude or discourteous, or the use of profanity or verbal abuse directed at or ~~towards~~ toward Safety Division Personnel~~, may be grounds for revocation~~.

13. Failure of any person connected with the inspection program to notify their supervising trooper or Safety Division Area Office within 72 hours of an arrest for a criminal offense or the institution of civil action.

14. Any misuse or falsification of the automated Motor Vehicle Inspection Program (MVIP) system through neglect or intentionally allowing an assigned password or personal identification number (PIN) to be used by other persons.

15. Willfully obtaining computer services without proper authority from the safety officer.

16. Failure to adequately explain and differentiate, both orally and in writing, to customers what repairs are necessary to pass the safety inspection and those repairs that are only recommended. Each station shall explicitly (not fine print) convey to each customer when his vehicle will be examined beyond the parameters of the state inspection and empower the customer with the ability to decline this service.

17. Allowing a suspended or revoked safety inspector to perform predelivery inspections (PDIs) or have access to inspection supplies, which may be grounds for suspension or revocation of the station appointment and an additional suspension or revocation for the inspector.

B. Disciplinary action for a Class IV offense shall be immediate suspension or revocation. ~~A suspension shall not be less than 90 days or more than six months. A revocation shall not be less than one year or more than three years.~~ A revocation shall not be less than one year or more than three years. A suspension shall constitute any period of time less than a year and shall not be less than 90 days. Offenses are cumulative in nature and will remain active for a period of 24 months from the date of the offense. For a subsequent violation within 24 months, the suspension ~~shall not be less than six months or more than one year~~ or revocation shall be no less duration than the prior discipline received.

C. In the case of the loss of the driver's license, the suspension shall remain in effect until the driver's license is reinstated and consideration for reinstatement of inspection privileges will be made at that time.

D. In cases concerning nonpayment of fees when the inspection station has been given 15 days to reply to a final notice, the suspension of the affected inspection station shall remain in effect until all inspection fees are paid. Consideration for reinstatement of inspection privileges will be made when all fees are paid. Furthermore, stations that have not paid their processing fee after the 15-day period will not be issued any additional inspection supplies. Supply orders may resume when the inspection fee is paid and the station has been reinstated to an active status.

~~A Class IV offense in combination with three Class I offenses, two Class II offenses, or one Class III offense shall be grounds for no less than a 90-day or more than a six-month suspension.~~

19VAC30-70-9.1. Official inspection station appointment.

A. These procedures are applicable to the application process for initial appointment, reclassification of appointment, change in ownership, change in name, and reinstatement of the appointment for an official inspection station following a period of suspension or revocation.

For investigations involving changes to the original report, only those areas of inquiry ~~which~~ that have changed need to be reported.

For changes in station name, location, and classification only, a narrative report is not required. These requests may be reported on the Form SP-164. This report should include information pertinent to the change. A statement should be included to report verification of information contained in the station's new application for appointment.

1. Any garage or other facility that routinely performs motor vehicle, motorcycle, or trailer repairs may apply to the Department of State Police in writing for appointment as an Official Safety Inspection Station.

a. The Department of State Police will forward an application package to the applicant.

b. The application ~~form or~~ forms are to be completed and returned to the supervising trooper processing the application within 45 days.

c. The application shall include the names, addresses, email addresses, telephone numbers, dates of birth, and social security numbers for the applicant and each person who will supervise or otherwise participate in the program. Each person will also be required to execute an Authorization for Release of Information Form and a Criminal History Record Request (Form SP-167). When a corporation with other established inspection stations is applying for an additional location, it shall not be necessary for the corporate officers to complete the Form SP-167 or undergo the usual background investigation. In these situations, the Department of State Police is only concerned with the personnel who will be responsible for handling and securing the safety inspection supplies.

2. Each inspection station application will be reviewed and the applicant must meet the following criteria:

a. The facility must have been in business at its present location for a minimum of six months.

(1) This requirement will not apply to a change in location for a previously appointed station ~~or a change in ownership which does not affect the station's ability to perform safety inspections~~.

(2) This requirement will not apply to a repair garage that is an established business and is expanding its mechanical convenience to the general public by the addition of other repair locations.

(3) This requirement will not apply to a business license as a franchised dealer of new vehicles.

b. The facility must perform motor vehicle, motorcycle, or trailer repairs routinely.

c. The station must have on hand or be willing to purchase the necessary equipment as identified by the Department of State Police for performing safety inspections.

d. The station must employ or be willing to employ at least one ~~full-time~~ full-time safety inspector with the appropriate license for the desired station's classification.

e. The facility's physical plant must meet the specific standards for the station classification for which the appointment is required.

3. Each applicant station must undergo a background investigation to determine if the business and associated personnel meet the following minimum criteria:

a. A review of the history of management and all persons employed who will participate in the inspection program must reflect general compliance with all federal, state, and local laws.

b. The character, attitude, knowledge of safety inspection requirements, mechanical ability, and experience of each individual who will perform or supervise safety inspections must be satisfactory.

c. The applicant and all participants must be familiar with and agree to comply with the Official Motor Vehicle Inspection Manual. Each vehicle presented for safety inspection must be inspected in strict compliance with the Code of Virginia and the Official Motor Vehicle Inspection Manual.

d. The business establishment must be financially stable. Its future existence should not be dependent upon appointment as an inspection station. The applicant and all persons to be associated with the inspection program must be in compliance with any judgment order or meeting all financial obligations, or both. The applicant and all persons to be associated with the inspection program must be in good financial standing for a period of at least one year.

Following any change in ownership, new ownership must show financial stability for a minimum of six months prior to their official inspection station appointment.

4. Each business must agree to provide the necessary space, equipment, and personnel to conduct inspections as required by the Department of State Police. Facilities and equipment will be maintained in a manner satisfactory to the superintendent. All safety inspectors will read and be thoroughly familiar with the instructions furnished for Official Inspection Stations and agree to abide by these instructions and to carefully inspect every motor vehicle, trailer, and semi-trailer presented for inspection as required by the Official Motor Vehicle Safety Inspection Manual. Businesses must operate inspection stations in strict accordance with the Code of Virginia and the Official Motor Vehicle Inspection Manual. The appointment of an inspection station may be canceled at any time by the superintendent and will be automatically canceled if any change in address, name, or ownership is made without proper notification.

5. Any applicant whose application is rejected or withdrawn may not reapply sooner than six months from the date he is notified of the rejection of his application or from the date the application is withdrawn.

6. Each business to be appointed will be assigned one of 11 classifications based upon the physical plant specifications or other criteria as follows:

a. Unlimited: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. (Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane.)

b. Small exemption: The inspection lane shall be level or on the same plane for 40 feet. The entrance opening shall be at least 10 feet in height, eight feet in width, and adequate to accommodate vehicles 40 feet in length. Any vehicle exceeding 10 feet in height may be inspected if the building entrance will allow such vehicle to completely enter the designated inspection lane.

c. Large exemption: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. (Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane.) This classification is required to inspect only vehicles with a GVWR exceeding 10,000 pounds.

d. Motorcycle: The inspection lane shall be level or on the same plane. The entrance shall be adequate to accommodate the motorcycle and the operator.

e. Unlimited trailer: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. This classification is required to inspect all trailers.

f. Small trailer exemption: The inspection lane shall be reasonably level and in good condition for 40 feet. The entrance shall be at least 10 feet in height and adequate to accommodate trailers 40 feet in length. This classification is required to inspect only those trailers not exceeding 40 feet in length or 10 feet in height measured to the highest part of the trailer but not including racks, air conditioners, antennas, etc.

g. Large trailer exemption: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and adequate to accommodate all legal size trailers. This classification is required to inspect only property-carrying trailers exceeding 10 feet in height or 40 feet in length.

h. Safety and emissions: The inspection lane shall be level or on the same plane. The lane must accommodate most passenger cars and light trucks. The emissions equipment must be placed in the lane at a location to allow the inspected vehicle to be positioned with all four wheels on the floor or on an above-ground ramp on a plane to the floor to accommodate headlight aiming and other required inspection procedures. Any above-ground structure must be constructed so as to permit proper steering, suspension, brake, and undercarriage inspection as outlined in the Official Motor Vehicle Safety Inspection Manual. A list of local inspection stations that can accommodate vehicles that cannot be safety inspected due to the pretenses of emissions equipment must be maintained and available for customers. A "bottle" jack or other appropriate lifting equipment may be used for safety inspection on above-ground structures.

i. Private station: The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet. An applicant who owns and operates less than 20 vehicles will not be considered.

j. Private station (fleet service contractor): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification will permit the inspection of all vehicles that the applicant has a written agreement to service and repair. An applicant who does not have at least six written agreements to service private fleets with at least five vehicles in each fleet or at least one written agreement to service a private fleet with at least 30 vehicles in the fleet will not be considered for this type of appointment. Vehicles not covered by a written agreement for service~~,~~ and repair, other than the vehicles owned by the applicant's company or corporation, shall not be inspected by a garage having this type of classification.

k. Private station (government): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification will permit the inspection of all vehicles in the government entity's fleet, the fleet of any volunteer or paid fire department, or any other unit or agency of the government structure having a written agreement with such governmental entity for repair, inspection service, or both. An applicant for this classification must own or have a written agreement to inspect 30 or more vehicles. Vehicles not owned by or covered by a written agreement shall not be inspected by a garage having this type of classification.

7. Classifications listed in subdivisions 6 a through 6 h of this subsection must be open to the public and have at least one safety inspector available to perform inspections during normal business hours as set forth in 19VAC30-70-10.

8. Private inspection station classifications may be assigned to businesses or governmental entities with fixed garage or repair facilities operating or contracting with vehicle fleets.

B. A representative of any official inspection station may apply to the Department of State Police in writing to request a change of the station's status.

1. An application form ~~or forms~~ will be forwarded to the applicant.

2. The applicant will complete the application form ~~or forms~~ and contact the Department of State Police in keeping with the application instructions. Applications will include all data as set forth in this section.

3. A Safety Division trooper will be assigned to complete the appropriate investigation to affect the change. A change in status investigation will include:

a. A review of the existing station file.

b. An update of the file to include personnel, facility, or other significant changes. Criteria for appointment and background investigation procedures for a change in status will be in keeping with this section.

c. Official inspection stations will be permitted to continue to perform safety inspections during a change of ownership investigation provided at least one safety inspector is retained from the prior owner.

d. If disqualifying criteria is revealed, the station's appointment shall be canceled until final disposition of the application is made or until issues of disqualifying criteria are resolved.

C. Once an official inspection station has been suspended, regardless of the cause for the suspension, management may request reinstatement up to 60 days prior to the expiration of the suspension period. Stations whose appointments are revoked may complete the application process as set forth for original appointments after the expiration of the period of revocation.

1. The applicant station must submit a letter to Safety Division Headquarters (Attention: Station Files) requesting reinstatement.

2. An application package will be forwarded to the applicant.

3. The completed application forms are to be returned to Safety Division Headquarters (Attention: Station Files).

4. After review, the application package is forwarded to the appropriate Safety Division Area Office for investigation.

a. The trooper assigned to the investigation will compare the information in the new application package to the information in the existing files.

b. The investigation will focus on any changes or inconsistencies.

c. The applicant station must meet all criteria for appointment as set forth in this section.

d. Any applicant whose application for reinstatement is rejected or withdrawn may not reapply sooner than six months from the date he is notified of the rejection or withdrawal of the application.

D. Failure to comply with the provisions of this section shall be grounds for termination of the application process or cancellation of the official inspection station's appointment. An applicant having an application terminated or an official inspection station having an appointment canceled for noncompliance may not reapply for a period of one year.

Part II
Inspection Requirements

19VAC30-70-10. Official inspection station requirements.

A. Official inspection stations, except private appointments, shall be open at least eight hours of each normal business day and shall be able to perform inspections 12 months throughout the year, except during illness of limited duration or normal vacation.

1. Normal business hours, Monday through Friday, are defined as an eight-hour period of time between 8 a.m. and 6 p.m.

2. Stations are not prohibited from performing inspections at times other than during normal business hours.

3. A station that advertises inspections beyond normal business hours shall be able to perform such inspections.

4. If a station desires to maintain business hours that are different from those defined in this section, written permission must be obtained from the safety officer and a sign setting forth the inspection hours must be posted conspicuously at the station where it can be observed by a person desiring to have a vehicle inspected.

B. At least one full-time safety inspector to perform inspections and one inspection lane meeting the minimum requirements shall be available for inspection at all times during the normal business day. All inspections must be made only at the locations and in the inspection lane approved by the Department of State Police. All stations shall have other lanes, bays, or areas in which repairs can be made so the inspection lane can remain available.

The designated inspection areas, including any location where customers are permitted to enter when submitting vehicles for inspection, must be kept clean and free from excessive dirt, grease, and loose materials. If requested, customers presenting vehicles for inspection shall be allowed

to observe the inspection process from a safe location designated by the station.

C. Inspection station facilities must be properly maintained and must present a businesslike appearance to the general public. Property adjacent to the inspection station that is owned or controlled by the station must be free of debris, litter, used parts and junk vehicles. Vehicles properly contained within fenced storage areas shall be deemed to comply with this requirement.

D. ~~Inspections shall be performed on a first-come, first-served basis. "First-come, first-served" means a procedure whereby customers seeking an inspection shall be attended to in the order that they arrive to the station. Motorists shall not be required to make an appointment to obtain an inspection, except those appointments~~ Official inspection stations may, at their discretion, accept vehicles on a first-come, first served basis or by prescheduled appointments for the safety inspection of a motor vehicle pursuant to § 46.2-1157 of the Code of Virginia. Appointments shall be made for those motorists that are required by subdivision A 12 of § 46.2-1158.01 of the Code of Virginia. Stations that take in vehicles for inspection at the beginning of the work day shall not be required to stop inspecting those vehicles to provide an inspection for a drive-in request, provided inspections are currently being performed at the time and will continue throughout the day. ~~Stations must maintain a procedure to validate when vehicles were brought to the station for inspection. Inspections shall begin concurrently with repair lanes during the station's normal business hours, without delay. Stations may suggest to motorists a timeframe of no greater than three hours during which it may be anticipated that an inspection may be provided. Stations shall cooperate fully with Department of State Police personnel regarding any issues detailed in this section, as with all other investigations.~~

~~In addition to accepting vehicles on a first-come, first-served basis, any official inspection station consisting of two or more inspection lanes may accept prescheduled appointments for the safety inspection of a motor vehicle pursuant to § 46.2-1157 of the Code of Virginia, so long as at least one lane is reserved for the sole purpose of first-come, first-served safety inspections. An additional certified safety inspector shall be available to perform those inspections that are made by an appointment.~~

Stations shall make every effort to keep the designated inspection lanes available. Stations with more than one repair bay shall not perform work in the designated inspection lanes when customers are waiting for an inspection. This will not apply to minor adjustments that require minimal time to perform. Stations shall not let vehicles occupy the designated inspection lanes while awaiting parts or customer authorization to complete the inspection pursuant to 19VAC30-70-60.

E. Safety inspectors, managers who supervise inspection activities, and business owners, through participation in the Official Motor Vehicle Inspection Program, are representatives of the Department of State Police and should conduct themselves in a manner to avoid controversy in dealing with customers presenting vehicles for inspection. The use of profanity or verbal abuse directed at customers presenting their vehicles for inspection will be grounds for suspension from participation in the inspection program and will be considered a Class IV offense as set forth in 19VAC30-70-6.

Controversy that cannot be calmly resolved by the safety inspector, managers, and owners should be referred to the supervising trooper for handling.

F. The "Certificate of Appointment" must be framed under glass or clear plastic and posted in the customer waiting area where it can be observed and read by a person submitting a vehicle for inspection.

Inspection stations must have garage liability insurance in the amount of at least $500,000 with an approved surplus lines carrier or insurance company licensed to write such insurance in this Commonwealth. This requirement shall not apply to inspection stations that only inspect their company-owned, government-owned, or leased vehicles.

G. The required "Official Inspection Procedure" sheet and the "Direct Inquiries" sheet furnished to each station must both be framed under glass or clear plastic and posted conspicuously in the customer waiting area where they can be observed and read by a person submitting a vehicle for inspection.

H. The poster designating the station as an official inspection station shall be posted in a prominent location, outside or visible outside the station, to alert passersby that inspection services are available. Private inspection stations shall not display an outside poster.

I. Each official inspection station shall display a list with the names and license expiration dates of ~~all employees licensed to inspect at that station~~ each active inspector associated to the station within the MVIP system, adjacent to the certificate of appointment. All inspectors listed must be actively employed by the station. The Official Motor Vehicle Safety Inspection Manual will be kept at or near the point of inspection for ready reference. The manual may be kept in written or electronic form.

J. Important -- Any change in name, ownership or location of any official inspection station cancels the appointment of that station, and the Department of State Police must be notified immediately. The department shall be notified when an official inspection station discontinues operation.

K. All inspection supplies, inspection binders and manual, unused stickers, duplicates of certificates issued, bulletins and

other forms are the property of the Department of State Police and must be safeguarded against loss.

L. Inspection supplies issued to an inspection station can be used only by that station and are not to be loaned or reissued to any other station.

1. Stations must maintain a sufficient supply of approval stickers, trailer and motorcycle approval stickers, rejection stickers and inserts. When reordering supplies, station owners or managers shall request sufficient supplies to sustain their business for at least six months. However, it is realized that a few stations will not be able to comply with the six-month requirement since there is a maximum of 100 books per order limit. Also, when ordering supplies, the following information should be considered so that the station does not order an excessive amount of supplies: each book of approval stickers contains 25 stickers, the rejection book contains 50 stickers, the month inserts are packaged in strips of 50 each, and trailer and motorcycle decals are five per strip. In December of each year, a supply of year inserts will be shipped to each station based on the station's previous year's usage. In November, each station shall check its stock of month inserts and order what is needed for the months of January through June. In May, the same should be done for the months of July through December.

2. Inspection stations that exhaust any type of their ~~supply of~~ supplies, such as approval stickers, trailer and motorcycle approval stickers, rejection stickers, ~~and~~ or inserts shall immediately stop ~~performing new inspections~~ all inspection operations and contact their supervising trooper or the nearest Safety Division Area Office.

M. All losses of stickers must be reported immediately to the supervising inspection trooper or the nearest Safety Division Area Office.

N. Every precaution against the loss of stickers must be taken. If the loss occurs through carelessness or neglect, a suspension of the station may result.

O. Manuals, bulletins, other regulations and lists of approved equipment must be available at all times for reference and may be kept in written or electronic form. Revisions to the Motor Vehicle Safety Inspection Manual will be sent to each station electronically through the MVIP system. Station management shall be responsible to see that each safety inspector is familiar with all bulletins and manual revisions and shall be required to furnish evidence to the department that all bulletins and manual revisions have been reviewed by each licensed inspector.

A copy of the diagram drawn by the investigating trooper, showing the approved inspection lane or lanes, will be maintained for review and kept available with the station's inspection supplies.

P. Private appointment may be made of company stations or government stations that own and operate a minimum of 20 vehicles and they may inspect only company-owned or government-owned vehicles respectively. When authorized by the department, they may inspect vehicles of a wholly-owned subsidiary or leased vehicles.

1. A private station may perform inspections during each month of the year or may elect to inspect only during certain designated months.

2. A private station not electing to inspect vehicles every month of the year that finds it necessary to inspect a vehicle during a month other than those selected for inspection may issue a sticker to the vehicle from the nearest past inspection month.

Q. All official inspection station owners, managers, and certified safety inspectors shall comply with the Virginia inspection laws and the inspection rules and regulations and will adhere to all instructions given by the supervising trooper or the Safety Division. Reports of violations will be investigated and, if found to be valid, may result in the suspension of the station, suspension of the inspector, possible court action, or other appropriate action, or any combination of these actions. Repeated violations or serious violations may result in a revocation of the inspector or station appointment, or both, by the superintendent.

R. The arrest of any person associated with the inspection program for a criminal offense of a nature that would tend to immediately reflect upon the integrity and reputation of the Department of State Police may be grounds for an immediate suspension and the conviction for such an offense may result in a revocation of the station's appointment.

