



VIRGINIA

REGISTER OF REGULATIONS

VOL. 38 ISS. 2

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

SEPTEMBER 13, 2021

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Virginia Code Commission

<http://register.dls.virginia.gov>

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THE 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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Marcus B. Simon**, Vice Chair; **Ward L. Armstrong**; **Nicole Cheuk**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

September 2021 through October 2022

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u> | <u>Will Be Published On</u> |
|----------------------|-------------------------------------|-----------------------------|
| 38:3 | September 8, 2021 | September 27, 2021 |
| 38:4 | September 22, 2021 | October 11, 2021 |
| 38:5 | October 6, 2021 | October 25, 2021 |
| 38:6 | October 20, 2021 | November 8, 2021 |
| 38:7 | November 3, 2021 | November 22, 2021 |
| 38:8 | November 15, 2021 (Monday) | December 6, 2021 |
| 38:9 | December 1, 2021 | December 20, 2021 |
| 38:10 | December 15, 2021 | January 3, 2022 |
| 38:11 | December 29, 2021 | January 17, 2022 |
| 38:12 | January 12, 2022 | January 31, 2022 |
| 38:13 | January 26, 2022 | February 14, 2022 |
| 38:14 | February 9, 2022 | February 28, 2022 |
| 38:15 | February 23, 2022 | March 14, 2022 |
| 38:16 | March 9, 2022 | March 28, 2022 |
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| 39:2 | August 24, 2022 | September 12, 2022 |
| 39:3 | September 7, 2022 | September 26, 2022 |
| 39:4 | September 21, 2022 | October 10, 2022 |

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

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

Name of Petitioner: Dawne Sherman.

Nature of Petitioner's Request: To allow all face-to-face client contact hours accrued during the supervised graduate internship in excess of the minimum required 240 direct client hours to be counted toward the 2,000 total required direct client contact hours required for residency.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Counseling considered the petition at its meeting on August 20, 2021, and decided it would include amendments to the internship and residency requirements in the adoption of final regulations relating to its periodic review. The amendments will specify the proportional hours that could be counted as face-to-face. However, in practice, those hours are already being applied to a residency.

For example, a person who completed 659 hours in an internship with 296 face-to-face hours was credited with 59 hours (the number in excess of required 600 hours) toward the residency and 56 hours (the number in excess of required 240 hours) was credited toward the 2,000 hours of face-to-face client contact. While the regulation does not currently specify how those excess hours are applied, an applicant is currently receiving the credit.

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

VA.R. Doc. No. PFR21-341; Filed August 23, 2021, 1:55 p.m.

Agency Decision

Title of Regulation: 18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

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

Name of Petitioner: Jennifer Stolpe.

Nature of Petitioner's Request: To amend the education requirement for licensure by endorsement to require only 36 class hours if all class hours were focused on addiction counseling.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on August 20, 2021, the Board of Counseling discussed the petitioner's request and decided not to initiate rulemaking. Since the standard for all licensed professions regulated by the board is 60 graduate hours in counseling, a reduction to 36 hours would be problematic for this license. The petitioner was advised that the described educational background would likely qualify for certification as a Certified Substance Abuse Counselor in Virginia and to consider pursuing that option.

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

VA.R. Doc. No. PFR21-35; Filed August 23, 2021, 11:18 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

TITLE 1. ADMINISTRATION

TREASURY BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Treasury Board conducted a periodic review and a small business impact review of **1VAC75-30, Regulations Governing Escheats**, and determined that this regulation should be amended. The department is publishing its report of findings dated September 16, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018).

The board seeks to amend 1VAC75-30 to update Code of Virginia citations that are no longer valid due to the recodification of the Escheat Generally Statute in 2019. Chapter 712 of the 2019 Acts of Assembly recodified Title 55 of the Code of Virginia as Title 55.1. The legislation renumbered the title and renamed many of the chapters within the title. In addition, there were semantic changes within the recodification that will now be reflected in the regulation. Two sections, Authority and Effective date, will be repealed as they are now otherwise reported.