S. When a station has been suspended or revoked, it must release to an employee of the Department of State Police all inspection supplies, posters, and papers including the certificate of appointment. Failure to do so is a violation of § 46.2-1172 of the Code of Virginia.

T. The authority of the superintendent to suspend the designation or appointment of an official inspection station as provided in § 46.2-1163 of the Code of Virginia, or to suspend the certification of an inspector designated to perform inspections at an official inspection station, and, in keeping with the provisions of § 46.2-1166 of the Code of Virginia, is hereby delegated to any of the following supervisory ranks of the Department of State Police: Lieutenant Colonel, Major, Captain, Lieutenant, First Sergeant and Sergeant.

U. Each station must purchase and keep in proper operating condition the following equipment: computer, printer, internet connection, paper hole punch, black ball point pen or pens or black marker or markers, sticker scraper with replacement razor blades, tire tread depth gauge, amp meter, headlight and auxiliary lamp adjustment tools, 12-inch ruler, 25-foot

measuring tape, torque wrench or torque sticks, brake pads/shoes/disc/drum measuring device, dial indicator, micrometer, pry bars, roller jack (at least 4-ton), and an approved type optical headlight aiming device. Each station that requests an additional inspection lane that is not in close proximity to the originally approved inspection lane must purchase an additional approved headlight machine for each lane that meets the minimum requirements. Stations are required to have one of the following headlight aiming devices ~~effective January 1, 2013: the~~: Hopkins Vision1, Hopkins Vision 100, American Aimers Vision 100, American Aimers Vision 2 Pro, or the Symtech (former L.E.T.), DVA-6, HBA-5, PLA-11, and PLA-12. This shall not apply to "trailer-only" inspection stations.

19VAC30-70-11. Automated Motor Vehicle Inspection Program (MVIP).

A. Effective March 1, 2011, the automated Motor Vehicle Inspection Program (MVIP) was implemented. The MVIP system will enable the Safety Division and inspection stations to more efficiently record and retain data, thereby enhancing the overall operation of the program.

B. Passwords or personal identification numbers (PINs) shall only be used by the person to whom they were assigned.

C. Automated stations shall order all supplies via the MVIP system. Stations will ensure supplies are ordered no more than once per month.

D. Once a certified safety inspector completes an inspection, he will be required to immediately enter the inspection information via the MVIP system. In the event there is an MVIP or internet connection failure, inspectors will complete the corresponding receipt provided in the approval or rejection sticker book. A manual copy will be given to the customer or placed in the vehicle, while the original will remain in the book. Inspections performed during such outages shall be entered into MVIP by the inspector performing the inspections and done so by the close of business of the day MVIP connectivity is restored.

E. All stations and inspectors are required to verify the accuracy of the information entered through the MVIP system to include:

1. One copy of the official safety inspection ~~approval/rejection~~ approval or rejection receipt shall be printed on 8-1/2 by 11 inch white paper and given to the customer or placed in the vehicle. The size of the print on the receipt shall not be reduced. In the event of MVIP or internet connection failure, the corresponding manual receipt from the book shall take the place of the MVIP generated receipt.

2. The printed official inspection receipt number shall correspond with the issued decal.

3. The complete vehicle identification number (VIN) shall be verified before submitting the inspection through the MVIP system and printing the official inspection receipt.

F. When a station has a voided decal, it must be entered into MVIP by the inspector. Once entered, the receipt shall be printed, attached to the decal, and retained until the supervising trooper's next visit. The supervising trooper will be responsible for destroying the voided sticker and a Form SP-164 will not be required.

G. ~~Once a book of stickers is completed, station~~ Station management shall ensure that all ~~decals~~ stickers are accounted for and all information has been entered correctly into the MVIP system. Completed ~~books~~ approval or rejection receipts shall be retained by the station for a period of six months. At the end of the six-month period, used receipts shall be destroyed by burning or shredding.

19VAC30-70-30. Inspector requirements.

A. The inspection of motor vehicles required by these rules and regulations shall be made only by those individuals who are certified and licensed as safety inspectors by the Department of State Police. The procedures outlined in this section are applicable to the processing of applications for initial certification, reclassification of safety inspector's licenses, and reinstatement of suspended or revoked safety inspector's licenses.

B. All certified inspectors shall be at least 18 years of age. In addition, all certified inspectors shall have:

1. A minimum of one year of practical experience as an automotive mechanic or six months of practical experience as an automotive mechanic combined with an additional and separate six months of mirroring a certified state inspector, or

2. Satisfactorily completed a training program in the field of automotive mechanics approved by the Superintendent of State Police.

A person who has met either of the practical experience requirements in repairing motorcycles may be certified to inspect motorcycles only and a person who meets them in repairing trailers may be certified to inspect trailers only.

C. Each mechanic entering the inspection program will be required to satisfactorily pass a written and practical examination exhibiting his knowledge of the inspection procedures.

D. Each certified inspector shall possess a valid Virginia driver's license with the following exceptions:

1. An inspector who is a resident of an adjoining state holding a valid driver's license in that state and who commutes regularly to work in Virginia; or

2. A member of the armed forces of the United States on active duty, or a dependent thereof, who holds a driver's license from his home state.

E. An inspector whose driver's license is suspended or revoked, including the seven-day administrative suspension for a DUI arrest, must immediately notify the station's supervising trooper or the local Safety Division Area Office of the suspension or revocation. The suspension or revocation of an inspector's driver's license shall automatically act as a suspension of his privilege to inspect motor vehicles until such suspension or revocation is terminated and the reinstatement has been made by the Superintendent of State Police.

F. Each licensed safety inspector must have a valid safety inspector's license in his possession at all times while conducting inspections.

G. Each safety inspector with a valid safety inspector's license need only present such valid license to his new employer to commence participation in the program at his new place of employment. Management of the inspection station is required to notify the Safety Division when a safety inspector begins or ends employment. This may be handled by contacting the Safety Division Headquarters in Richmond by telephone.

H. An inspector must promptly notify the Safety Division in writing of any change in his home address as shown on the safety inspector's license. In the event the license becomes mutilated, lost or stolen, the inspector must notify the Department of State Police immediately in writing, requesting a duplicate. The Safety Inspector Notification Form shall be used and all requested information should be printed plainly and completely. For those inspectors who are not employed, write "Inactive" in the station name block. In those cases where notification is being made due to an address change, it will be necessary to: (i) fill out the form completely and (ii) retain a copy of the form and license until a permanent (new) license is received. In those cases where the license has been lost, stolen or mutilated, complete steps in clauses (i) and (ii) as set forth in this subsection. The notification form may be duplicated as necessary.

I. An inspector must immediately notify the station's supervising trooper or local Safety Division Area Office of an arrest for a criminal offense or the institution of a civil action.

J. Requirements for safety inspector applicants with a specific learning disability:

1. Applicants will be required to furnish documentation from the particular school division where the applicant was classified as having a learning disability. The specific learning disability will be clearly identified.

2. Once the learning disability has been documented, and if applicable, the applicant will be allowed to test with the written exam being orally presented.

3. The station management where the applicant is employed or to be employed must agree to have someone present during the hours the employee is conducting inspections to assist with the reading of the Official Motor Vehicle Safety Inspection Manual when necessary during the initial three-year certification period. If the inspector changes stations within the first three-year period, it is the inspector's responsibility to notify station management of his disability and this requirement.

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, the sticker is to be placed at the bottom left corner of the windshield 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 left edge of the windshield when viewed from the inside of the vehicle. 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.

EXCEPTIONS: 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 left edge of the sticker shall be approximately one inch to the right of the left edge of the windshield when viewed from the inside of the vehicle.

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, 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 1/4 inch to the right of the sticker or decal when viewed from the inside of the vehicle without removing or overlapping the 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. <u>In the event of an MVIP or internet connection failure, manual receipts from the approval and rejection books shall be utilized.</u>

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.

19VAC30-70-60. Rejection stickers.

A. Only one rejection sticker shall be issued to any one vehicle. A rejection sticker shall not be issued to any vehicle already bearing such a sticker or to one which bears evidence of previously being issued a rejection sticker. When a vehicle is bearing a valid or expired rejection sticker, it is not to be removed unless the vehicle meets all of the inspection requirements.

B. A vehicle rejected by one station may be reinspected by another station if the owner desires to have this done; however, that station shall perform a complete inspection of the vehicle.

C. Reinspection of a rejected vehicle by the same station during the 15-day validity of the rejection sticker need include only a check of the items previously found defective, unless there is an obvious equipment defect that would warrant further rejection of the vehicle. Such reinspection will not constitute a complete inspection and a $1.00 fee may be charged. Furthermore, if a vehicle returns for reinspection within the 15-day period, the rejecting station will reinspect the vehicle without delay or at the reasonable conclusion of the current inspection being performed.

1. If additional defects are detected during reinspection of a vehicle previously rejected, the vehicle will not be issued an approval sticker.

2. No vehicle bearing a valid rejection sticker shall be entitled to receive more than two reinspections by the rejecting station during the validity period of the rejection sticker.

3. The validity period of the rejection sticker shall be 15 days in addition to the day of inspection.

4. Any vehicle that is presented for inspection at another inspection station after the 15-day validity period, if the vehicle was rejected for brakes, and the inspector cannot determine which wheels were checked, then all four wheels will be removed to ensure that all repairs or defects have been corrected.

D. If repairs are to be made to a rejected vehicle that would necessitate removing the vehicle from the inspection lane, no rejection sticker need be issued; however, the vehicle must be returned to an approved lane for a recheck of the rejected items and the application of the approval sticker.

E. If the vehicle does not meet all the requirements and the owner does not authorize immediate repairs, and if a rejection sticker has not already been issued, a rejection sticker shall be legibly filled out in its entirety with a black ball point pen. The certified safety inspector performing the inspection shall immediately enter the receipt information via the MVIP system. The complete vehicle identification number (VIN), tag number or car dealer name if a dealer tag is attached, mileage, year, make, and model shall be included. A circle to indicate which wheels were pulled to check the brakes and an individual mark shall be placed in each equipment block of the rejection sticker that was pertinent to the rejection. In addition, information may be written on any blank area as to the exact nature of the rejection (i.e., front brakes vs. rear brakes). The date of issue shall be punched, and the sticker affixed to the same location as indicated in subsections C, E, and G of 19VAC30-70-50. (When affixed to a trailer or motorcycle, the face of the rejection sticker shall be attached to the trailer or motorcycle in order to allow the rejection data on the back side to be read.)

F. The operator of the rejected vehicle shall be informed of the following:

1. The rejection sticker is valid for 15 days in addition to the date of inspection.

2. The rejection sticker places no travel restriction on the operation of the vehicle and is issued in lieu of an approval sticker.

3. The vehicle operator is legally responsible for any defect if operated on the highway and may be subject to a traffic summons for any existing equipment violation.

G. ~~Duplicate copies (pink) of rejection stickers shall be forwarded, in numerical order, to the Safety Division by the fifth of the month following the month of inspection. The yellow copy shall be retained, in numerical order, by the station for at least 24 months.~~ All receipt copies of rejection stickers 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.

19VAC30-70-90. Brakes: emergency, parking, or holding; batteries.

A. Some vehicles are equipped with an actual emergency brake, while others have only a parking or holding brake. Some types may be actuated by a foot or hand lever, while others may incorporate a switch or valve to actuate the brake. Air and vacuum brake systems may employ spring activating parking brakes.

B. Inspect for and reject if:

1. Vehicle or combination of vehicles is not equipped with a parking, holding, or emergency brake in good working order of the type installed as original standard factory equipment for the vehicle on which it is installed.

2. The parking brake actuating mechanism does not fully release when the control is operated to the off position or if the parking brake lamp light remains on.

NOTE: The light does not apply to vehicles that are not equipped with a parking (emergency) brake indicator light.

3. Any mechanical parts are missing, broken, badly worn, or are inoperative.

4. Cables are stretched, worn, or frayed or not operating freely.

5. Grease or ~~other~~ similar-type contamination is present on the linings, drums, or rotors.

6. Parking brake will not hold the vehicle stationary with the engine running at slightly accelerated speed with shift lever in drive position for automatic transmission or shift lever in low gear with clutch engaged for standard shift transmission.

7. Holding brake will not disengage when engine is started and vehicle is placed in drive. Holding brake will not hold vehicle stationary with foot on holding brake and vehicle in drive.

8. On vehicles equipped with automatic transmissions, the vehicle will start in any gear other than (P) park and (N) neutral. If the gearshift indicator does not identify the park (P) and neutral (N) positions, then the vehicle shall be rejected.

9. On vehicles equipped with manual transmissions, the vehicle will start in any gear if the clutch is not depressed or disengaged.

NOTE: This will not apply to older model vehicles, which were not originally equipped with a neutral-safety switch, clutch disengagement system or clutch pedal position sensor by the manufacturer.

10. The accelerator does not disengage after being depressed, allowing the engine to return to a normal idle speed.

C. Battery mounting and storage. Inspect for and reject if:

1. A battery is not securely attached to a fixed part of the motor vehicle or trailer. A battery is not protected by a removable cover or enclosure if the battery is installed in a location other than the engine compartment.

2. All brackets, hardware, bolts, and bushings used for securely mounting the battery to the vehicle are not present.

3. Removable covers or enclosures are not substantial and are not securely latched or fastened.

4. The battery compartment does not have openings to provide ample battery ventilation and drainage.

5. Whenever the cable to the starting motor passes through a metal compartment, the cable shall be protected against grounding by an acid and waterproof insulating bushing.

6. Whenever a battery and a fuel tank are both placed under the driver's seat, (i) the battery and fuel tank are not partitioned from each other or (ii) each compartment is not provided with an independent cover, ventilation, and drainage.

19VAC30-70-120. Frame, engine mounts, coupling devices and emergency chains.

Inspect for and reject if:

1. Frame or unitized body of any motor vehicle, trailer or semitrailer is broken, cracked, bent or damaged at any location, including any welded joint ~~and/or~~ or is rusted or corroded to the point the frame is weakened as to reasonably constitute a hazard during the operation of the vehicle.

2. Engine or transmission mounts and hardware is broken or missing. This includes all hardware bolts and bushings used for mounting to the vehicle's frame, engine, or transmission. Any engine or transmission mount shall be rejected if they allow the power train to come in contact with the firewall or other body parts. ~~Cab~~ Any body, truck bed, or bumper mounts or mounting hardware shall be rejected if they do not properly secure ~~the body~~ these components to the frame as originally designed.

3. Trailer hitch or pintle hook is not securely attached. Reject if the pintle eye or trailer drawbar has any cracks or if any welding repairs have been made to the pintle eye.

4. Chains, cables, etc., used to attach a towed vehicle are not securely attached or are broken, worn or abraded.

5. Fifth wheel does not lock in position or have a locking mechanism in proper working order.

6. Fifth wheel assembly system has any leak of fluid or air.

7. Fifth wheel has any broken, missing, or damaged parts; or is not securely attached to the frame.

8. Trailer king pin is not secure, or is broken or worn so as to prevent secure fit in fifth wheel.

9. Any movement is detected at any location where any device has been placed between the body and the chassis.

10. Trailer is not equipped with an emergency chain or steel cable.

NOTE: Fifth wheel assembly system does not require an emergency chain or cable. A fifth wheel is defined as a device which interfaces with and couples to the upper coupler assembly of a semitrailer. The upper coupler assembly is a structure consisting of an upper coupler plate, king pin and supporting framework which interfaces with and couples to a fifth wheel. Ball and socket connections also referred to as hitch and coupling connections are not fifth wheel assemblies and do require an emergency chain or steel cable.

19VAC30-70-160. Auxiliary lamps: backup; cornering; driving; fog; spot and warning.

A. Auxiliary lamps on a vehicle consist of seven general types: backup lamps (SAE-R), cornering lamps (SAE-K), driving lamps (SAE-Y), front fog lamps with an amber or clear lens (SAE-F) and rear fog lamps with red lens (SAE-F2), spot lamps (SAE-O), warning lamps (SAE-W, W2, W3), and daytime running lamps (DRLs) (SAE-Y2).

B. School buses may be equipped with an eight-lamp warning system of two red and two amber warning lamps of an approved type (SAE-W2) on the front and rear of such vehicle.

1. School buses may also be equipped with roof-mounted flashing white or amber warning lamps of an approved type (SAE-W2).

2. In addition to required warning lamps, school buses may be equipped with a stop signal arm consisting of an octagonal sign which meets FMVSS specifications (Federal Motor Vehicle Safety Standards, 49 CFR Part 571). The stop signal arm shall be reflectorized or be equipped with two red warning lamps of an approved type.

C. There is no limit on the number of backup lamps that a vehicle may have so long as they are of an approved type (SAE-R).

D. No more than four lamps, including two headlamps, may be lighted at any time to provide general illumination ahead of the vehicle.

E. Approved type (DOT or SAE-W) blue or blue and red lights are permitted on Department of Corrections vehicles designated by the Director of the Department of Corrections and any law-enforcement vehicle.

1. Approved type secondary warning lights installed only on the four corners, on law-enforcement vehicles, Department of Corrections, fire apparatus, government-owned vehicle operated on official business by a local fire chief or other local fire official, rescue squad vehicle, ambulance, or any other emergency medical vehicles. These lights shall also have primary warning lights installed.

2. The hide-away or undercover strobe lights shall be installed in the side marker lights, tail lights or parking lights. The strobe itself must be clear and the lens color must continue to be the same type and color as originally approved. It will not be permissible to install the hide-away lights in the headlights.

3. Approved type (SAE-W) red warning lights or red and white lights showing to the front are permitted on fire department vehicles, including publicly-owned state forest warden vehicles, ambulances, any rescue vehicle used for emergency calls, local department of emergency management, animal warden vehicles, school buses and vehicles used by security personnel at the Newport News Shipbuilding and Drydock Company, Bassett-Walker, Incorporated, the Tultex Corporation, the Winchester Medical Center, or the National Aeronautics and Space Administration's Wallops Flight Facility.

4. No more than two flashing or steady-burning red lights or red and white combination lights of an approved type (SAE-W) may be installed on one vehicle owned by any member of a fire department, volunteer fire company or volunteer rescue squad, any ambulance driver employed by a privately-owned ambulance service, and any police chaplain.

F. Vehicles mentioned in subsection E of this section permitted to be equipped with flashing, blinking or alternating red, red and white, blue, or blue and red emergency lights (except vehicles owned by any member of a fire department, volunteer fire company, volunteer rescue squad or any ambulance driver employed by a privately-owned ambulance service) may be equipped with the means to flash their headlamps when their emergency warning lamps are activated provided:

1. The headlamps are wired to allow either the upper beam or lower beam to flash but not both.

2. The headlamp system includes a switch or device which prevents flashing of headlamps when headlamps are required to be lighted pursuant to current statute.

3. Emergency vehicles in Chesapeake, Poquoson, and York County may be equipped with flashing headlights that will function whenever their warning lights are activated.

G. Any firefighting vehicle, ambulance, rescue or life-saving vehicle, Virginia Department of Transportation vehicle, or tow truck may be equipped with clear auxiliary lamps which shall be used exclusively for lighting emergency scenes. Such lamps shall be of a type permitted by the superintendent. Any government-owned police vehicle may be equipped with clear auxiliary lamps of a type approved by the superintendent.

H. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used for the principal purpose of towing or servicing disabled vehicles or in constructing, maintaining and repairing highways or utilities on or along public highways and vehicles used for the principal purpose of removing hazardous or polluting substances from the state waters or drainage areas on or along public highways. Such lamps are permitted on vehicles used for servicing automatic teller machines, refuse collection vehicles, hi-rail vehicles and on vehicles used for towing or escorting over-dimensional materials, equipment, boats, or manufactured housing units by authority of highway hauling permit.

1. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on fire apparatus, government-owned vehicles operated on official business by a local fire chief or other local fire official, rescue squad vehicles, ambulances, and any other emergency medical vehicles to be equipped with alternating blinking or flashing red, or red and white secondary lights mounted inside the vehicle's tail lights or marker lights.

2. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles owned and used by municipal safety officers in the performance of their official duties, businesses providing security services and vehicles used to collect and deliver the United States mail, vehicles used by law-enforcement personnel in the enforcement of laws governing motor vehicle parking,

government-owned law-enforcement vehicles provided the lights are used for giving directional warning, and vehicles used to provide escort for funeral processions.

3. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used as pace cars, security vehicles, or firefighting vehicles by any speedway or motor vehicle race track.

4. An approved type (SAE-W) amber flashing, blinking or alternating light may be mounted on the rear of any vehicle used to transport petroleum products. The light must be wired through the reverse gear circuit and activate in conjunction with the back-up lights and audible alarm.

5. An approved type (SAE-W) green warning light is permitted on vehicles used by police, firefighting, or rescue personnel as command centers at the scene of incidents. Such lights shall not be activated while the vehicle is operating upon the highway.

6. Approved type (DOT or SAE-W) colored warning lights may be used by dealers or businesses engaged in the sale of fire, emergency medical services, or law-enforcement vehicles. They may, for demonstration purposes, equip such vehicles with colored warning lights.

I. Inspect for and reject if:

1. ~~Vehicle has an auxiliary~~ Auxiliary lamp is being used for a purpose other than for which it ~~was~~ is manufactured or previously approved by the superintendent.

2. Auxiliary lamp does not have a clear lens.

3. Any reflector in such auxiliary lamp device is not clear.

~~EXCEPTION: Any~~ EXCEPTIONS: An auxiliary lighting device that is both covered and ~~not illuminated, other than lamps required,~~ unlit shall not be considered for inspection. An auxiliary lighting device that has a clear lens, has clear reflectors, and is unlit shall not be considered for inspection. Fog and driving lamps mounted below the level of the regular headlamps must be checked for aim as outlined in subdivisions I ~~10 i and I 11 g~~ 12 h and 13 f of this section if not covered.

NOTE: The covers shall be a type that would be installed as original equipment and not tape, paper bags, aluminum foil or similar materials ~~per subdivision I 11 g (2) of this section~~.

~~2.~~ 4. A vehicle has installed on it a warning lamp (DOT or SAE-W) that is not of an approved type or has been altered.

Reject if the vehicle has wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of any auxiliary lamps: backup, cornering, driving, fog, spot, or warning lamps.

~~3.~~ 5. Motor vehicles may be equipped with more than two fog or auxiliary lights; however, only two of these types of lights can be illuminated at any time. Reject a vehicle equipped with a headlamp mounted or used as an auxiliary lamp.

~~4.~~ 6. Vehicle is equipped with an auxiliary lamp that does not function properly. (If an auxiliary lamp has been modified by removing the wiring, bulb and socket, the unit will be considered an ornament and not a lamp and will not be considered in inspection.)

~~5.~~ 7. Vehicle is equipped with a lighted advertising sign, except commercial motor vehicles, buses operated as public carriers, taxicabs, and privately-owned passenger cars used for home delivery of commercially prepared food. Commercial motor vehicles, buses operated as public carriers, and taxicabs may be equipped with vacant and destination signs and one steady burning white light for the nighttime illumination of external advertising. Privately-owned passenger cars used for home delivery of commercially prepared food may be equipped with one steady burning white light for the nighttime illumination of a sign identifying the business delivering the food. Do not reject approved identification lights.

~~6.~~ 8. Any lamp is not of an approved type or if lamps to be burned together as a pair do not emit the same color light.

~~7.~~ 9. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted.

~~8.~~ 10. Backup lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. ~~Lamps~~ Required lamps are not of an approved type (DOT or SAE-R) or a lamp has been altered;

b. Wiring or electrical connections are defective or filaments do not burn;

c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted;

d. Lens is other than clear. LED (light-emitting diode) lights with a clear lens are acceptable if of an approved type. For those vehicles that are equipped with a multiple LED light (not filament-burning bulbs), they will pass inspection if more than 50% of the diode lights are burning;

e. Lamps are not wired into the reverse gear. Vehicles manufactured without backup lamps may be wired into an independent circuit.

~~9.~~ 11. Cornering lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. ~~Lamps~~ Required lamps are not of an approved type (DOT or SAE-K) or a lamp has been altered;

b. Wiring or electrical connections are defective or filaments do not burn;

c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted;

d. The color of the light is other than clear or amber;

e. The lamps do not burn in conjunction with the turn signals.

~~10.~~ 12. Driving lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. Driving lamps are installed on vehicles equipped with the four-headlamp system, except the "F" type headlamp system;

b. ~~A vehicle is equipped with more than two driving lamps;~~

~~c.~~ Driving lamps are not of an approved type or have been altered;

~~d.~~ c. The color of the lamp is other than white;

~~e.~~ d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted;

~~f.~~ e. Wiring or electrical connections are defective;

~~g.~~ f. Any driving lamp is mounted above the level of the regular headlamps, or is not mounted firmly to prevent excessive vibration;

~~h.~~ g. Driving lamps are not wired so that they will burn only when the high beams of the regular headlamps are activated;

~~i.~~ h. Driving lamps are not aimed so that the center of the hot spot drops three inches in 25 feet so that the hot spot is directly ahead of the lamp.

NOTE: Driving lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

~~11.~~ 13. Fog lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. A vehicle may be equipped with more than two fog lamps; however, not more than two fog lamps can be illuminated at any time;

b. ~~Lamps are not of an approved type (DOT or SAE-F on front or F2 on rear plus two-digit year and manufacturer) or a lamp has been altered;~~

~~c.~~ The lens is other than clear or amber. Fog lamps may have black-end bulbs or small metal caps over the end of the bulb;

~~d.~~ c. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted;

~~e.~~ d. Wiring or electrical connections are defective or filaments do not burn;

~~f.~~ e. Any fog lamp is mounted above the level of the regular headlamps, or is not mounted firmly;

~~g.~~ f. Lamps are not wired and aimed according to the following instructions:

(1) Fog lamps are general illumination lamps as covered in subsection A of this section. They must burn through the tail light circuit even if on a separate switch. If installed on a vehicle with a four-headlamp system, or a vehicle equipped with driving lamps, they must be wired into the low beam circuit.

(2) Fog lamps must be aimed so that the top edge of the high intensity zone is set at the horizontal centerline and the left edge of the high intensity zone is set at the vertical centerline. (Same as low beam headlights.)

NOTE: Fog lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

~~12.~~ 14. Spot lamps are not required; however, if installed they must operate and be inspected.

Inspect for and reject if:

a. Vehicle is equipped with more than two spot lamps;

b. Lamps are not of an approved type (DOT or SAE-O) or a lamp has been altered;

c. The lens in any spot lamp is other than clear;

d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack ~~or cracks~~. Taping or gluing cracks or pieces is not permitted;

e. Wiring or electrical connections are defective or filaments do not burn.

~~13.~~ 15. Daytime running lamps (DRLs) are not required. However, if installed they must operate and be inspected. DRLs must be installed in pairs.

NOTE: DRLs may or may not be wired into the tail light circuit.

Inspect for and reject if:

a. Any lamp, except headlamps, used as DRLs if not an approved type (SAE-Y2) and is not marked "DRL";

b. Fog lamps or parking lamps are used as DRLs;

c. More than one pair of lamps is used and designated as DRLs;

d. A DRL is mounted higher than 34 inches measured to the center of the lamp;

e. The color is other than white to amber;

f. DRLs do not deactivate when the headlamps are in any "on" position.

Any DRL optically combined with a turn signal or hazard lamp must deactivate when the turn signal or hazard lamp is activated and then reactivate when the turn signal or hazard lamp deactivates.

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 large objects hanging from the inside mirror or mounted to the windshield, cell phone mounts, GPS devices, CB radios or tachometers mounted on the dash or windshield, 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. The normal location for any required county, town, or city sticker is adjacent to the right side of the official inspection sticker 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 right corner of the windshield when viewed from inside the vehicle. The top edge of such decals 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.

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: 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 the transponder device may be affixed to the immediate right of the mirror at the roof line.

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.

NOTE: Any vehicle displaying an expired sticker or decal on its windshield at the time of inspection, excluding a rejection sticker, shall not be issued an approval sticker unless the owner or operator authorizes its removal. A rejection sticker will be issued versus an involuntary removal.

10. Sunshading material ~~on the windshield or~~ words, lettering, numbers or pictures on the windshield that ~~do not~~ extend below the AS-1 line ~~will not be considered for inspection~~ or three inches downward from the top of the windshield in the absence of an AS-1 line. ~~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~~ Sunshading is permitted on the windshield if authorized by the Virginia Department of Motor Vehicles and indicated on the vehicle registration.

NOTE: Vehicles with permitted sunshading on the windshield must have a cut-out to accommodate the direct application of an approval or rejection sticker to the windshield in the location indicated in 19VAC30-70-50 C of 19VAC30-70-60 E.

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 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 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 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.

19VAC30-70-290. Seat belts; definitions.

A. Definitions:

"Bus" means a motor vehicle with motive power designed to carry more than 10 persons.

"Designated seating position" means any plain view (looking down from the top) location intended by the manufacturer to provide seating accommodations while the vehicle is in motion, except auxiliary seating accommodations as temporary or folding jump seats.

"Front outboard designated seating positions" means those designated seating positions for the driver and outside front seat passenger (except for trucks which have the passenger seat nearest the passenger side door separated from the door by a passageway used to access the cargo area).

"GVWR" means Gross Vehicle Weight Rating as specified by the manufacturer (loaded weight of a single vehicle).

"Multi-purpose passenger vehicle" means any motor vehicle that is (i) designed to carry no more than 10 persons and (ii) constructed either on a truck chassis or with special features for occasional off-road use. This shall include a mini-van.

"Open-body type vehicle" means a vehicle having no occupant compartment top or an occupant compartment top that can be installed or removed by the user at his convenience.

"Passenger car" means a motor vehicle with motive power except a multipurpose passenger vehicle or motorcycle designed for carrying 10 persons or less.

"Rear outboard front facing designated seating positions" means those designated seating positions for passengers in outside front facing seats behind the driver and front passenger seat, except any designated seating position adjacent to a walk-way, that is located between the seat and the near side of the vehicle and is designated to allow access to more rearward seating positions.

"Truck" means a motor vehicle with motive power designed primarily for the transportation of property or special purpose equipment.

B. Passive ~~Restraint System~~ restraint system.

~~A.~~ 1. Inflatable occupant restraint (commonly known as air bags).

~~B.~~ 2. Passive belt system (automatic deployment around the occupant after the occupant enters the vehicle and closes the door).

C. Inspect for and reject if:

1. Not of an approved type; (see approved equipment section for seat belts)

2. Installation not in compliance as follows:

a. All motor vehicle seat belt anchorages and attachment hardware must meet the standards and specifications set forth by the Society of Automotive Engineers, Inc., and Federal Motor Vehicle Safety Standard No. 209 (49 CFR 571.209), for such anchorages and attachment hardware;

b. Any questions concerning the proper installation of seat belt assemblies should be directed to the nearest Safety Division office.

3. Any 1963 and subsequent model vehicle, designed and licensed primarily for private passenger use, is not equipped with adult safety lap belts for at least two front seats or a combination of lap belts and shoulder straps or harnesses.

4. Any passenger car manufactured on or after January 1, 1968, is not equipped with lap/shoulder or harness seat belt assemblies located at the front outboard designated seating positions (except in convertibles) and lap seat belt assemblies located at all other designated seating positions.

5. Any convertible passenger car manufactured on or after January 1, 1968, does not have a lap seat belt assembly for each designated seating position.

6. Any passenger car manufactured on or after December 11, 1989, (except convertibles) not equipped with lap/shoulder seat belt assemblies located at all forward facing rear outboard designated seating positions.

a. Any passenger car manufactured on or after September 1, 1991, (including convertibles) is not equipped with a lap/shoulder seatbelt assembly located at all forward facing rear outboard designated seating positions.

b. Any truck, multipurpose vehicle, or bus (except school buses and motor homes) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, manufactured on or after September 1, 1991, is not equipped with a lap/shoulder seatbelt assembly at all forward facing rear outboard designated seating positions.

c. Any of the heretofore described vehicles manufactured on or after September 1, 1992, are not equipped with lap/shoulder seatbelt assembly located at all forward facing rear outboard designated seating positions on a readily removable seat.

7. Any of the following motor vehicles manufactured on or after July 1, 1971, do not have a lap seat belt assembly for each designated seating position:

a. Open-body type vehicles;

b. Walk-in van type trucks;

c. Trucks (GVWR in excess of 10,000 pounds);

d. Multipurpose passenger vehicles (GVWR in excess of 10,000 pounds).

8. Any buses manufactured on or after July 1, 1971, do not have a lap seat belt assembly for the driver's seating position.

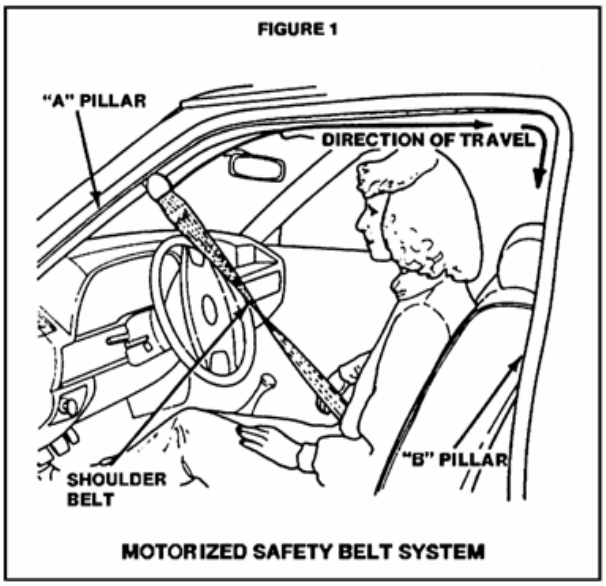
9. All other motor vehicles manufactured on or after January 1, 1976, except those for which requirements are specified in subdivisions 3 and 4 of this subsection, do not have lap/shoulder or harness seat belt assemblies installed for each front outboard designated seating position. Those vehicles originally equipped and sold by the manufacturer with only a lap belt installed for each designated seating position in compliance with Federal Motor Vehicle Safety Standards (49 CFR Part 571) will be deemed to be in compliance with this section.

10. Any seat belt buckle, webbing, or mounting is cut, torn, frayed or no longer operates properly.

11. Any seat belt anchorage is loose, badly corroded, missing or not fastened to belt.

D. Safety belts (motorized). Enter the vehicle and close the door. Insert the key into the ignition and turn to the on position. A motor causes the shoulder belt to slide along a track (Figure 1) starting at the front body "A" pillar and moving rearward to its locked position at the "B" pillar. The seat belt warning indicator lamp should illuminate with the lap belt unbuckled. When the ignition is turned to the off position and the door is opened, the shoulder belt moves forward to the "A" pillar.

NOTE: Do not reject if the motor is inoperative and the shoulder belt is permanently "locked" at pillar "B."



E. Air bag and air bag readiness light.

Inspect for and reject if:

1. Any defects in the air bag system are noted by the air bag readiness light or otherwise indicated;

2. The air bag has been deployed and has not been replaced (and is not deactivated because of a medical or other exemption and a notice is posted to indicate that it has been deactivated);

3. Any part of the air bag system has been disabled or removed from the vehicle; or

4. If the air bag indicator fails to light or stays on continuously.

NOTE: Checking the air bag readiness light. Turn the ignition key to the on position; the air bag readiness light will indicate normal operation by lighting for six to eight seconds, then turning off. A system malfunction is indicated by the flashing or continuous illumination of the readiness light or failure of the light to turn on.

NOTE: Any vehicle not originally manufactured with an air bag readiness light shall not be rejected for not having this item.

19VAC30-70-350. Motorcycle airbag, seat, steering, and suspension.

Inspect for and reject if:

1. Frame is bent or damaged so as to constitute a hazard in proper operation.

2. Wheels are out of line to a degree steering and control is affected.

3. Steering-head bearing is loose, broken, defective or out of adjustment.

4. Handlebars are loose, bent, broken or damaged in such a manner as to affect proper steering.

5. Shock absorbers are broken, worn, missing, defective, disconnected or do not function properly.

6. Any spring in the suspension system is broken or sagging.

NOTE: If a motorcycle or autocycle is equipped or designed with steering or suspension components similar in design to a passenger vehicle, the steering or suspension will be inspected as if the motorcycle or autocycle were a passenger vehicle.

7. If motorcycle seat or seats are not securely fastened.

8. Any motorcycle designed to carry more than one person is not equipped with a footrest for each passenger.

9. The battery is not attached to a fixed part of the motorcycle and protected by a removable cover or enclosure if the battery is installed in a location other than the engine compartment. This includes all brackets, hardware, bolts, and bushings used for securely mounting the battery to the motorcycle.

a. Removable covers or enclosures shall be substantial and shall be securely latched or fastened.

b. The battery compartment shall have openings to provide ample battery ventilation and drainage.

c. Whenever the cable to the starting motor passes through a metal compartment, the cable shall be protected against grounding by an acid and waterproof insulating bushing.

d. Whenever a battery and a fuel tank are both placed under the driver's seat, they shall be partitioned from each other and each compartment shall be provided with an independent cover, ventilation, and drainage.

10. Air bag and air bag readiness light. Inspect for and reject if:

a. Any defects in the air bag system are noted by the air bag readiness light or otherwise indicated;

b. The air bag has been deployed and has not been replaced (and is not deactivated because of a medical or other exemption and a notice is posted to indicate that it has been deactivated);

c. Any part of the air bag system has been disabled or removed from the motorcycle; or

d. If the air bag indicator fails to light or stays on continuously.

NOTE: Checking the air bag readiness light. Turn the ignition key to the on position; the air bag readiness light will indicate normal operation by lighting for six to eight seconds, then turning off.

A system malfunction is indicated by the flashing or continuous illumination of the readiness light or failure of the light to turn on.

NOTE: Any motorcycle not originally manufactured with an air bag readiness light shall not be rejected for not having this item.

19VAC30-70-360. Motorcycle lights: auxiliary, headlamp, rear, signal, warning.

A. Headlamps. Inspect for and reject if:

1. Motorcycle is not equipped with at least one motorcycle headlamp.

2. Any motorcycle headlamp is not of an approved type (SAE-M). A motorcycle may have one or more headlamps. In addition to the ~~headlamp(s)~~ headlamp or headlamps, a motorcycle may be equipped with not more than two auxiliary headlamps of a type approved (SAE-C) by the superintendent and identified as "auxiliary front lamps."

3. Lens and reflector do not match except in sealed units, or if the lens is cracked, broken or rotated, or if the lens and reflector are not clean or bright.

4. Any motorcycle lights-headlamp, rear lamp, signal or warning lamp has any wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of lamp or lens.

5. Lamp is not focused or any filament or bulb fails to burn.

6. Lamp is not mounted securely or if switch does not operate properly.

7. The center of the hot spot is set more than four inches up or down from the horizontal centerline or more than four inches to the left or right from the vertical centerline. The headlamp shall be checked for proper aim by using an optical headlamp aimer.

8. The high beam indicator does not burn when the high beam is on or does not go off when the low beam is on.

NOTE: Motorcycles may be equipped with means of modulating the high beam of their headlights between high and low beam at a rate of 200 to 280 flashes per minute, provided they are equipped with a switch or device that prevents flashing of headlights when headlights are required to be lighted.

NOTE: Inspection is to be performed with lamp on high beam.

NOTE: The use of strobe lights being placed inside the headlamps of police motorcycles is permitted. The strobe light system developed by Harley-Davidson for use in police motorcycle headlamps has been tested and does meet the current standard; therefore, strobe light systems of this type and similar types may be used in police motorcycle headlamp systems.

B. Aiming the headlamp. All headlamps that do not comply with subdivision A 7 of this section shall be aimed straight ahead. (Zero inches up or down and zero inches to the right or left.)