Contact Information: Vernita Boone, Treasury Board Secretary, Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Treasury Board conducted a periodic review and a small business impact review of **1VAC75-40, Unclaimed Property Administrative Review Process**, and determined that this regulation should be amended. The board is publishing its report of findings dated February 11, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018).

The board will amend 1VAC75-40 to update Code of Virginia citations that are no longer valid due to the recodification of the Uniform Disposition of Unclaimed Property Act in 2019. Chapter 712 of the 2019 Acts of Assembly recodified Title 55 of the Code of Virginia as Title 55.1. The legislation renumbered the title and renamed many of the chapters within the title. In addition, there were semantic changes within the recodification that will now be reflected in the regulations. In addition, the Application for Administrative Review form will be simplified to a request for administrative review in writing.

Contact Information: Vernita Boone, Treasury Board Secretary, Department of the Treasury, James Monroe



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-160, Regulations Governing the Secondary School Transcript**, and determined that this regulation should be amended.

The proposed regulatory action to amend 8VAC20-160, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Joseph Wharff, Associate Director, Office of Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-3370, or email joseph.wharff@doe.virginia.gov.



TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC15-30, Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins September 13, 2021, and ends October 4, 2021.

Comments must include the commenter's name and address (physical or email) information in order to receive a response

Periodic Reviews and Small Business Impact Reviews

to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters**, and determined that this regulation should be amended. The department is publishing its report of findings dated June 1, 2021, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

The regulation is effective and continues to be needed; however, this general permit is scheduled to expire on February 29, 2024. The Environmental Protection Agency has issued a draft 2021 Pesticide General Permit (PGP) to update the 2016 PGP that this regulation is based on. This regulation will be amended to reissue the general permit, and the agency will consider revisions to the permit to include changes made to the federal 2021 PGP.

The general permit covers point source discharges of wastewater from chemical pesticides that leave a residue in water and all biological pesticide applications that are made in or over surface waters. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. The permit regulation specifies requirements that protect water quality downstream from the discharge and that is essential to protect the health, safety, or welfare of citizens. If this regulation were repealed, individual permits would be required to conduct these activities.

No public comments were received during the periodic review.

This regulation establishes procedures for obtaining coverage under this general permit, and portions of the regulation may be viewed as complex due to the technical requirements included in the regulation. This regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water. The State

Water Control Board last reissued this regulation in 2019. This regulation is evaluated and necessary changes are made to the regulation when the permit is reissued. The reissuance of the general VPDES permit accomplishes the objectives of applicable law, minimizes the costs to a small business owner, and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and the costs to obtain permit coverage.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-12, Public Participation Guidelines**, and determined that this regulation should be retained without changes. The department is publishing its report of findings dated August 18, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018 as amended). It provides the State Board of Social Services with an effective means of including public participation as part of developing regulations that are necessary to the health, safety, and welfare of citizens.

The agency recommends that the regulation be retained with no changes. It is up-to-date and remains an effective tool for the agency to make regulatory actions known to the public.

The agency determined this regulation continues to be necessary as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. No complaints or comments were received. The regulation is not complex and does not overlap or duplicate federal and state laws and regulations. It was last reviewed and amended in 2017. No factors have changed that would impact the regulation, and it has no economic impact on small businesses.

Contact Information: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **24VAC30-120, Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices; 24VAC30-451, Airport Access Fund Policy; 24VAC30-551, Integrated Directional Signing Program (IDSP) Participation Criteria; and 24VAC30-630, Rules Governing Person with Disability Traffic Signs.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins September 13, 2021, and ends October 4, 2021.

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

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-840, Erosion and Sediment Control Regulations**. The purpose of the proposed action is to establish a fee schedule for conducting Erosion and Sediment Control Plan reviews for solar projects. Chapter 497 of the 2021 Acts of Assembly, Special Session I, requires the Department of Environmental Quality (DEQ) to review the Erosion and Sediment Control (ESC) Plans for certain solar projects and their associated infrastructure with a rated electrical generation capacity exceeding five megawatts. Item 377 N of Chapter 552 of the 2021 Acts of Assembly, Special Session I, requires DEQ to convene a working group for the purpose of developing the fee schedule for conducting the ESC Plan reviews for solar projects.