C. Rear lamp. Inspect for and reject if:

1. The motorcycle is not equipped with a rear lamp of approved type (SAE-T-S-P-A).

2. The lamp is not mounted near rear of vehicle, or is not mounted securely, or if lamp does not make a good electrical connection.

3. Lenses are not red to the rear and clear or amber to the front or any lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the cracks.

NOTE: LED (light-emitting diode) lights with a clear lens are acceptable if of an approved type. For those vehicles that are equipped with a multiple LED light (not filament-burning bulbs), they will pass inspection if more than 50% of the diode lights are burning.

4. Filaments in all lamps do not burn when headlamp switch is turned on to any position.

5. The rear license plate is not illuminated by an approved license plate bulb.

D. Signal device (intention to stop or turn).

1. Signal devices are not required on motorcycles; however, if installed, they must operate and be inspected.

2. Signal lamp lenses installed on the front of the motorcycle shall be amber and be located on each side of the vertical centerline of the motorcycle and as far apart as practicable and not closer than nine inches, measured from the optical centerline of the lamps, and to be located on the same level and not less than 20 inches above the ground level. The optical centerline of the lamp shall not be less than four inches from the retaining ring of the headlamp unit.

3. Signal lamps installed on the rear of the motorcycle shall be red or amber and shall be located on each side of the vertical centerline of the motorcycle as far apart as practicable but not closer than nine inches, measured from the optical centerline of the lens, and shall be located on the same level and not less than 20 inches above the ground level.

4. Inspect for and reject if:

a. Motorcycle, except an antique vehicle not originally equipped with a stop lamp, is not equipped with at least one stop lamp of an approved type that automatically exhibits a red or amber light to the rear when the brake control foot pedal or hand grip brake control device is activated. (On motorcycles manufactured prior to January 1, 1972, the activation of the front wheel brake control device is not required to activate the stop lamp.)

NOTE: Motorcycles may be equipped with a means of varying the brightness of the vehicle's brake light upon application of the vehicle's brakes.

b. The signal lamp is not of an approved type (SAE-D) or does not flash.

c. Lens in brake lamp or signal lamp has a piece broken from it. (Lens in brake lamp or signal lamp may have one or more cracks provided an off-color light does not project through the crack or cracks.)

d. Wiring or electrical connections are defective or any filaments do not burn.

e. Switch is not convenient to the driver and not of an approved type.

f. Signal devices are not installed as provided in subdivisions D 1, 2, and ~~2~~ 3 of this section.

E. Warning lights. Inspect for and reject if:

1. Warning lamps are not of an approved type or have been altered.

2. Any lighted advertising sign is present.

F. Auxiliary lights. Inspect for and reject if:

1. Motorcycle or autocycles are equipped with any color other than red or amber standard bulb running lights or light-emitting diode (LED) pods or strips.

2. Auxiliary lights are not directed toward the ground.

3. Auxiliary lights are not designed for vehicular use.

4. Auxiliary lights project a beam of light greater than 25 candlepower per bulb.

5. Auxiliary lights display a blinking, flashing, oscillating, or rotating pattern.

6. Auxiliary lights are attached to the wheels.

NOTE: Such lighting is not subject to approval by the Superintendent of the State Police.

19VAC30-70-580. 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 ~~which~~ 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 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 ~~(DOT and AS 1, AS 2, or AS 3)~~ (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.)

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~~; any alteration 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 or mounted to the windshield, cell phone mounts, GPS devices, CB radios or tachometers mounted on the dash or windshield, 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 year 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.

NOTE: Antennas, transponders, and similar devices must not be mounted more than 152 mm (six inches) below the

upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

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 3/4 inch in diameter at any location in the windshield above the topmost portion of the steering wheel except the two-inch border at each side.

8. At any location above the topmost portion of the steering wheel excluding a two-inch border at the top and one-inch border at the sides there is:

a. Any crack over 1/4 inch in width.

b. Any crack 1/4 inch or less in width intersected by another crack.

c. Any damage area 3/4 inch or less in diameter if within three inches of any other damage area.

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 ~~rearview~~ 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 sticker or decal is adjacent to the right side of 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 that 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 of the driver's sight line~~.

~~Fastoll 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 may be affixed to the immediate right of the mirror at the roof 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: ~~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 upwards 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. However, at the option of the motor vehicle owner, the sticker or decal may be affixed to the upper edge of the center of the windshield. (Any expired sticker or decal, 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" 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 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.~~ 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 will afford localities time to enact changes to regulations governing required stickers or decals, which may be impacted by the 2018 inspection sticker placement change.

NOTE: 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 may be affixed to the immediate right of the mirror at the roof line.

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.

NOTE: Any vehicle displaying an expired sticker or decal on its windshield at the time of inspection, excluding a rejection sticker, shall not be issued an approval sticker unless the owner or operator authorizes its removal. A rejection sticker will be issued versus an involuntary removal.

10. Sunshading material attached to the windshield extends 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: Sunshading material on the windshield displaying words, lettering, numbers or pictures that do not extend below the AS-1 line are permitted.

NOTE: Vehicles with logos made into the glass at the factory that meet federal standards 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 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.

13. Glass in the left front door cannot be lowered so a hand signal can be given. (This does not apply to vehicle equipped with approved turn signals which were not designed ~~and/or~~ or manufactured for left front glass to be lowered.) If either front door has the glass removed and material inserted in place of the glass which 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 or 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.

Do not reject a tractor truck having a gross vehicle weight rating of 26,001 pounds or more equipped with one optically grooved clear plastic wide angle lens affixed to the right front side window. Such wide angle lens shall not extend upward from the bottom of the window opening more than six inches or backward from the front of the window opening more than eight inches.

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.

19VAC30-70-660. Seat belts.

A. Definitions:

"Bus" means a motor vehicle with motive power designed to carry more than 10 persons.

"Designated seating position" means any plain view (looking down from the top) location intended by the manufacturer to provide seating accommodations while the vehicle is in motion, except auxiliary seating accommodations as temporary or folding jump seats.

"Front outboard designated seating positions" means those designated seating positions for the driver and outside front seat passenger (except for trucks which have the passenger seat nearest the passenger side door separated from the door by a passageway used to access the cargo area.)

"GVWR" means gross vehicle weight rating as specified by the manufacturer (loaded weight of a single vehicle.)

"Multipurpose passenger vehicle" means any motor vehicle that is (i) designed to carry no more than 10 persons and (ii) constructed either on a truck chassis or with special features for occasional off-road use. This shall include a minivan.

"Open-body type vehicle" means a vehicle having no occupant compartment top or an occupant compartment top that can be installed or removed by the user at his convenience.

"Rear outboard front facing designated seating positions" means those designated seating positions for passengers in outside front facing seats behind the driver and front passenger seat, except any designated seating position adjacent to a walkway, that is located between the seat and the nearside of the vehicle and is designated to allow access to more rearward seating positions.

"Truck" means a motor vehicle with motive power designed primarily for the transportation of property or special purpose equipment.

B. Passive Restraint System:

Inflatable occupant restraint (commonly known as air bags).

Passive belt system (automatic deployment around the occupant after the occupant enters the vehicle and closes the door).

Inspect for and reject if:

1. Not of an approved type.

2. Installation not in compliance as follows:

a. All motor vehicle seat belt anchorages and attachment hardware must meet the standards and specifications set forth by the Society of Automotive Engineers, Inc., and Federal Motor Vehicle Safety Standard Number 209, for such anchorages and attachment hardware.

b. Any questions concerning the proper installation of seat belt assemblies should be directed to the nearest Safety Division office.

3. Any of the following motor vehicles manufactured on or after July 1, 1971, not having a lap seat belt assembly for each designated seating position:

a. Open-body type vehicles;

b. Walk-in van type trucks;

c. Trucks (GVWR in excess of 10,000 pounds);

d. Multipurpose passenger vehicles (GVWR in excess of 10,000 pounds).

4. Any buses manufactured on or after July 1, 1971, not having a lap seat belt assembly for the driver's seating position.

5. All other motor vehicles manufactured on or after January 1, 1976, except those for which requirements are specified in subdivisions 3 and 4 of this subsection, not having lap/shoulder or harness seat belt assemblies installed for each front outboard designated seating position.

Those vehicles originally equipped and sold by the manufacturer with only a lap belt installed for each designated seating position, in compliance with Federal Motor Vehicle Safety Standards, will be deemed to be in compliance with this section.

6. Any seat belt buckle, webbing, or mounting is cut, torn, frayed, or no longer operates properly.

7. Any seat belt anchorage is loose, badly corroded, missing or not fastened to belt.

8. Any truck, multi-purpose vehicle, or bus (except school buses and motor homes) with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 1991, is not equipped with a lap/shoulder seatbelt assembly at all forward facing rear outboard designated seating positions.

9. Any of the heretofore described vehicles manufactured on or after September 1, 1992, are not equipped with lap/shoulder seatbelt assembly located at all forward facing rear outboard designated seating positions on a readily removable seat.

C. Air bag and air bag readiness light. Inspect for and reject if:

1. Air bag. Any defects in the air bag system are noted by the air bag readiness light or otherwise indicated;

2. The air bag has been deployed and has not been replaced (and is not deactivated because of a medical or other

exemption and a notice is posted to indicate that it has been deactivated);

3. Any part of the air bag system has been disabled or removed from the vehicle; or

4. If the air bag indicator fails to light or stays on continuously.

NOTE: Air bag readiness light. Turn the ignition key to the on position; the air bag readiness light will indicate normal operation by lighting for six to eight seconds, then turning off. A system malfunction is indicated by the flashing or continuous illumination of the readiness light or failure of the light to turn on.

NOTE: Any vehicle not originally manufactured with an air bag readiness light shall not be rejected for not having this item.

VA.R. Doc. No. R19-5604; Filed August 3, 2018, 3:37 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-316. Regulations Governing Exemptions for Large General Services Customers under § 56-585.1 A 5 c of the Code of Virginia (repealing 20VAC5-316-10 through 20VAC5-316-50).**

Statutory Authority: §§ 12.1-13 and 56-585.1 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: September 17, 2018.

Agency Contact: Andrea B. Macgill, Associate General Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9064, FAX (804) 371-9240, or email andrea.macgill@scc.virginia.gov.

Summary:

Chapter 296 of the 2018 Acts of Assembly repeals the provisions (i) requiring a large general service customer with a verifiable history of using more than 500 kilowatts, that does not wish to participate in an electric utility's energy efficiency program, to demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results and (ii) requiring the State Corporation Commission to promulgate regulations regarding the process under which such large general service customers file notice of such exemption. Therefore, the Large General Service Customer Rules (20VAC5-316, Regulations Governing Exemptions for Large General Services Customers under § 56-585.1 A 5 C of the Code of Virginia) are repealed.

AT RICHMOND, AUGUST 13, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00126

Ex Parte: In the matter of repealing Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

The Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia, 20 VAC 5-316-10 et seq. ("LGS Customer Exemption Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-585.1 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"), apply to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c that have verifiable histories of using more than 500 kilowatts ("kW") but no more than 10 megawatts of demand from a single metering point. The LGS Customer Exemption Rules establish requirements for such large general service customers to request exemption from any rate adjustment clause approved by the Commission pursuant to § 56-585.1 A 5 c of the Code, if the customer can demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results.[1]

Effective July 1, 2018, Chapter 296 of the 2018 Acts of Assembly ("Chapter 296") amended § 56-585.1 A 5 c of the Code to state, in part:

> None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any large general service customer. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.

Chapter 296 eliminated from Code § 56-585.1 A 5 c the language requiring a large general service customer with a verifiable history of using more than 500 kW, who does not wish to participate in an electric utility's energy efficiency program or programs, to demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results. Chapter 296 also eliminated the language in § 56-585.1 A 5 c that required the Commission to "promulgate rules and regulations to accommodate the process under which such large general service customers shall file notice of such exemption. . . ." Accordingly, there appears to be no need to retain the LGS Customer Exemption Rules.

NOW THE COMMISSION, having considered the amendments to § 56-585.1 A 5 c of the Code by Chapter 296, finds that interested parties should be permitted to comment on the need to retain any portion of the Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia, 20 VAC 5-316-10, et seq.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2018-00126.

(2) The Commission's Division of Information Resources shall forward the proposed repeal of the Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia, Appendix A hereto, to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the proposed repeal of the Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia, Appendix A, available for access by the public at the Commission's website, http://www.scc.virginia/gov/case. The Clerk of the Commission shall make a copy of the proposed repeal of Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code available for public inspection and provide a copy, free of charge, in response to any written request for one.

(4) On or before September 17, 2018, any interested person may comment on, propose modifications or supplements to, or request a hearing on the proposed repeal of Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments or hearing requests electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia/gov/case. Individuals shall be specific in their comments to the proposed repeal of Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia and shall address only those issues pertaining to the amendment of § 56-585.1 A 5 c of the Code pursuant to Chapter 296. Issues outside the scope of implementing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. Interested parties shall refer in their comments or requests to Case No. PUR-2018-00126.

(5) If no written request for a hearing on the proposal to repeal the Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia, as outlined in this Order, is received on or before September 17, 2018, the Commission may, upon consideration of any comments submitted in support of or in opposition to the proposal, enter an order based upon the papers filed herein.

(6) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on Attachment A hereto and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy hereof shall be delivered to the Commission's Office of General Counsel and the Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]See 20 VAC 5-316-10.

VA.R. Doc. No. R19-5630; Filed August 13, 2018, 1:36 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

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

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-10, 22VAC30-20-20, 22VAC30-20-30, 22VAC30-20-40, 22VAC30-20-70, 22VAC30-20-80, 22VAC30-20-95, 22VAC30-20-100, 22VAC30-20-110, 22VAC30-20-120, 22VAC30-20-130, 22VAC30-20-150, 22VAC30-20-170, 22VAC30-20-181, 22VAC30-20-190, 22VAC30-20-200; adding 22VAC30-20-195, 22VAC30-20-210; repealing 22VAC30-20-60).**

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

Effective Date: October 3, 2018.

Agency Contact: Leah Mills, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7610, FAX (804) 662-7663, TTY (800) 464-9950, or email leah.mills@dars.virginia.gov.

Summary:

The amendments (i) provide for reemployment transition services for students with disabilities; (ii) require that an individual obtain competitive integrated employment before his vocational rehabilitation case can be closed as successfully employed; (iii) disallow the case of a vocational rehabilitation recipient to be closed as successful if the recipient is earning less than the prevailing wage for the individual's employment; and (iv) require that individuals with disabilities receive vocational counseling before they can be employed in positions earning less than minimum wage. The amendments bring the existing regulation into conformity with the federal regulations for the Workforce Innovation and Opportunity Act (WIOA).

22VAC30-20-10. Definitions.

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

"Act" means the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended.

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include~~, but are not limited to,~~ the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case, a review of existing data as described in 22VAC30-20-30 to determine if an individual meets the eligibility requirements for vocational rehabilitation services as described in 22VAC30-20-40, and to assign priority for an order of selection described in 22VAC30-20-90.

"Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

"Audiological examination" means the testing of the sense of hearing.

"Clear and convincing evidence" means that the designated state unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal.

Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

"Client Assistance Program" means the program located within the disAbility Law Center of Virginia for the purpose of advising applicants or eligible individuals about all available services under the ~~Rehabilitation~~ Act ~~of 1973 (29 USC § 701 et seq.), as amended~~, and to assist applicants and eligible individuals in their relationship with programs, projects, and facilities providing vocational rehabilitation services.

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Community rehabilitation program" means a program that directly provides or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

2. Testing, fitting, or training in the use of prosthetic and orthotic devices;

3. Recreational therapy;

4. Physical and occupational therapy;

5. Speech, language, and hearing therapy;

6. Psychiatric, psychological, and social services, including positive behavior management;

7. Assessment for determining eligibility and vocational rehabilitation needs;

8. Rehabilitation technology;

9. Job development, placement, and retention services;

10. Evaluation or control of specific disabilities;

11. Orientation and mobility services for individuals who are blind;

12. Extended employment;

13. Psychosocial rehabilitation services;

14. Supported employment services and extended services;

15. Customized employment;

16. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;

~~16.~~ 17. Personal assistance services; or

~~17.~~ 18. Services similar to the services described in subdivisions 1 through ~~16~~ 17 of this definition.

For the purposes of this definition, the word "program" means an agency, organization, or institution, or unit of an agency, organization, or institution~~,~~ that directly provides or facilitates the provision of vocational rehabilitation services as one of its major functions.

"Comparable services and benefits" means services and benefits, including accommodations and auxiliary aids and services, that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the individual at the time needed to ensure the individual's progress toward achieving the employment outcome in the individual's individualized plan for employment; and commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive integrated employment" means work ~~in the competitive labor market~~ that (i) is performed on a full-time or part-time basis ~~in an integrated setting,~~ (including self-employment) and for which an individual is compensated at or above the ~~minimum wage,~~ rate required under state or local minimum wage law for the place of employment but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals ~~who are not disabled~~ without disabilities in comparable positions who have similar training, experience, and skills; (ii) in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or similar tasks and who have similar training, experience, and skills; (iii) is typically found in the community where the employee with a disability interacts for the purpose of performing the duties of the position with other individuals without disabilities to the same extent that employees who do not have disabilities interact in comparable positions; and (iv) presents, as appropriate, opportunities for advancement that are similar to those for other individuals who are not individuals with disabilities and who have similar positions.

"Customized employment" means competitive integrated employment based on the unique strengths, needs, and

interests of an individual with a significant disability, which is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer and is carried out through flexible strategies, such as (i) job exploration by the individual; (ii) customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; (iii) developing a set of job duties, a work schedule and job arrangements, and specifics of supervision (including performance evaluation and reviews) and determining job location; (iv) using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and (v) providing services and supports at the job location.

"Department" means the Department for Aging and Rehabilitative Services. The department is considered the "designated state agency" or "state agency," meaning the sole state agency designated in accordance with 34 CFR 361.13(a) to administer or supervise local administration of the state plan for vocational rehabilitation services. The department also is considered the "designated state unit" or "state unit," meaning the state agency, vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the state agency as required under 34 CFR 361.13(b), or the state agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 22VAC30-20-40.

"Employment outcome" means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment ~~in the integrated labor market;~~, as defined in this section (including customized employment, self-employment, telecommuting, or business ownership), or supported employment ~~or any other type of employment in an integrated setting including self-employment, telecommuting, or business ownership~~ as defined in this section, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. ~~(34 CFR 361.5(b)(16))~~ (34 CFR 361.5(c)(15))

~~"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case (i) a preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services; (ii) a thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's impediment to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability; (iii) the provision of goods or services necessary to determine the nature of the disability and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of an employment outcome; (iv) referrals to other agencies or organizations for services, when appropriate; and (v) the provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual with a disability is capable of achieving an employment outcome.~~

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC § 201 et seq.). ~~(34 CFR 361.5(b)(20))~~ (34 CFR 361.5(c)(18))

~~"Extended evaluation" means the provision of vocational rehabilitation services necessary for a determination of vocational rehabilitation potential.~~

"Extended services" as used in the definition of "supported employment" means ongoing support services and other appropriate services that are (i) needed to support and maintain an individual with a most significant disability in supported employment ~~and that are~~; (ii) organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource~~, from funds other than funds received under 34 CFR Part 363~~ after an individual with a most significant disability has made the transition from support provided by the department~~.~~; and (v) provided to a youth with a most significant disability by the department in accordance with requirements set forth in 22VAC30-20-110 and 22VAC30-20-120 of this chapter and 34 CFR Part 363 for a period of time not to exceed four years, or at such time a youth reached age 25 years and no longer meets the definition of youth with a disability in this section, whichever occurs first.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member" or "member of the family" means an individual (i) who is either a relative or guardian of an applicant or eligible individual, or lives in the same household as an applicant or eligible individual; (ii) who has a substantial interest in the well-being of that individual; and (iii) whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"Higher education" means training or training services provided by universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"IDEA" means the federal Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

"Impartial hearing officer" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the department; has not been involved previously in the vocational rehabilitation of the applicant or ~~eligible individual~~ recipient of services; has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation portion of the unified or combined state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer. ~~(34 CFR 361.5(b)(25))~~ (34 CFR 361.5(c)(24))

"Individual who is blind" means a person who is blind within the meaning of applicable state law.

"Individual with a disability," except as provided in ~~34 CFR 361.5(b)(29)~~ 34 CFR 361.5(c)(28), means an individual (i) who has a physical or mental impairment; (ii) whose impairment constitutes or results in a substantial impediment to employment; and (iii) who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. ~~(34 CFR 361.5(b)(28))~~ (34 CFR 361.5(c)(27))

"Individual with a most significant disability" means an individual with a significant disability who meets the department's criteria for an individual with a most significant disability. ~~(34 CFR 361.5(b)(30))~~ (34 CFR 361.5(c)(29))

"Individual with a significant disability" means an individual with a disability (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. ~~(34 CFR 361.5(b)(31))~~ (34 CFR 361.5(c)(30))

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative. ~~(34 CFR 361.5(b)(32))~~ (34 CFR 361.5(c)(31))

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals. "Integrated setting," with respect to an employment outcome, means a setting typically found in the community ~~in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons. (34 CFR 361.5(b)(33))~~ where the employee with a disability interacts, for the purposes of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. (34 CFR 361.5(c)(32))

"Local workforce ~~investment~~ development board" means a local ~~workforce investment~~ board ~~established under § 117 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(34))~~ as defined in § 3 of the Workforce Innovation and Opportunity Act (20 USC § 3101 et seq.). (34 CFR 361.5(c)(33))

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. ~~(34 CFR 361.5(b)(35))~~ (34 CFR 361.5(c)(34))

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified impartial mediator. ~~(34 CFR 361.5(b)(36))~~ (34 CFR 361.5(c)(35))

"Nonprofit," with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986. ~~(34 CFR 361.5(b)(37))~~ (34 CFR 361.5(c)(36))

"One-stop center" means a center established under the Workforce Innovation and Opportunity Act (20 USC § 3101 et seq.) and designed to provide a full range of assistance to job seekers ~~under one roof. Established under the Workforce Investment Act of 1998, the~~. The centers offer training, career counseling, job listings, and similar employment related services.

"Ongoing support services," as used in the definition of "supported employment," means services that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment; identified based on a determination by the department of the individual's needs as specified in an individualized plan for employment; and furnished by the department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement ~~or multiple placements if those placements are being provided under a program of transitional employment~~. These services shall include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on, at a minimum, twice-monthly monitoring at the worksite of each individual in supported employment~~;~~, or if under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual. These services shall consist of any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in subsection A of 22VAC30-20-100; the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite; job development and training; social skills training; regular observation or supervision of the individual; follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; facilitation of natural supports at the worksite; any other service identified in the scope of vocational rehabilitation services for individuals described in 22VAC30-20-120; or any service similar to the foregoing services. ~~(34 CFR 361.5(b)(38))~~ (34 CFR 361.5(c)(37))

"Personal assistance services" means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services. (34 CFR 361.5(c)(38))

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry; nursing services; necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; drugs and supplies; prosthetic, orthotic, or other assistive devices, including hearing aids; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids provided by the department in accordance with the cooperative agreement established with the Department for the Blind and Vision Impaired and prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical therapy; occupational therapy; speech or hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin, and endocrine; or any mental or psychological disorders such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. ~~(34 CFR 361.5(b)(41))~~ (34 CFR 361.5(c)(40))

"Post-employment services" means one or more of the services identified in 22VAC30-20-120 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, ~~and~~ interests, and informed choice. ~~(34 CFR 361.5(b)(42))~~ (34 CFR 361.5(c)(41))

"Pre-employment transition services" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3). (34 CFR 361.5(c)(42))

"Prevocational training" means individual and group instruction or counseling, the controlled use of varied activities, and the application of special behavior modification techniques. Individuals or patients are helped to (i) develop physical and emotional tolerance for work demands and pressures, (ii) acquire personal-social behaviors which would make them acceptable employees and coworkers on the job, and (iii) develop the basic manual, academic, and communication skills needed to acquire basic job skills.

"Qualified and impartial mediator" means an individual who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education); is not a member of the State Rehabilitation Council for the department; has not been involved previously in the vocational rehabilitation of the applicant or ~~eligible individual~~ recipient of services; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the department for the purposes of this definition solely because the individual is paid by the department to serve as a mediator. ~~(34 CFR 361.5(b)(43))~~ (34 CFR 361.5(c)(43))

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. (34 CFR 361.5(c)(45))

"State" means the Commonwealth of Virginia.

"State plan" means the ~~state plan for~~ vocational rehabilitation services portion of the unified or combined state plan submitted under ~~34 CFR 361.10(c). (34 CFR 361.5(b)(51))~~ 34 CFR 361.10.

"State workforce ~~investment~~ development board" means a state workforce ~~investment~~ development board as established under ~~§ 111 of the Workforce Investment Act of 1998. (34 CFR 361.5(b)(49))~~ § 3 of the Workforce Innovation and Opportunity Act (20 USC 3101 et seq.). (34 CFR 361.5(c)(49))

"Student with a disability" means an individual with a disability in secondary, postsecondary, or other recognized education program who (i) is not younger than the earliest age for the provision of transition services under § 614(d)(1)(A)(i)(VIII) of IDEA, or if the state elects to use a lower minimum age for the receipt of pre-employment transition services under IDEA, is not younger than that minimum age; (ii) is not older than the maximum age allowed by state law for receipt of services under IDEA; and (iii) is eligible for and receiving special education or related services under Part B of IDEA or is a student who is an individual with a disability for purposes of § 504 of the Act. (34 CFR 361.5(c)(51))

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities. (34 CFR 361.5(c)(52))

"Supported employment" means (i) competitive integrated employment ~~in an integrated setting or employment in integrated work settings in which individuals are working toward competitive~~ ~~employment~~, including customized employment, that is individualized and customized, consistent with the ~~strengths, resources, priorities, concerns, abilities, capabilities,~~ unique strengths, abilities, interests, and informed choice of the ~~individuals with~~ individual, including ongoing support services for individuals with the most significant disabilities, for whom competitive integrated employment has not ~~traditionally~~ historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability, and who, because of the nature and severity of ~~their~~ the individual's disabilities, ~~need~~ needs intensive supported employment services ~~from the department and extended~~

~~services~~ and extended services after the transition from support by the department, in order to perform this work ~~or (ii) transitional employment for individuals with the most significant disabilities due to mental illness. (34 CFR 361.5(b)(53))~~. (34 CFR 361.5(c)(53))

"Supported employment services" means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are ~~provided by the department (i) for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment and (ii) following transition as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment. (34 CFR 361.5(b)(54))~~ (i) organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) provided by the department for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (iv) following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment. (34 CFR 361.5(c)(54))

"Transition services" means a coordinated set of activities for a student or youth with a disability designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment ~~(including supported employment)~~, supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment~~. (34 CFR 361.5(b)(55))~~ and include outreach to and engagement of the parents, or as appropriate, the representative of such a student or youth with a disability. (34 CFR 361.5(c)(55)

~~"Transitional employment," as used in the definition of "supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.~~

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. ~~(34 CFR 361.5(b)(57))~~ (34 CFR 361.5(c)(56))

"Vocational rehabilitation potential" ~~mean~~ means the ability of the individual with a disability to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

"Vocational rehabilitation services" means those services listed in 22VAC30-20-120.

"WIOA" means the federal Workforce Innovation and Opportunity Act (29 USC § 3101 et seq.).

"Youth with a disability" means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

22VAC30-20-20. Processing referrals and applications.

A. Referrals. The department must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through a one-stop center. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services. (34 CFR 361.41(a))

B. Applications.

1. Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under § 121 of the Workforce Innovation and Opportunity Act, an eligibility determination shall be made within 60 days, unless (i) exceptional and unforeseen circumstances beyond the control of the department preclude making a determination within 60 days and the department and the individual agree to a specific extension of time; or (ii) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out ~~or, if appropriate, an extended evaluation is~~

~~necessary. (34 CFR 361.41(b)(1))~~ in accordance with 34 CFR 361.42(e). (34 CFR 361.41(b))

2. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate (i) has completed and signed an agency application form, a common intake application form in a one-stop center requesting vocational rehabilitation services, or has otherwise requested services from the department; (ii) has provided information to the department that is necessary to initiate an assessment to determine eligibility and priority for services; and (iii) is available to complete the assessment process. (34 CFR 361.41(b)(2))

3. The department shall ensure that its application forms are widely available throughout the state, particularly in the one-stop centers. (34 CFR 361.41(b)(3))

22VAC30-20-30. Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the department shall conduct an assessment for determining eligibility and priority for services. The assessment shall be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with ~~the following provisions:~~ this section.

1. Eligibility requirements are applied without regard to ~~race, age, gender, color, or national origin;~~:

a. Race;

b. Age;

c. Sex;

d. Color;

e. National origin;

f. Particular service needs;

g. Anticipated costs of services required by an applicant;

h. Income level of applicant of applicant's family;

i. Type of expected employment outcome;

j. Source of referral for vocational rehabilitation services;

k. Employment history;

l. Current employment status;

m. Educational status; or

n. Current educational credential.

2. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

~~3. The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family, or the type of expected employment outcome, or the source of referral for vocational rehabilitation services; and, or the applicant's employment history or current employment status, or the applicant's educational status or current educational credential; and~~

~~4.~~ 3. No duration of residence requirement is imposed that excludes from services any individual who is present in the state. (34 CFR 361.42(c))

22VAC30-20-40. Eligibility ~~requirements~~ determination.

A. Basic requirements. The department's determination of an applicant's eligibility for vocational rehabilitation services shall be based only on the following requirements: (i) a determination by qualified personnel that the applicant has a physical or mental impairment; (ii) a determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (iii) a presumption, in accordance with subsection B of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and (iv) a determination by a qualified vocational rehabilitation counselor employed by the department that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

B. Presumption of benefit. The department shall presume that an applicant who meets the basic eligibility requirements in clauses (i) and (ii) of subsection A of this section can benefit in terms of an employment outcome ~~unless the department demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment from vocational rehabilitation services due to the severity of the applicant's disability~~.

C. Presumption of eligibility for Social Security beneficiaries. ~~The department shall assure that if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the department shall presume that the applicant (i) meets the eligibility requirements in clauses (i) and (ii) of subsection A of this section and (ii) is an individual with a significant disability as defined in 22VAC30-20-10.~~

1. The department shall presume that any applicant who demonstrates proof of being determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (i) meets the basic eligibility requirement in

clauses (i) and (ii) of subsection A of this section and (ii) is considered an individual with a significant disability as defined in 22VAC30-20-10.

2. If an applicant for vocational rehabilitation services asserts that he is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services) but is unable to provide appropriate evidence, such as an award letter, to support this assertion, the department must verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time to enable the department to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with 22VAC30-20-20.

D. Achievement of an employment outcome. Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

1. The department shall be responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

2. The applicant's completion of the application process for vocational rehabilitation services shall be sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying this section.

E. Interpretation of entitlement. Nothing in this section shall be construed to create an entitlement to any vocational rehabilitation service.

F. Review and assessment of data for eligibility determination. Except as provided in ~~22VAC30-20-60~~ subsection G of this section, the department shall base its determination of each of the basic eligibility requirements in subsection A of this section on:

1. A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, ~~information used by the Social Security Administration~~ particularly information used by education officials, and determinations made by officials of other agencies; and

2. To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and ~~worksite assessments,~~ any other support services that are necessary to determine whether an individual is eligible.

G. Trial work experience for individuals with significant disabilities. Prior to any determination that an individual with a disability is ~~incapable of benefiting~~ unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the department shall ~~explore~~ conduct an exploration of the individual's abilities, capabilities, and capacity to perform in a realistic work situation in accordance with 34 CFR 361.42 to determine whether or not there is clear and convincing evidence to support such a determination. The department shall develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences, which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual. The plan for trial work shall include:

1. Trial work experiences which may include:

a. Supported employment,

b. On-the-job training, and

c. Other experiences using realistic integrated work settings.

2. Appropriate supports to accommodate the needs of the individual during the trial work experiences that include:

a. Assistive technology devices and services, and

b. Personal assistance services.

3. Trial work experiences of sufficient variety and over a sufficient period of time for the department to determine there is:

a. Sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

b. Clear and convincing evidence that due to the severity of the individual's disability, the individual is incapable of benefitting from the provision of vocational rehabilitation services in terms of an employment outcome.

22VAC30-20-60. ~~Extended evaluation for individuals with significant disabilities.~~ (Repealed.)

~~A. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the department is able to make an eligibility determination for vocational rehabilitation services, the department shall conduct an extended evaluation to make the determination that (i) there is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.~~

~~B. During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.~~

~~C. During the extended evaluation period, the department shall develop a written plan for providing services that are necessary to make the determinations in subsection A of this section. The department may provide during this period only those services that are necessary to make these two determinations. (34 CFR 361.42)~~

~~D. The department shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.~~

~~E. The department shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the department determines that (i) there is sufficient evidence to conclude that the individual can benefit from vocational rehabilitation services in terms of an employment outcome or (ii) there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.~~

22VAC30-20-70. Certification of eligibility.

~~A. For vocational rehabilitation services, before or at the same time the applicant is accepted for services, the department shall certify that the applicant has met the basic eligibility requirements as specified in 22VAC30-20-40.~~

~~B. For extended evaluation, as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be certification that the applicant has met the requirements as specified in 22VAC30-20-60.~~

Before developing an individualized plan for employment as specified in 22VAC30-20-110, the department shall certify that the applicant has met the basic eligibility requirements as specified in subsection A of 22VAC30-20-40.

22VAC30-20-80. Procedures for ineligibility determination.

A. Certification of ineligibility. If the department determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the department shall:

1. Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

2. Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a department personnel determination in accordance with 22VAC30-20-181;

3. Provide the individual with a description of services available under the Client Assistance Program and information on how to contact that program;

4. Refer the individual (i) to other training or employment-related programs that are part of the one-stop ~~centers~~ service delivery system that can address the individual's training or employment related needs or~~,~~ (ii) if the ineligibility determination is based on a finding that the individual is incapable of achieving or has chosen not to pursue an employment outcome as defined in 22VAC30-20-10, to ~~local extended employment providers; and~~ federal, state, or local programs or service providers, including as appropriate, independent living programs and extended employment providers, best suited to meet the individual's rehabilitation needs; and

5. Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. The review need not be conducted in situations in which the individual has refused it, the individual is no longer present in ~~the state~~ Virginia, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

B. Case closure without eligibility determination. The department shall not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the department has made a reasonable number of attempts to contact the applicant or, if

appropriate, the applicant's representative to encourage the applicant's participation.

22VAC30-20-95. Information and referral services.

A. The department shall implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the department's order of selection criteria for receiving vocational rehabilitation services if the department is operating under an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.

B. The department shall refer individuals with disabilities to other appropriate federal and state programs, including other components of the statewide workforce investment system. In making these referrals, the department shall:

1. Refer the individuals to federal or state programs, including programs carried out by other components of the statewide workforce ~~investment~~ development system, best suited to address the specific rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program; ~~and~~

2. Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in extended employment if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

3. Inform the individual that if he initially chooses not to pursue an employment outcome, he can seek services from the department at a later date if, at that time, he chooses to pursue an employment outcome;

4. Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration; and

5. Provide the individual who is being referred (i) a notice of the referral by the department to the agency carrying out the program; (ii) information identifying a specific point of contact within the agency to which the individual is being referred; and (iii) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

22VAC30-20-100. The individualized plan for employment procedures.

A. General requirements.

1. ~~An individualized plan for employment meeting the requirements of this section shall be developed and implemented in a timely manner for~~ For each individual determined to be eligible for vocational rehabilitation services or, if the department is operating under an order of selection in accordance with 22VAC30-20-90, for each eligible individual to whom the department is able to provide services~~. Services shall be provided in accordance with the provisions of the individualized plan for employment.~~, an individualized plan for employment meeting the requirements of this section shall be developed and implemented in a timely manner, not to exceed 90 days after the individuals eligibility determination date. This 90-day deadline for developing the individualized plan for employment may be extended if the department and the eligible individual agree to an extension of the deadline to a specific date by which the plan shall be developed.

2. The individualized plan for employment must be designed to achieve a specific employment outcome as defined in 22VAC30-20-10.

3. The department shall conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or if the department is operating under an order of selection, the department shall conduct an assessment for each eligible individual to whom the department is able to provide services. The purpose of this assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

a. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individualized plan for employment shall be determined based on data from assessment of eligibility and priority of services under 22VAC30-20-30.

b. If additional data are necessary to determine the employment outcome and the nature and scope of services, the department shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible. In preparing the comprehensive assessment, the department shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the

individualized plan for employment. This includes information (i) available from other programs and providers, particularly information used by the education system and the Social Security Administration; (ii) provided by the individual and the individual's family; and (iii) obtained under the assessment for determining the individual's eligibility and vocational needs.

~~3.~~ 4. The individualized plan for employment shall be a written document prepared on forms provided by the department.

~~4.~~ 5. Vocational rehabilitation services shall be provided in accordance with the provisions of the individualized plan for employment. An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment with or without assistance from the department or other entity. The individualized plan for employment shall be approved and signed by the qualified vocational rehabilitation counselor employed by the department and the individual or, as appropriate, the individual's representative. The department shall establish and implement standards for the prompt development of individualized plans for employment for the individuals identified in subdivision 1 of this subsection, including timelines that take into consideration the needs of the individual.

~~5.~~ 6. The department shall promptly provide each individual or, as appropriate, the individual's representative a written copy of the individualized plan for employment and its amendments in the native language or appropriate mode of communication of the individual or, as appropriate, the individual's representative.

~~6.~~ 7. The department shall advise in writing each individual or, as appropriate, the individual's representative of all department procedures and requirements affecting the development and review of an individualized plan for employment, including the availability of appropriate modes of communication.

~~7.~~ 8. The individualized plan for employment for a student with a disability ~~who is receiving special education services~~ must be ~~coordinated with the~~ developed in consideration of the student's individualized education program ~~for that individual in terms of goals, objectives, and services identified in the individualized education program.~~ or services under § 504 of the Act, as applicable, and the plans, policies, and procedures and terms of interagency agreement with the state agency and education officials designed to facilitate the transition of students with disabilities from the receipt of educational services to the receipt of vocational rehabilitation services.

9. The department shall provide individuals entitled to benefits under Title II or Title XVI of the Social Security Act information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including benefits planning.

B. Individualized plan for employment review. The department shall review the plan with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in achieving the identified employment outcome. The plan may be amended as necessary if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services. Amendments to the plan do not take effect until agreed to and signed by the individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the department.

22VAC30-20-110. Individualized plan for employment content.

A. Regardless of the option in 22VAC30-20-100 chosen by the eligible individual for developing the individualized plan for employment, each plan for employment shall include the following:

1. A description of the employment outcome, as defined in 22VAC30-20-10, that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice of the individual~~, and results in employment in an integrated setting;~~ that is consistent with the general goal of competitive integrated employment;

2. A description of the vocational rehabilitation services provided under 22VAC30-20-120 that are needed to achieve the employment outcome, (i) including, as appropriate, the provision of assistive technology devices and services and personal assistance services, including training in the management of those services, and ~~providing in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;~~ (ii) in the case of an eligible student or youth with a disability, the specific transition and support services needed to achieve the employment outcome or projected post-school employment outcome;

3. A provision for services to be provided in the most integrated setting that is appropriated for the services involved and consistent with the informed choice of the eligible individual;

~~3.~~ 4. Timelines for the achievement of the employment outcome and for the initiation of services;

~~4.~~ 5. A description of the entity ~~or entities~~ chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational

rehabilitation services and the methods used to procure those services;

~~5.~~ 6. A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome;

~~6.~~ 7. The terms and conditions of the individualized plan for employment, including, as appropriate, information describing (i) the responsibilities of the department, (ii) the responsibilities the eligible individual shall assume in relation to achieving the employment outcome, (iii) the extent of the eligible individual's participation in paying for the cost of services, (iv) the responsibility of the individual with regard to applying for and securing comparable services and benefits as described in 22VAC30-20-170, and (v) the responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in 22VAC30-20-170;

~~7.~~ 8. A statement of the rights of the individual under this chapter and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of determinations made by department personnel;

~~8.~~ 9. A statement of the availability of the Client Assistance Program;

~~9.~~ 10. The basis on which the individual has been determined to have achieved an employment outcome;

~~10.~~ 11. A statement concerning the expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

~~11.~~ 12. A description of the terms and conditions for the provision of any post-employment services; and

~~12.~~ 13. If appropriate, a statement of how post-employment services shall be provided or arranged through other entities as the result of arrangements made pursuant to the comparable benefits and services requirement.