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

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Public Comment Deadline: October 13, 2021.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400 P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

VA.R. Doc. No. R22-6841; Filed August 16, 2021, 3:50 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-870, Virginia Stormwater Management Program (VSMP) Regulation**. The purpose of the proposed action is to amend the regulation to allow for changes in the statewide permit fee schedule supporting the Virginia Stormwater Management Program in accordance with Item 337 L 2 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, which directs the board to amend or modify the existing statewide permit fee schedule so that the fees for the Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities and municipal separate storm sewer system (MS4) permits are set at an amount representing no less than 60%, not to exceed 62%, of the direct costs for the administration, compliance, and enforcement of those permits.

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

Statutory Authority: §§ 62.1-44.15:24 and 62.1-44.15:28 of the Code of Virginia.

Public Comment Deadline: October 13, 2021.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400 P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

VA.R. Doc. No. R22-6840; Filed August 16, 2021, 3:49 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-900, Certification of Nonpoint Source Nutrient Credits**. The purpose of the proposed action is to amend the regulation to allow for changes in the application fee schedule supporting the Nutrient Credit Certification Program in accordance with Item 377 L 3 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, which directs the board to amend or modify the existing application fee schedule so that the fees are set at an amount representing no less than 60% but not more than 62% of the direct costs for the administration, compliance, and enforcement of the Nutrient Credit Certification Program.

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

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Public Comment Deadline: October 13, 2021.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

VA.R. Doc. No. R22-6839; Filed August 16, 2021, 3:48 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Final Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Titles of Regulations: **4VAC15-20. Definitions and Miscellaneous: In General (adding 4VAC15-20-260).**

4VAC15-90. Game: Deer (amending 4VAC15-90-10; repealing 4VAC15-90-290).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: September 1, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

| Locality | Season |
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| Accomack County | Saturday prior to the third Monday in November through the first Saturday in January |
| Albemarle County | Saturday prior to the third Monday in November through the first Saturday in January |
| Alleghany County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Amelia County | Saturday prior to the third Monday in November through the first Saturday in January |
| Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands) | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Amherst County (national forest lands) | Saturday prior to the third Monday in November and for 14 consecutive days following |

Summary:

The amendments (i) address the recent detection of Chronic Wasting Disease (CWD) in Montgomery County, create a new disease management zone in counties around that area, and adjust seasons accordingly and (ii) repeal the Fairystone Quality Deer Management Area now that CWD has been detected within 25 miles of this area because disease management actions necessitate more aggressive deer harvest strategies. The proposed regulation included a prohibition on hunting contests for coyotes and furbearer species in which participants are offered cash, prizes, or other inducements of monetary value; this proposed amendment was removed from the final regulation.

[**4VAC15-20-260. Coyote and furbearer hunting contests.**

~~It shall be unlawful to organize, sponsor, promote, conduct, participate, or solicit participation in a contest or organized competition in which participants are offered cash, prizes, or other inducements of monetary value for capturing or killing coyotes or fur bearing animals defined in § 29.1-100 of the Code of Virginia. No part of this regulation shall be construed to restrict coyote bounties authorized in § 15.2-926.1 of the Code of Virginia.]~~

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| Amherst County (east of Business U.S. 29, as defined above) | Saturday prior to the third Monday in November through the first Saturday in January |
| Appomattox County | Saturday prior to the third Monday in November through the first Saturday in January |
| Arlington County | Saturday prior to the third Monday in November through the first Saturday in January |
| Arlington County (antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Augusta County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Bath County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Bedford County (except on national forest lands) | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Bedford County (national forest lands) | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Bland County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Botetourt County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Brunswick County | Saturday prior to the third Monday in November through the first Saturday in January |
| Buchanan County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Buckingham County | Saturday prior to the third Monday in November through the first Saturday in January |
| Campbell County | Saturday prior to the third Monday in November through the first Saturday in January |
| Caroline County | Saturday prior to the third Monday in November through the first Saturday in January |
| Carroll County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Charles City County | Saturday prior to the third Monday in November through the first Saturday in January |
| Charlotte County | Saturday prior to the third Monday in November through the first Saturday in January |
| Chesapeake (City of) | October 1 through November 30 |
| Chesterfield County | Saturday prior to the third Monday in November through the first Saturday in January |
| Clarke County | Saturday prior to the third Monday in November through the first Saturday in January |