B. Supported employment. In addition to the requirements in subsection A of this section, the individualized plan for employment for an individual with a most significant disability for whom supported employment has been determined appropriate shall also:

1. Specify the supported employment services to be provided by the department;

2. Specify the expected extended services needed, which may include natural supports;

3. Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

4. Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

5. Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other federal or state programs;

6. To the extent that job skills training is provided, identify that the training shall be provided on site; and

7. Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

C. Student with a disability. In addition to the requirements in subsection A of this section, the individualized plan for employment for a student with a disability shall be coordinated with the individualized education program or services under § 504 of the Act, as applicable for that individual, in terms of the goals, objectives, and services identified in the education program.

22VAC30-20-120. Scope of vocational rehabilitation services for individuals.

A. Pre-employment transition services. The department, in collaboration with the local education agencies involved, shall provide or arrange for the provision of pre-employment transition services for all students with disabilities as defined in 22VAC30-20-10 who are in need of such services regardless of whether the student has applied or been determined eligible for vocational rehabilitation service.

1. The department shall provide the following required pre-employment transition services:

a. Job exploration counseling;

b. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), provided in an integrated environment to the maximum extent possible;

c. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

d. Workplace readiness training to develop social skills and independent living; and

e. Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

2. The department may provide the following authorized pre-employment transition services if funds are available and remaining after the provision of the required activities described in subdivision 1 of this subsection:

a. Implement effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

b. Develop and improve strategies for individuals with intellectual disabilities and individuals with significant disabilities to (i) live independently, (ii) participate in postsecondary education experiences, and (iii) obtain, advance in, and retain competitive integrated employment;

c. Provide instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

d. Disseminate information about innovative, effective, and efficient approached to achieve the goals of this subsection;

e. Coordinate activities with transition services provided by local education agencies under the IDEA;

f. Apply evidence-based findings to improve policy, procedure, practice, and the preparation of personnel in order to better achieve the goals of this section;

g. Develop model transition demonstration projects;

h. Establish or support multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

i. Disseminate information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

3. Each local office of the department shall carry out the responsibilities of:

a. Attending individualized education program meetings for students with disabilities when invited;

b. Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment, other employment opportunities available throughout the school year, and apprenticeships;

c. Working with schools, including those carrying out activities under § 614(d) of IDEA, to coordinate and ensure the provision of pre-employment transition services under this section; and

d. When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act.

B. Services for individuals who have applied for or been determined eligible for vocational rehabilitation services. As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's ~~informed choice~~ individualized plan for employment, the department shall ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

1. Assessment for determining eligibility and priority for services and assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with 22VAC30-20-10.

2. Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

3. Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce ~~investment~~ development system and to advise those individuals about the Client Assistance Program.

4. Physical and mental restoration services, in accordance with the definition ~~of~~ in 22VAC30-20-10, to the extent that financial support is not readily available from a source other than the department (such as through health insurance or comparable services and benefits as defined in 22VAC30-20-10).

a. Eligibility requirements.

(1) Stable or slowly progressive. The physical or mental condition shall be stable or slowly progressive. The condition shall not be acute or transitory, or of such recent origin that the resulting functional limitations and the extent to which the limitations affect occupational performance cannot be identified.

(2) Refusal of service. When an individual has a physical or mental disability with resulting limitations that constitute a barrier to employment, and when in the opinion of licensed medical personnel these limitations can be removed by physical or mental restoration

services without injury to the individual, the individual shall not be eligible for any rehabilitation services, except counseling, guidance and placement if he refuses to accept the appropriate physical or mental restoration services. A second opinion may be provided at the individual's request. In the event of conflicting medical opinions, the department shall secure a third opinion and the decision shall be made on the two concurring opinions.

b. Provision of physical and mental restoration services. These services shall be provided only when:

(1) Recommended by a licensed practitioner;

(2) Services are not available from another source; and

(3) They are provided in conjunction with counseling and guidance, and other services, as deemed appropriate.

The department shall not make case expenditures for acute or intermediate medical care except for medical complications and emergencies that are associated with or arise out of the provision of vocational rehabilitation services under an individualized plan for employment and that are inherent in the condition under treatment.

c. Services not sponsored by the department. The department, in consultation with appropriate medical resources, shall determine those restoration services that shall be provided by the department. The following procedures shall not be provided:

(1) Experimental procedures;

(2) High risk procedures;

(3) Procedures with limited vocational outcomes or procedures not related to the vocational outcome; and

(4) Procedures with uncertain outcomes.

5. Vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology engineering, mathematics (including computer science), medicine, law, or business; books, tools, and other training materials, except that no training or training services in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, ~~or~~ hospital schools of ~~nursing)~~ nursing, or any other postsecondary education institution) may be paid for with funds under this section unless maximum efforts have been made by the department and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

All training services provided shall be related to attainment of the vocational objective or provide for the determination of eligibility for vocational rehabilitation services. Vocational training includes any organized form of instruction that provides the knowledge and skills essential for performing the tasks involved in an occupation. Vocational training may be obtained in institutions such as colleges, universities, business schools, nursing schools, and trade and technical schools. It may also be obtained by on-the-job training, apprenticeship programs, tutorial training, or correspondence study.

a. Approved training institutions. Only training institutions approved in accordance with the department's vendor approval process shall be used.

b. College and university academic training.

(1) Academic requirements. The individual shall take sufficient academic credit hours based on the requirement of the college attended for classification as a full-time student, unless this is, in the opinion of the department, contraindicated by the individual's disability. Courses shall meet the institution's requirement ~~towards~~ toward the obtainment of the degree or certificate. Continuation of financial assistance by the department shall be dependent upon the individual maintaining the grade average required by the institution for the particular course of study. When the institution has no grade requirement, continuation of financial assistance by the department shall be dependent upon the individual maintaining a "C" average calculated over the academic year. When the individual fails to maintain the required academic grade average, assistance may be discontinued. The department's assistance may be reinstated when the individual completes one semester or quarter with the minimum required grade average.

Each individual shall be advised that failure to provide grades to the department shall be grounds for termination of departmental financial assistance.

(2) Graduate degree program. The department shall assist eligible individuals in securing a graduate degree only when it is judged essential to achieving an employment goal agreed to by the department and the individual.

(3) Virginia colleges and universities. Vocational training, including college or university training, shall be provided by the department in department-approved institutions located within the boundaries of the Commonwealth, unless such training is not available within the Commonwealth. Institutions in the areas of Washington, D.C.; Bristol-Johnson City-Kingsport, Tennessee; the city of Bluefield, West Virginia; and other cities where the services may be provided more effectively and economically and shall be treated as if located in Virginia.

(4) Tuition and mandatory fees. The department may pay tuition for college and university training in an amount not in excess of the highest amount charged for tuition by a state-supported institution or the rate published in the

catalog, whichever is less, except where out-of-state or private college is necessary. Published tuition costs in excess of the highest amount charged by a state-supported institution may be necessary and may be paid by the department if no state-supported institution is available that offers the degree program needed to achieve the established employment goal, if no state-supported program offers disability-related supports to enable the individual to achieve the established employment goal, or if an out-of-state or private program is more economical for the department.

(5) Scholarships and grants. Training services in institutions of higher education shall be paid for with departmental funds only after maximum efforts have been made by the individual to secure assistance in whole or in part from other sources; however, any individual eligible for vocational rehabilitation training services but not meeting the financial need test of the department may be provided an assistance grant annually in an amount not to exceed the equivalent of one quarter's tuition of a full-time community college student.

c. Correspondence study. The correspondence study training may be authorized only when:

(1) The individual requires specific preliminary training in order to enter a training program or training cannot be arranged by any other method; and

(2) Satisfactory progress is maintained.

d. On-the-job training. The department may enter into agreements with employers in the private or public sector to provide on-the-job training services. The terms and conditions of each individual agreement shall be established by the department.

e. Part-time training. Part-time training may be utilized only when the severity of the individual's disability shall not allow the individual to pursue training on a full-time basis. Part-time training shall be authorized only at department-approved facilities and schools.

f. Work adjustment training. Work adjustment training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

g. Prevocational training. Prevocational training may be provided if needed for the individual to engage in subsequent vocational rehabilitation services as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

h. Tutorial training. Tutorial training may be provided if needed for the individual to achieve a vocational goal as indicated by the thorough diagnostic study assessment of medical, vocational, psychological, and other factors. This service may be provided only by the department or approved vendors.

i. Other higher education training concerns.

(1) Required textbooks and supplies. The maximum amount of departmental financial assistance for required textbooks and supplies (pencils, paper, etc.) shall not exceed the amount determined by the institution for books and supplies in the student's school budget.

(2) Required training materials. Training materials may be provided when required by the instructor.

6. Maintenance in accordance with the definition of that term in 22VAC30-20-10.

a. Clothes. Clothes shall be provided when specifically required for participation in a training program or for placement in a specialized job area as determined by the department.

b. Room, board, and utilities. The maximum rate paid for room, board, and utilities shall be established annually by the department.

(1) Training cases. The maximum amount of departmental financial assistance for room and board at a training institution (college, vocational school, rehabilitation center facility), when the institution is able to provide room and board, shall not exceed the published room and board rates charged by the institution, or the actual cost, whichever is less.

(2) While living at home. Maintenance shall be provided for an individual living at home only when the individual's income supports the family unit of the individual, when it is more cost effective for the department, or when it is in the best interest of the individual's vocational rehabilitation program based on mutual agreement of the rehabilitation counselor and the individual.

7. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in 22VAC30-20-10. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

a. Transportation costs. The department shall pay the most economical rate for accessible public transportation. When public transportation is not available, or the individual, because of disability, cannot travel by public

transportation, transportation may be provided at a rate established by the department.

b. For and during training services. When the individual must live at the training location, the department may only pay for a one-way trip from the residence to the training location at the beginning of the training and a one-way trip from the training location to the residence or job site at the conclusion of the training program. Transportation may be paid to and from the residence in case of emergency (severe illness or death in family~~;~~, acute business emergency, or prolonged school closing such as Christmas holidays). Local bus fare also may be provided. When the individual's physical condition is such that travel by public conveyance is impossible, taxi fare may be allowed from place of residence to training site and return. When the individual lives at home and the training site requires daily transportation, the cost of such transportation may be paid.

8. Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome. Services to family members of the individual may be provided when such services may be expected to contribute substantially to the determination of vocational rehabilitation potential or to the rehabilitation of the individual. In order for the department to furnish these services, they shall not be available from any other source.

a. Family member is defined in 22VAC30-20-10.

b. Day care services for dependent children. The department may pay up to the amount paid per child, per day, by the local social services department in the locality in which the child is located. When more than one child is involved, rates for the additional children may be lower. When satisfactory accommodations can be secured at a rate lower than that paid by the local social services department, the lower rate shall be paid by the department.

9. Interpreter services, including sign language and oral interpreter services for individuals who are deaf or hard of hearing; tactile interpreting services for individuals who are deaf-blind provided by qualified personnel; and reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

a. Upon request of the individual or as needed, these services may be provided at any stage during the rehabilitation process. Interpreting may be primarily in the form of sign language (manual method) or oral interpretation (oral method).

b. The department shall pay for interpreting services when these services contribute to the individual's vocational rehabilitation program.

c. The interpreter shall hold at least one of the credentials approved by the Virginia Department for the Deaf and Hard-of-Hearing pursuant to § 51.5-113 of the Code of Virginia.

d. When individuals with deafness are in a training program, the department shall arrange for note taking or reader services, unless the individual indicates such service is not needed or desired.

10. Rehabilitation technology, in accordance with the definition of that term in 22VAC30-20-10, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

a. Telecommunications system. Services related to use of a telecommunications system shall meet established federal or state health and safety standards and be consistent with written state policies.

b. Sensory and other technological aids and devices. The department may provide electronic or mechanical pieces of equipment or hardware intended to improve or substitute for one or more of the human senses, or for impaired mobility, or motor coordination.

Services related to use of sensory and other technological aids and devices shall meet established federal or state health and safety standards and be consistent with state law and regulations.

(1) An otological evaluation may be required, and an audiological examination shall be required before the department may purchase a hearing aid.

(2) The department shall purchase hearing aids only for those individuals identified as benefiting in terms of employability as a direct result of such aid.

11. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce ~~investment~~ development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

12. Job related services, including job search and placement assistance ~~and~~, job retention services, follow-up services, and follow-along services. Placement shall be in accordance with the mutually agreed upon vocational objective and is the responsibility of both the individual and the department.

13. Post-employment services, in accordance with the definition of that term in 22VAC30-20-10.

a. Selection criteria. All individuals whose vocational rehabilitation cases have been closed as achieving an employment outcome may be considered for post-

employment services. The department may evaluate with each individual the need for such services.

b. All of the following criteria shall be met for an individual to receive post-employment services:

(1) The individual shall have been determined to have achieved an employment outcome;

(2) The disabling medical condition shall be stable or slowly progressive;

(3) Post-employment services shall be necessary to assist the individual in maintaining employment; and

(4) The problem interfering with the individual maintaining employment does not require a complex or comprehensive rehabilitation effort, that is, a new and distinct disabling condition has not occurred that requires a new application.

If needed services exceed any of the conditions in subdivisions 13 b (1) through 13 b (4) of this ~~section~~ subsection, the department may take a new application.

14. Supported employment services, as defined in 22VAC30-20-10.

a. An individual with a most significant disability, including a youth with a most significant disability, shall be eligible for supported employment services if ~~he meets all of the following criteria~~:

~~(1) Has not worked, or has worked only intermittently, in competitive employment;~~

~~(2) Has been determined on the basis of any evaluation of rehabilitation and career needs, including a consideration of whether supported employment is a possible vocational outcome, to meet the eligibility criteria established in 22VAC30-20-40; and~~

~~(3) Has a need for ongoing support services in order to perform competitive work.~~

(1) Competitive integrated employment has not historically occurred; or

(2) Competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(3) The nature and severity of the disability results in the need for intensive supported employment services and extended services after the transition from support provided by the department in order to perform the work.

b. The following activities shall be authorized under the supported employment program:

(1) Evaluation of rehabilitation and career needs of individuals with the most significant disabilities in terms of a supported employment outcome;

(2) Development of and placement in jobs for individuals with the most significant disabilities; and

(3) Provision of time-limited services needed to support individuals with the most significant disabilities in employment, including:

(a) Intensive on-the-job skills training provided by skilled job trainers, coworkers, and other qualified individuals;

(b) Ongoing support services needed to support and maintain an individual's supported employment placement that shall include, at a minimum, twice monthly monitoring to assess the individual's employment stability;

(c) Extended services designed to reinforce and stabilize the job placement; ~~and~~

(d) Customized employment as appropriate; and

(e) Discrete post-employment services unavailable from the extended services provider that are necessary to maintain or regain the job placement or advance in employment, including ~~but not limited to~~ job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

~~c. Transitional employment services for individuals with chronic mental illness may be provided under the supported employment program. Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services. Ongoing support services shall include continuing sequential job placements until job permanency is achieved.~~

~~d.~~ c. The department shall provide for the transition of an individual with the most significant disabilities to extended services no later than ~~18~~ 24 months after placement in supported employment, unless a longer period ~~to achieve job stabilization has been established in the individualized plan for employment before an individual with a most significant disability makes the transition to extended services as defined in 22VAC30-20-10.~~ is needed to achieve the employment outcome in the individualized plan for employment and the eligible individual and the department jointly agree to extend the time.

d. The department may provide extended services as defined in 22VAC30-20-10 to a youth with the most significant disability for a period of time not to exceed four years, or until such time that a youth reaches the age of 25 years and no longer meets the definition of youth with a disability under 22VAC30-20-10.

15. Occupational licenses, tools, equipment, initial stocks (including livestock), and supplies.

a. Licenses. Licenses required for entrance into selected vocations may be provided. These may be occupational or business licenses as required by the local governing body, state board examinations required by the Department of Professional and Occupational Regulation, and motor vehicle operator's license.

b. Tools and equipment. Tools and equipment shall be provided for an individual when:

(1) They are required for a job or occupation that is best suited to the utilization of the individual's abilities and skills;

(2) The employer does not ordinarily furnish these articles; and

(3) They are for the exclusive use of the individual.

Such articles shall be for the individual's own use in the performance of his work and must remain in his possession and under his control as long as he engages in the job or occupation for which they are provided.

If the individual alleges that tools and equipment are stolen, the individual shall file a stolen property report with the local police.

Computer equipment and software shall be provided if required as indicated in subdivisions 15 b (1), 15 b (2), and 15 b (3) of this ~~section~~ subsection, or if it is necessary for vocational training.

c. Title retention and release. The department shall comply with state laws and regulations on the retention of title and release of title of equipment to individuals.

d. Repossession of tools and equipment. The department shall repossess all occupational tools and equipment to which the department retains title when they are no longer being used for the purposes intended by the individual for whom they were purchased.

16. Transition services~~, in accordance with the definition of that term in 22VAC30-20-10.~~ for students and youth with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment or pre-employment transition services for students.

17. Personal assistance services, in accordance with the definition of that term in 22VAC30-20-10.

18. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome. These include~~, but are not limited to,~~ such services as peer counseling, independent living skills training, attendant care, and attendant training. The department shall not purchase or participate in the purchase of automotive vehicles.

19. Customized employment in accordance with the definition of that term in 22VAC30-20-10.

~~19.~~ 20. Services to groups. The department may provide vocational rehabilitation services to groups of individuals with disabilities when the services may contribute substantially to the needs of the group; although the services are not related directly to the individualized employment plan of any one person with a disability.

22VAC30-20-130. Individuals determined to have achieved an employment outcome.

An individual is determined to have achieved an employment outcome and the record of service may be closed only if all of the following requirements are met:

1. The provision of services under the individual's individualized plan for employment has contributed to the achievement of an employment outcome;

2. The employment outcome is consistent with the employment outcome described in the individualized plan for employment and with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. The employment outcome is in ~~an~~ a competitive integrated setting;

4. The individual has maintained the employment outcome for a period of at least 90 days; ~~and~~

5. At the end of the applicable period under this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job; and

6. The individual is informed through the appropriate modes of communication of the availability of post-employment services.

22VAC30-20-150. Written standards for facilities and providers of services.

The department shall establish, maintain, make available to the public, and implement written minimum standards for the various types of facilities and providers of services used by the department in providing vocational rehabilitation services, in accordance with the following requirements:

1. Accessibility of facilities. Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, and § 504 of the Act, as amended, and regulations implementing these laws.

2. Personnel standards.

a. Qualified personnel. Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or state approved or recognized certification, licensing, or registration requirements or, in the absence of these requirements, other comparable requirements (including state personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

b. Affirmative action. Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in § 503 of the Act.

c. Special communication needs personnel. Providers of vocational rehabilitation services shall include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability~~;~~ and ensure that appropriate modes of communication for all applicants and eligible individuals are used.

3. Fraud, waste, and abuse. Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

22VAC30-20-170. Availability of comparable services and benefits.

A. Prior to providing any vocational rehabilitation services to an eligible individual or to members of the individual's family, except those services listed in subsection D of this section, the department shall determine whether comparable services and benefits as defined in 22VAC30-20-10 exist under any other program and whether those services and benefits are available to the individual.

B. If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's individualized plan for employment, the department shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

C. If comparable services or benefits exist under any other program but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the department shall provide vocational rehabilitation services until those comparable services and benefits become available.

D. The following services shall be exempt from a determination of the availability of comparable services and benefits under subsection A of this section: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling, guidance, and referral services; job-related services, including job search and placement services; job retention services; follow-up services; rehabilitation technology; and post-employment services consisting of those services listed in this subsection.

E. The requirements of subsection A of this section ~~also~~ shall not apply if the determination of the availability of comparable services and benefits under any other program would interrupt or delay (i) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment; (ii) an immediate job placement; or (iii) the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk based on medical evidence provided by an appropriate qualified medical professional~~; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits~~.

22VAC30-20-181. Review of determinations made by the department.

A. An applicant, an eligible individual, a recipient of services, or, if appropriate, an individual's representative who is dissatisfied with any determination made by department personnel that affects the provision of vocational rehabilitation services may request a timely review of the determination.

B. Informal dispute resolution.

1. A request for review shall be made within 60 days after the determination. The applicant, eligible individual, or, if appropriate, the individual's representative may request a meeting with the supervisor of the staff member who made the determination and request an informal administrative review conducted by the supervisor. Recipients of services who are not receiving vocational rehabilitation services may be offered access to the informal dispute resolution process at the discretion of the supervisor.

2. Within 10 working days of the request, the supervisor shall send a written decision and grounds to the applicant or eligible individual, with a copy to the individual's representative, if applicable, and it shall become part of the case record.

3. The informal dispute resolution process shall not be used to deny or delay the right to proceed directly to a hearing conducted and concluded within the time period established under subdivision D 1 of this section.

C. Mediation.

1. The department shall provide a mediation process conducted by a qualified and impartial mediator as defined in 22VAC30-20-10, who shall be selected from a list of

qualified and impartial mediators maintained by the department. Mediation shall be requested within 60 days after a determination or informal administrative review decision. The department shall include in the mediation process the guardian of an applicant ~~or~~, eligible individual, or recipient of services who has been judged incompetent. Participation in the mediation process is voluntary on the part of the applicant or eligible individual and on the part of the department. Mediation may be requested while a hearing is pending but shall not be used to deny or delay the applicant or eligible individual's right to a hearing conducted and concluded within the time period established under subdivision D 1 of this section.

2. The mediator shall schedule and conduct the mediation sessions in a timely manner and in a location convenient to the parties in dispute. The mediator shall afford both parties an opportunity to be represented by counsel or other advocate and to submit evidence or other information. Discussions that occur during mediation remain confidential and shall not be used as evidence in any subsequent hearing or civil proceeding, and parties shall be required to sign a confidentiality pledge prior to mediation. Either party or the mediator may terminate mediation at any time, and the applicant, eligible individual, or the department may seek resolution through a hearing.

3. Any agreement reached by the parties in a mediation shall be described in a written mediation agreement. Both parties to the dispute shall have an opportunity to review the agreement with their representative, supervisor, or legal advisor before signing it. An agreement signed by both parties shall become part of the case record, with a copy given to the applicant or eligible individual and any representative.

4. The cost of the mediation process shall be paid by the department, but the department is not required to pay for any costs related to the representation of an applicant or eligible individual.

D. ~~Due~~ Impartial due process hearing.

1. The applicant, eligible individual, recipient of services, or, if appropriate, individual's representative may request a hearing within 60 days after the determination to be reviewed, meeting or informal administrative review decision under subsection B of this section, or mediation refusal or mediation termination date. Department personnel may request a hearing within 60 days after termination of the mediation process under subsection C of this section.

a. The hearing shall be scheduled and conducted by a qualified and impartial hearing officer as defined and selected according to subdivision 2 of this subsection.

b. The hearing officer shall conduct the hearing within 60 days of the department receiving an individual's request, unless informal resolution is achieved before the 60th day, or the parties agree to a specific extension of time, or the hearing officer grants a postponement request for good cause that would result in a fair representation of the issues.

c. The hearing officer shall provide both parties to the dispute an opportunity to present evidence, information, and witnesses; to be represented by counsel or other appropriate advocate; and to examine all witnesses, information, and evidence. All testimony shall be given under oath. Hearsay testimony and redundant evidence may be admitted at the discretion of the hearing officer. Because the hearing officer cannot issue subpoenas, the department shall be responsible for the appearance of current department personnel on the witness list of either party.

d. Within 30 days after the hearing, the hearing officer shall issue a written decision with a full report of the findings and grounds for the decision to the applicant, eligible individual, individual's representative, and the department. The decision shall be based on the provisions of the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements. The hearing officer's decision shall be final, except that a party may request an impartial administrative review if the state has established procedures for review, and a party may bring a civil action under subsection G of this section.

2. The hearing officer for a particular case shall be selected randomly by the department from among the pool of persons qualified to be an impartial hearing officer, as defined in 34 CFR 361.5(b)(22) and 29 USC § 722(b) and (d), who are identified jointly by the commissioner and those members of the State Rehabilitation Council designated in § 102(d)(2)(C) of the Act (29 USC § 722(b) and (d)).

E. Administrative review of hearing officer decision.

1. If the state has established procedures for an administrative review, the request and statutory, regulatory, or policy grounds for the request shall be made in writing to the department within 20 days of the ~~hearing decision date~~ mailing of the impartial hearing officer's decision. The review shall be a paper review of the entire hearing record and shall be conducted by a designee of the Governor's office who shall not delegate the review to any personnel of the department.

2. The reviewing official shall provide both parties an opportunity to submit additional written evidence and information relevant to the final decision concerning the matter under review. The reviewing official may not overturn or modify the hearing officer's decision, or any

part of that decision, that supports the position of the applicant or eligible individual, unless the reviewing official concludes, based on clear and convincing evidence, that the hearing officer's decision is clearly erroneous on the basis of being contrary to the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements.

3. Within 30 days after the request, the reviewing official shall issue an independent decision and full report of the findings and the statutory, regulatory, or policy grounds for the decision to the applicant, eligible individual, individual's representative, and department. The decision of the reviewing official is final and shall be implemented pending review by the court if either party chooses under subsection G of this section to bring a civil action regarding the matter in dispute.

F. Informing affected individuals. The department shall inform, through appropriate modes of communication, all applicants and eligible individuals of their right to request a review of a determination made by department personnel that affects provision of vocational rehabilitation services, including the names and addresses of individuals with whom mediation and hearing requests may be filed and how the mediator and hearing officer shall be selected; their right to proceed directly to a hearing; their right to an informal administrative review; their right to pursue mediation; and their right to contact the Client Assistance Program to assist during mediation and hearing processes. Notification shall be provided in writing at the time of application for vocational rehabilitation services; assignment to a priority category if the department is operating under an order of selection; individualized plan for employment development; and reduction, suspension, or termination of services.

G. Civil action. Any party who disagrees with the findings or decision of an impartial hearing officer under subsection D of this section or an administrative review under subsection E of this section shall have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this subsection, the court receives the records related to the impartial due process hearing and the records related to the administrative review, if applicable; hears additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

22VAC30-20-190. Protection, use, and release of personal information.

A. Purpose. The purpose is to establish policies and procedures to protect current and stored personal information and for the proper dissemination of this information in accordance with the statutes of the Code of Virginia, Virginia Freedom of Information Act, ~~and~~ Virginia Privacy Protection Act, and the Workforce Innovation and Opportunity Act. ~~Hereafter clients~~ Clients shall be referred to as data subjects in this section.

B. Application. This applies to all employees of the department, consultants, affiliates and volunteers.

C. Policies. The department shall:

1. Comply with state statutes when releasing any information regarding data subjects by:

a. Disclosing information or records to the data subject who is 18 years old, except:

(1) If data subject has been legally declared as incompetent then the right to access information has been granted to the individual or committee which has been appointed as guardian, authorized ~~agent or~~ agents~~,~~ or ~~representative or~~ representatives.

(2) When the treating physician has written on a mental or medical record: "In my opinion a review of such records by the data subject would be injurious to the data subject's physical or mental health or well being." This does not preclude access to that report by authorized agents or representatives. The treating physician is the only professional who, by statute, has the authority to label and deny access to a mental record by the data subject. Access to other information is not restricted.

b. Disclosing information or records only to the parent or guardian for the data subject who is under 18 years old~~.~~;

2. Follow procedures which ensure that all records and other personal, identifying data are treated as confidential information, meaning that other than regular access authority and the exceptions which are permitted by code and statutes, no expressed personal or documented information shall be released to a third party without the written, informed consent of the data subject or his authorized agent or by court order;

3. Obtain and document only that information which is necessary to plan and deliver rehabilitation services;

4. Maintain and post the department's access list which designates staff positions of those who have the privilege of reviewing and checking out records;

5. Assign to all individuals as defined in subsection B of this section and acknowledge written requests for information which are identified and occur after a data subject's application for services;

6. Charge for copies of information unless the request is from those who need information to assist data subject in the rehabilitation program. The rate shall be $.15 per page or the actual cost, whichever is less; and

7. Keep records in offices unless in accordance with a court order, statute, or by special authorization from the department representative.

D. Procedures for disclosing information.

1. Handling disclosures.

a. Each request to disclose information shall be handled during normal business hours.

b. Each written request shall be responded to within 14 working days.

c. Before an employee releases information to a person or organization other than those identified on the access list, written, informed consent must be given by data subject or the authorized agent.

When there is need to release information regarding data subjects, informed consent forms should be initiated through the data subject's counselor. Forms are completed prior to releasing information and filed in data subject's record.

d. Any employee who releases information after informed consent is obtained must document data subject's record with employee's name, date, the purpose for giving specific information, and to whom information was given. These statements are also documented when the record has been reviewed by or copied for the data subject.

2. Accessing information for specific situations.

a. A data subject's request to review personal record.

(1) When a data subject requests a review of ~~their~~ his case records, the individual should be referred to their counselor, or in his absence, the counselor's supervisor. This employee is responsible for confirming the data subject's age, and competency status to access information in his own behalf.

(2) For those data subjects who are ~~under~~ younger than age 18 years or who have been declared incompetent, the department shall explain right to access and assist data subject by coordinating the desired review with parent or authorized agent.

(3) For data subjects who have the right to access information, the department should obtain the case record and review contents to learn if there are any mental records which a treating physician has identified as not to be reviewed. These are the only reports which can and must be removed before access.

(4) The department gives data subject their case record and is available throughout the review to interpret reports or to assist the data subject, who may wish to seek additional information regarding contents. The data subject may choose to review their case record without interpretation.

b. Access by parents, guardians, or authorized agents.

(1) When a data subject is a minor or has been legally declared as incompetent, the parent, guardian, or authorized agent, is expected to furnish personal identification and sign a statement regarding their relationship to data subject.

(2) When a data subject is 18 years or older and there is a parent who wants to review information or accompany data subject to a data subject oriented meeting, the data subject shall sign an "Authorization for Release of Information," form prior to disclosure.

c. Access by "significant others" (other family members or friends).

(1) When a data subject is a minor or has been legally declared as incompetent, the parent, guardian, or authorized agent, shall give written, informed consent prior to disclosure.

(2) When a data subject is 18 years or older, he shall give written, informed consent prior to disclosure.

d. Access by third parties.

(1) Unless required by law, or ~~this~~ the department, no disclosure shall be made to third parties without written, informed consent from the data subject or the legally authorized agent. Upon disclosure, third parties shall be advised to maintain confidentiality with no redisclosure of information.

(2) The following information is either required by law or permitted by mission of the agency and shall be disclosed without the data subject's authorization:

(a) Within the department, employees shall be given information which is relevant to case management or research requirements.

(b) The department's medical consultants may release information to another physician for consultation or hospitalization purposes.

(c) For emergencies:

~~(1)~~ (i) Telephone and face-to-face disclosure may be made to any person for an emergency when it is reasonable to believe that a delay shall result in serious bodily injury, death or deterioration of the physical or mental condition of data subject. Examples: (i) an emergency admission or commitment to a hospital; (ii) an inquiry from an acute care hospital, data is limited to answers for specific information from the data subject's case record; and (iii) an inquiry by law-enforcement officials regarding an emergency situation. Information is

limited to that which is necessary to deal with the emergency.

~~(2)~~ (ii) When it becomes necessary to release information in these circumstances, the responsible department party shall enter the following in the data subject's case record: (i) the date the information was released; (ii) the person to whom information was released; (iii) the reason the information was released; (iv) the reason written, informed consent could not be obtained; and (v) the specific information which was released.

(d) For court orders and subpoena, all requests for information by court orders shall be processed by the data subject's counselor unless there is some question about the need for legal advice. In those situations, the department representative shall decide if contact needs to be made with the department representative in the Attorney General's office prior to compliance. This contact shall be made by the commissioner's designee.

(e) The Virginia Department of Social Services shall be given, upon request, information about the location, income, and property of data subjects who have abandoned, deserted, or failed to support children and their caretakers who are receiving public assistance. No other information may be released.

(f) The Virginia Department of Health shall be given access to medical records in the course of an investigation, research, or studies of diseases or deaths which are of public health importance.

(g) The Virginia Department of Health may be provided with abstracts of records of data subjects having malignant tumors or cancers. Such abstracts may include the name, address, sex, race, and any other medical information required by law.

(h) Information may be released as requested for a formal investigation to the Virginia Department of Health, State Medical Examiner.

e. Access by special interest third parties.

(1) Release of information shall include a written, informed consent.

(2) Except for public events, no data other than directory information shall be released to the news media without the written, informed consent of the data subject or the authorized agent.

(3) No information shall be released to law-enforcement officers without the written, informed consent of the data subject or the authorized agent, or without judicial order.

(4) Audio tapes, video tapes, computerized data or other media reproduction are considered as confidential records and shall be treated like written material.

E. Procedure for changing a record.

1. Revoking an authorization of consent.

a. If anyone, such as an attorney, has a data subject sign an authorization which rescinds all prior authorizations, this negates all previous authorizations. The department shall make this a part of the case record.

b. When the revocation clause appears in the record, the department no longer has the authority to disseminate additional information other than to those on the regulation department access list.

c. If the data subject is currently a client, their counselor shall record any authorization which includes a revocation clause. This means that all routines for forwarding reports to those not on department's access list shall be stopped.

d. The rehabilitation counselor shall notify the Wilson Workforce and Rehabilitation Center (WWRC) counselor or sponsor of the situation and inform the data subject of the restriction.

e. The department shall acknowledge and comply with the attorney's request for information. A separate letter shall also advise the attorney that this clause denies access of information to persons or organizations which are responsible for continuing rehabilitation services. The department shall advise the attorney of the need to be provided with an additional statement which reinstates communication and correspondence.

2. Reinstating consent. When a satisfactory reinstatement statement and new consent is received from the attorney and the data subject, the department shall file the additional authorization and inform appropriate department counterparts about the new release.

3. Challenging and correcting a record by the data subject or agent.

a. The data subject or agent has a right to contest the accuracy or completeness of any personal record, except access to challenging or correcting a treating physician's mental record which has been identified as not to be reviewed by the data subject.

b. Data subjects who are currently clients shall be instructed by their counselor that any request to correct, amend, or delete information is to be done in writing, giving specific reasons why information is being contested.

c. The counselor shall submit this statement to their immediate supervisor.

d. The Supervisor shall interview staff, as necessary, examine pertinent records, and submit a written recommendation to their regional or center director. This

recommendation is to include a statement and rationale to either uphold or to change existing records.

e. When the regional or center director determines that information which is being disputed is, in fact, incomplete, inaccurate, not pertinent, untimely, or unnecessary to be retained, that individual shall instruct the original writer to amend the report in question. If the originator is no longer an employee, the regional or center director or a designee shall prepare the amended report. A copy of the amended report shall be sent to the local office for the client's file.

f. The department shall disseminate the amended version of the report to any previous recipients and as part of the record for all further requests for information.

g. The department shall notify the data subject in writing of the decision. A copy of that notice is to be filed in data subject's local office file.

h. If the investigation does not change the record or resolve the dispute, the data subject may file a statement stating what he believes to be an accurate or complete version of that information. This statement becomes a permanent part of the record. The department shall forward a copy to all previous recipients who have access to the information being disputed.

F. Procedures of safeguarding records.

1. Maintaining security of records.

a. Data subject records are the property of the department and are entrusted to personnel who safeguard records from loss, defacement, or use by unauthorized persons.

b. No record is to be defaced by marking, underlining, or entering notations by anyone other than the originator of any document.

c. When a record is requested, either by court or a directive from the commissioner, a certified copy of the record shall be provided by the counselor.

d. Whoever removes records has the responsibility to assure confidentiality of content while it is out. It must never be left unattended in areas which are accessible to unauthorized individuals.

e. Confidentiality shall be maintained in work areas where casework documents are being prepared, filed, or distributed.

2. Violating confidentiality. Individuals who violate security standards or the confidentiality code by releasing information without obtaining or following procedures may be subject to their name being removed from the access list and to discipline under the standards of conduct.

G. Department's access list. The following have been approved to have access to the case records of clients served by the department:

1. Administrative and supervisory staff engaged in dutiful performance of their job which requires access to individual client files;

2. Service delivery personnel including~~, but not limited to,~~ rehabilitation counselors, vocational evaluators, or psychiatrists; and

3. Clerical personnel as appropriate.

22VAC30-20-195. Youth with disabilities seeking subminimum wage employment.

A. Prior to youth with disabilities starting subminimum wage employment, the department shall provide youth with disabilities documentation upon completion of the following actions:

1. Appropriate pre-employment transition services available to a student with a disability under subsection A of 22VAC30-20-120 or transition services under IDEA.

2. Application for vocational rehabilitation services in accordance with subsection B of 22VAC30-20-20 with the result that the individual was determined:

a. Ineligible for vocational rehabilitation services in accordance with 22VAC30-20-80; or

b. Eligible for vocational rehabilitation services in accordance with 22VAC30-20-40 and (i) has an approved individualized plan for employment in accordance with 22VAC30-20-110; (ii) was unable to achieve the employment outcome specified in the individualized plan for employment despite working toward the employment outcome with reasonable accommodations and appropriate supports for a reasonable period of time; and (iii) the case record of service with vocational rehabilitation for the youth with a disability has been closed.

3. Receipt of career counseling and information and referral from the department to state, federal, and other resources in the individual's geographic area that offer employment related services and supports designed to enable the individual to explore and obtain competitive integrated employment. The career counseling and information and referral services shall:

a. Be provided in a manner that facilitates informed choice and decision making by the youth or the youth's representative as appropriate;

b. Not be for subminimum wage employment and did not directly result in employment compensated at a subminimum wage; and

c. Be provided within 30 calendar days of closure of the vocational rehabilitation case record of service.

B. The department, in consultation with the state education agency, shall implement a process that includes the following steps to document the completion of the actions described in this section:

1. The appropriate school official responsible for the provision of transition services shall provide the department documentation of completion of appropriate transition services under IDEA and under 34 CFR 397.30; and

2. The department shall provide documentation of completion of transition services and documentation of completed appropriate pre-employment transition services to the youth with a disability.

C. The documentation, which is provided to the youth with a disability, shall be in a form and manner that is accessible for the youth and shall contain the following:

1. Youth's name;

2. Determination made, including a summary of the reasons for the determination, or description of the service or activity completed;

3. Name of the individual making the determination or the provider of the required activity;

4. Date of the determination made or required service or activity completed;

5. Signature and date of signature of the department or educational personnel making the determination or documenting completion of the required service;

6. Signature of the department personnel transmitting the documentation to the youth with a disability;

7. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which the documentation was transmitted to the youth; and

8. A coversheet that itemizes the contents of the documents that have been provided to the youth.

D. The department shall provide to the youth documentation of completion of each action required in subsection A of this section (i) within 45 calendar days after the completion the action or (ii) within 90 calendar days if additional time is necessary due to extenuating circumstances.

E. In the event that a youth with a disability or, as applicable, the youth's parent or guardian refuses through informed choice to participate in any action required by this section, the department shall provide the youth within 10 calendar days of the refusal documentation that contains:

1. Youth's name;

2. A description and reason for the refusal;

3. Signature of the youth or, as applicable, the youth's parent or guardian;

4. Signature and date of signature of the department or educational personnel documenting the youth's refusal; and

5. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the youth.

22VAC30-20-200. Review of extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

A. For the first two years after an individual's record of services is closed ~~(and thereafter if requested by the individual or, if appropriate, the individual's representative)~~, the department shall ~~annually~~ semiannually review and reevaluate the status of each individual (i) determined by the department to have achieved an employment outcome in which the individual is compensated in accordance with § 14(c) of the Fair Labor Standards Act ~~or~~; (ii) whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with 22VAC30-20-10; or ~~the individual~~ (iii) who made an informed choice to remain in extended employment. After the first two years, the reviews shall be conducted annually. The ~~annual~~ review and reevaluation shall include input from the individual or, if appropriate, the individual's representative to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment.

B. The department shall make maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to engage in competitive integrated employment.

C. The department shall obtain the signed acknowledgment of the individual, or, as appropriate, the individual's representative~~,~~ that the annual review and reevaluations have been conducted.

22VAC30-20-210. Agency responsibilities to individuals with disabilities during subminimum wage employment.

A. The department shall provide individuals with disabilities, regardless of age, who are known to the department to be employed at subminimum wage the following:

1. Counseling and information services that (i) are provided in a manner understandable to the individual with a disability, (ii) facilitate the independent decision making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment, particularly with respect to supported

employment and customized employment, and (iii) may include benefits counseling, particularly with regard to the impact of earned income on income-based financial, medical, and other benefits.

2. For individuals with a disability, information about (i) self-advocacy, (ii) self-determination, and (iii) peer mentoring training opportunities available in the community within 30 calendar days of being referred by an employer, or contractor or subcontractor of that employer, that holds special wage certificate described in § 14(c) of the federal Fair Labor Standards Act and has fewer than 15 employees.

B. Required intervals.

1. For individuals hired at subminimum wage on or after July 22, 2016, the services required by this section must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment.

2. For individuals already employed at subminimum wage prior to July 22, 2016, the services required by this section must be carried out once by July 22, 2016, and annually thereafter for the duration of such employment.

3. With regard to intervals required by subdivisions 1 and 2 of this subsection, the department's responsibility to provide the services in this section to those in subminimum wage shall be (i) calculated on the date of the closure for those with closed vocational rehabilitation case records of services or (ii) calculated based upon the date the individual becomes known to the department for those individuals without closed case records.

4. An individual with a disability becomes "known" to the department through self-identification, referral by a third party, through the individual's involvement with the vocational rehabilitation process, or any other method.

C. Documentation.

1. The department shall provide documentation to the individual (i) within 45 calendar days after completion of the activities required under subsection B of this section or (ii) within 90 calendar days if additional time is necessary due to extenuating circumstances, after completion of the actions required in subsection B of this section.

2. Documentation shall include the following:

a. Name of the individual;

b. Description of the service or activity completed;

c. Name of the provider of the required activity;

d. Date required service or activity was completed;

e. Signature and date of signature of individual documenting completion of the required service or activity;

f. Signature of department personnel (if different from subdivision 2 e of this subsection); and

g. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which the document was transmitted to the individual with a disability.

3. In the event an individual with a disability or, as applicable, the individual's representative refuses through informed choice, to participate in the activities required by this section, documentation shall contain:

a. Name of the individual;

b. Description of the refusal and reason for the refusal;

c. Signature of the individual with a disability or, as applicable, the individual's representative;

d. Signature and date of signature of department personnel documenting the individual's refusal; and

e. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which the document was transmitted to the individual with a disability.

4. The department shall retain a copy of all documentation required by this section consistent with the department's case management system.

D. The department may contract with other public or private services providers, as appropriate, to fulfill the requirements of this section. However, the contractor providing the services on behalf of the department shall not be an entity holding a special wage certificate under § 14(c) of the federal Fair Labor Standards Act.

VA.R. Doc. No. R19-5227; Filed August 8, 2018, 1:58 p.m.

EXECUTIVE ORDER NUMBER FIFTEEN (2018)

Declaration of a State of Emergency in Preparation for the Anniversary of Charlottesville

Importance of the Issue

The "Unite the Right" rally in Charlottesville on August 12, 2017, resulted in the tragic deaths of 32-year-old Heather Heyer, Virginia State Police Lieutenant H. Jay Cullen, III, and Virginia State Police Trooper-Pilot Berke M.M. Bates. Anniversary events, rallies, and protests are planned to be held in the City of Charlottesville and in Washington, D.C., on August 11-12, 2018. Accordingly, I declare a state of emergency in the Commonwealth of Virginia in order to prepare and coordinate our response to ensure the protection of residents' lives, property, and Constitutional rights.

State action is required to protect the health and general welfare of Virginia residents. The anticipated effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency exists. Accordingly, I direct state and local governments to render appropriate assistance to prepare for these events, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I order the following:

A. Implementation of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, by state agencies along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Activation of the Virginia National Guard and the Virginia Defense Force to state active duty to assist in providing such aid.

D. Provision of assistance by the Virginia National Guard to the Virginia Department of State Police to ensure crowd control, direct traffic, prevent looting, and perform such other law enforcement functions as deemed necessary by the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security). Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. The members of the Virginia National Guard activated for this event shall be authorized under Code of Virginia § 44-75.1(A)(3), to perform all acts necessary to accomplish the above assistance. The Virginia National Guard shall have the power of arrest to enforce laws, including all violations of Section 18.2, Chapter 9, Articles 1 and 2 of the Code of Virginia (Crimes Against Peace and Order; Riot and Unlawful Assembly; Disorderly Conduct), and such other acts necessary to protect lives, preserve property, and in defense of self and others. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

E. Evacuation of areas threatened or stricken by effects of this event, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas upon a determination by the State Coordinator of Emergency Management. I reserve the right to control the ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein based upon a determination made by the State Coordinator of Emergency Management. Violations of any order to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

F. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia’s authorized representative within the meaning of the Emergency

Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

G. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by state agencies to respond to this situation.

H. Authorization for the heads of executive branch agencies to act, when appropriate, on behalf of their regulatory boards to waive any state requirement or regulation where the federal government has waived the corresponding federal or state regulation based on the impact of events related to this situation.

I. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

J. Authorization of a maximum of $2,000,000 in state sum sufficient funds for state and local government mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act, 42 U.S.C. § 5121 et seq. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, I authorize an amount estimated at $250,000 for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

K. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

L. During this declared emergency, any person who holds a license, certificate, or other permit issued by any state or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during this emergency. Such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in Code of Virginia § 44-146.23 C. Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments, as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 A of the Code of Virginia, shall not be liable for the death of, or any injury to, persons or damage to property as a result of such activities, as provided in § 44-146.23 A of the Code of Virginia.

M. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations, political subdivisions and other private entities by state agencies, including the Departments of Health, Behavioral Health and Developmental Services, Social Services, Emergency Management, Transportation, State Police, Motor Vehicles, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23 A of the Code of Virginia, in the performance of their disaster-related mission assignments.

N. As provided in § 44-146.23 F of the Code of Virginia, no individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities at the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of this emergency.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective August 8, 2018, and shall remain in full force and in effect until September 12, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 8th day of August, 2018.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER SIXTEEN (2018)

Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud

Importance of the Issue

The misclassification of employees as "independent contractors" undermines businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenues, and prevents workers from receiving legal protections and benefits.

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) found that one third of audited employers in certain industries misclassify their employees. By failing to purchase workers' compensation insurance, pay unemployment insurance and payroll taxes, or comply with minimum wage and overtime laws, employers lower their costs as much as 40%, placing other employers at a competitive disadvantage.

Based on state and national studies, JLARC estimated that worker misclassification lowers Virginia's state income tax collections as much as $28 million a year. Agencies with relevant enforcement responsibilities, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, and the Workers' Compensation Commission each address only one component of this practice and may not fully coordinate their efforts. In its study, JLARC recommended the establishment of a task force with representatives from the agencies listed above.

Establishment of the Task Force

Pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, and the Code of Virginia, in order to examine the issue of worker misclassification and payroll fraud, I hereby create an Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud (Taskforce).

Initiatives

The purpose of the Taskforce is to develop and implement a comprehensive plan with measurable goals to reduce worker misclassification and payroll fraud in Virginia. The activities of the Taskforce should include, but not be limited to:

1. Reviewing statutes and regulations related to worker misclassification and payroll fraud;

2. Evaluating current enforcement practices of the agencies involved;

3. Developing procedures for more effective inter-agency cooperation and joint enforcement;

4. Developing educational materials and an outreach strategy for employers;

5. Advising on any technological or other improvements in worker misclassification and payroll fraud detection;

6. Recommending any appropriate changes to relevant legislation or administrative rules;

7. Identifying ways to involve external stakeholders in the Taskforce's work;

8. Identifying ways to hold companies working on state contracts who commit payroll fraud through misclassification of workers accountable; and

9. Identifying ways to deter such misconduct through incentives and enforcement mechanisms.

The Taskforce will be chaired by the Secretary of Commerce and Trade and will include representatives from the Virginia Employment Commission, the Department of General Services, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, the Workers' Compensation Commission, and the Office of the Attorney General.

The Taskforce shall develop a work plan by November 1, 2018. The Taskforce shall report to the Governor on its progress by August 1, 2019.

Staffing

Staff necessary for the Task Force will be provided by the respective agencies participating with the Task Force.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of August, 2018.

/s/ Ralph S. Northam
Governor

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Outdoors Foundation - Forest and Community Opportunities for Restoration and Enhancement Fund Review

Virginia Outdoors Foundation (VOF) is requesting feedback on draft material for a new grant initiative focusing on offsetting the impact of forest fragmentation caused by the path of two natural gas pipelines. A press release and the draft material can be found on the VOF website at http://www.virginiaoutdoorsfoundation.org/2018/08/vof-seeking-input-for-development-of-new-grant-initiative/.

VOF is calling the initial fund the Forest and Community Opportunities for Restoration and Enhancement Fund (Forest CORE Fund). The name is to represent both the forest cores (large acreage tracts of forest with high ecological integrity) that are being targeted for protection as well as to represent the importance of involving the community in this work.

This notice is to make the public aware of the material and to request feedback. There is no deadline to provide input, but written comments submitted after August 21, 2018, will be reviewed and considered for subsequent grant rounds. The VOF Board of Trustees will meet August 22, 2018, to review and approve the fund materials. The program will be announced publicly by the end of August.

If you have questions, please contact Emily White at email ewhite@vofonline.org or telephone (434) 282-7054.

Contact Information: Bobbie Cabibbo, Executive Assistant, Executive Office of Virginia Outdoors Foundation, 324 Waterloo Street, Warrenton, VA 20186, telephone (540) 347-7727 ext. 226, FAX (540) 347-7711, or email bcabibbo@vofonline.org.

CRIMINAL JUSTICE SERVICES BOARD

Committee on Training Approved Performance Outcomes for Dispatchers

The Department of Criminal Justice Services' Committee on Training approved comprehensive revisions to the performance outcomes, training objectives, testing criteria, and lesson plan guides for dispatchers on June 14, 2018. The Committee on Training approved three additional revisions during this meeting. These revisions can be found at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/cot_approved_performance_outcomes_for_dispatchers_6_1420_18.pdf. All basic dispatcher training will need to conform to the approved revisions by March 30, 2019.

Contact Information: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, Washington Building, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-4503, or email barbara.peterson-wilson@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Danville Farm LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Pittsylvania County

Danville Farm 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 energy project (solar) in Pittsylvania County, Virginia, pursuant to 9VAC15-60. The Danville Solar Project is located on 191 acres on property previously used as a golf course with an address of 1493 Ringgold Road, Ringgold, Virginia 24586 (36°35'28.40" N, 79°18'1.53" W). The rated capacity of the facility at the point of interconnection will be 12 megawatts alternating current, with approximately 40,000 solar panels on single axis tracker technology.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Hickory Solar Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Chesapeake, Virginia

Hickory Solar has filed a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Chesapeake pursuant to 9VAC15-60. The project is located on a single parcel (Lat: 36.626042°; Long: -76.192255°) totaling 154.5 acres off Ballentine Road near Battlefield Boulevard in Hickory, Chesapeake, Virginia. The project will have a rated capacity of 32 megawatts alternating current and comprise approximately 91,000 solar photovoltaic panels situated on approximately 150 acres. This project was previously noticed as two separate projects (Hickory Solar 1 LLC and Hickory Solar 2 LLC) in the Virginia Register of Regulations on March 6, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality,1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Hickory Solar 1 LLC and Hickory Solar 2 LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Chesapeake, Virginia

Hickory Solar 1 LLC and Hickory Solar 2 LLC have withdrawn notices of intent to submit the necessary documentation for a permit by rule for a small renewable

energy project (solar) in Chesapeake pursuant to 9VAC15-60. The notices were previously published in the Virginia Register of Regulations on March 6, 2017. A new notice, combining Hickory Solar 1 LLC and Hickory Solar 2 LLC into a single project, has been filed with the Department of Environmental Quality and will be published in the Virginia Register of Regulations on September 3, 2018.

Contact Information: Mary E. Major, Department of Environmental Quality,1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on August 15, 2018. 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 Seventeen (18)

Virginia Lottery's "Ultimate Miami and Vegas Racing Adventures with Hermie Sadler" Final Rules for Operation (effective August 9, 2018)

STATE WATER CONTROL BOARD

Proposed Consent Order for Frederick-Winchester Service Authority and Frederick County Sanitation Authority

An enforcement action has been proposed for Frederick-Winchester Service Authority (FWSA) and Frederick County Sanitation Authority (FCSA) for violations at the Parkins Mill Waste Water Treatment Facility in Winchester, Virginia. The State Water Control Board proposes to issue a consent order dually to FWSA and FCSA to address noncompliance with State Water Control Law. 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, Virginia, 22801, from September 3, 2018, to October 3, 2018.

Proposed Consent Order for Piedmont Neighborhoods LP

An enforcement action has been proposed for Piedmont Neighborhoods LP for violations at the Whittington residential development in Albemarle County, Virginia. The State Water Control Board proposes to issue a penalty only consent order to Piedmont Neighborhoods LP to address noncompliance with State Water Control Law. 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 September 3, 2018, to October 3, 2018.

Proposed Consent Order for the City of Waynesboro

An enforcement action has been proposed for the City of Waynesboro for violations in Augusta County, Virginia. A proposed amendment to order by consent describes a settlement to further address inflow and infiltration in the city's sewage collection system. 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, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from September 3, 2018, to October 3, 2018.

Public Meeting for Total Maximum Daily Load for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson Creek, Sinking Creek, Lapsley Run, and Part of the James River

Public informational meeting: A community meeting will be held on Tuesday, September 11, 2018, from 6 p.m. until 8 p.m. at the Eagle Rock Library. The address is Eagle Rock Library, 55 Eagles Nest Drive, Eagle Rock, VA 24085. In the case of inclement weather, the meeting will be rescheduled for September 13, 2018, from 6 p.m. until 8 p.m. at the Eagle Rock Library. This meeting is open to the public and all are welcome. For more information, please contact Lucy Baker at email lucy.baker@deq.virginia.gov or telephone (540) 562-6718.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will discuss the results of a water quality study, known as a total maximum daily load (TMDL) for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson Creek, Sinking Creek, Lapsley Run, and a section on the James River in Craig and Botetourt Counties. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for recreational use and general standard (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and

Report. This is an opportunity for local residents to learn about the condition of these streams, share information about the area, and become involved in the process of local water quality improvement. A 30-day public comment period on the draft TMDL will follow the meetings from September 11, 2018, through October 10, 2018. To access the draft TMDL document, visit http://bit.do/VADEQdraftTMDL.

Description of study: In Botetourt and Craig Counties, portions of the James River, Catawba Creek, Craig Creek, Barbours Creek, Sinking Creek, Lapsley Run, and Little Patterson Creek are impaired for the "recreational use" water quality standard, meaning there is too much E. Coli bacteria present in these waterbodies. A section of Catawba Creek does not have a healthy and diverse community of aquatic organisms and subsequently does not meet the "aquatic life" water quality standard. Excessive bacteria levels may pose a threat to human health; therefore, a bacteria standard was established to preserve recreational uses in Virginia's waterbodies. This water quality study will report on the sources of bacteria and recommend reductions to meet TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacteria levels need to be reduced to the TMDL amount. A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs.

Stream	Impairment length	Location description	County	Impairment
Craig Creek	7.91 miles	Mainstem from the mouth of Turnpike Creek extending downstream to the Rt. 311 crossing	Craig County	Bacteria
Craig Creek	11.43 miles	Craig Creek from the mouth of Johns Creek downstream to the Barbours Creek confluence	Craig County	Bacteria
Craig Creek	27.56 miles	Craig Creek mainstem from the mouth of Wilson Branch downstream confluence with the James River	Botetourt County	Bacteria
Barbours Creek	7.15 miles	Barbours Creek from just downstream of the Rt. 617 and Rt. 611 junction at the mouth of Valley Branch on downstream to its mouth on Craig Creek	Craig County	Bacteria
Little Patterson Creek	4.24 miles	Little Patterson Creek from just upstream of the Rt. 684 (Sugar Tree Hollow Rd.) crossing downstream to its confluence with Patterson Creek	Botetourt County	Bacteria
Lapsley Run	9.01 miles	Lapsley Run from its confluence with the James River upstream to its headwaters	Botetourt County	Bacteria
James River	7.63 miles	James River from the confluence of the Jackson and Cowpasture Rivers downstream to the mouth of Stull Run	Botetourt County	Bacteria

Sinking Creek	6.42 miles	Sinking Creek mainstem from its mouth on the James River upstream to the Rt. 697 crossing	Botetourt County	Bacteria
Catawba Creek	13.46 miles	Catawba Creek from the confluence of Little Catawba Creek downstream to the Town of Fincastle publicly owned treatment works	Botetourt County	Bacteria
Catawba Creek	3.23 miles	Catawba Creek from Buchanan Branch downstream to the confluence with Little Catawba Creek	Botetourt County	Aquatic Life

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 July 25, 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 Lucy Baker, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6718, FAX (540) 562-6725, or email lucy.baker@deq.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD AND STATE WATER CONTROL BOARD

Proposed Consent Order for W.E.L. Inc.

An enforcement action has been proposed for W.E.L. Inc. for violations in Concord, Roanoke, and Winchester, Virginia. The Virginia Waste Management Board and State Water Control Board propose to issue a special order by consent to W.E.L. Inc. to address noncompliance with the Virginia Waste Management Act, 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 or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from September 3, 2018, to October 3, 2018.

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.

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-430. Pertaining to the Marking and Minimum Mesh Size of Gill Nets.**

Publication: 21:18 VA.R. 2373-2374 May 16, 2005

Correction to Final Regulation:

Page 2373, second column, 4VAC20-430-65, subsection B, after "*Chincoteague*" replace "*(37° 56.0')*" with "*(37° 56.0' N)*"

VA.R. Doc. No. R05-184; Filed August 22, 2018

STATE BOARD OF HEALTH

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

Publication: 32:12 VA.R. 1906-1924 February 8, 2016

Corrections to Final Regulation:

Page 1920, 12VAC5-481-451, first column, subdivision 9 a, after "business hours and" change "804-624-2400" to "804-674-2400"

Page 1920, 12VAC5-481-451, second column, subdivision 9 b, beginning of line 8, change "624-2400" to "674-2400"

VA.R. Doc. No. R16-4629; Filed August 16, 2018

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code.**

Publication: 34:18 VA.R. 1617-1744 April 30, 2018

Corrections to Final Regulation:

Page 1632, 13VAC5-51-81 L 6, second column, line 5, after "explosives" replace "(unrestricted), blasting agents, and fireworks" with "(Restricted)"

Page 1632, 13VAC5-51-81, L 6, second column, line 6, after "permit" replace "$250" with "$20"

Page 1741, 13VAC5-51-154.7 C, after "Sections" replace "6505.1" with "6504.1"

VA.R. Doc. No. R16-4665; Filed August 16, 2018