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| Clarke County (antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Craig County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Culpeper County (except Chester F. Phelps Wildlife Management Area) | Saturday prior to the third Monday in November through the first Saturday in January |
| Culpeper County (Chester F. Phelps Wildlife Management Area) | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Culpeper County (private lands and antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October |
| Culpeper County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Cumberland County | Saturday prior to the third Monday in November through the first Saturday in January |
| Dickenson County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Dinwiddie County | Saturday prior to the third Monday in November through the first Saturday in January |
| Essex County | Saturday prior to the third Monday in November through the first Saturday in January |
| Fairfax County | Saturday prior to the third Monday in November through the first Saturday in January |
| Fairfax County (antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Fauquier County (except Chester F. Phelps Wildlife Management Area) | Saturday prior to the third Monday in November through the first Saturday in January |
| Fauquier County (Chester F. Phelps Wildlife Management Area) | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Fauquier County (private lands and antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October |
| Fauquier County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Floyd County | Saturday prior to the third Monday in November and for 28 consecutive days following |
| <u>Floyd County (disease focus zones defined by the department, antlerless deer only)</u> | <u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u> |
| Fluvanna County | Saturday prior to the third Monday in November through the first Saturday in January |

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| Franklin County | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Frederick County (non-national forest lands) | Saturday prior to the third Monday in November through the first Saturday in January |
| Frederick County (national forest lands) | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Frederick County (non-national-forest lands antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Giles County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Gloucester County | Saturday prior to the third Monday in November through the first Saturday in January |
| Goochland County | Saturday prior to the third Monday in November through the first Saturday in January |
| Grayson County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Greene County | Saturday prior to the third Monday in November through the first Saturday in January |
| Greensville County | Saturday prior to the third Monday in November through the first Saturday in January |
| Halifax County | Saturday prior to the third Monday in November through the first Saturday in January |
| Hanover County | Saturday prior to the third Monday in November through the first Saturday in January |
| Henrico County | Saturday prior to the third Monday in November through the first Saturday in January |
| Henry County | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Highland County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Isle of Wight County | Saturday prior to the third Monday in November through the first Saturday in January |
| James City County | Saturday prior to the third Monday in November through the first Saturday in January |
| King and Queen County | Saturday prior to the third Monday in November through the first Saturday in January |
| King George County | Saturday prior to the third Monday in November through the first Saturday in January |
| King William County | Saturday prior to the third Monday in November through the first Saturday in January |
| Lancaster County | Saturday prior to the third Monday in November through the first Saturday in January |

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| Lee County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Loudoun County | Saturday prior to the third Monday in November through the first Saturday in January |
| Loudoun County (antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Louisa County | Saturday prior to the third Monday in November through the first Saturday in January |
| Lunenburg County | Saturday prior to the third Monday in November through the first Saturday in January |
| Madison County | Saturday prior to the third Monday in November through the first Saturday in January |
| Madison County (private lands and antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October |
| Madison County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Mathews County | Saturday prior to the third Monday in November through the first Saturday in January |
| Mecklenburg County | Saturday prior to the third Monday in November through the first Saturday in January |
| Middlesex County | Saturday prior to the third Monday in November through the first Saturday in January |
| Montgomery County (<u>non-national forest lands</u>) | Saturday prior to the third Monday in November and for 14 28 consecutive days following |
| <u>Montgomery County (national forest lands)</u> | <u>Saturday prior to the third Monday in November and for 14 consecutive days following</u> |
| <u>Montgomery County (disease focus zones defined by the department, antlerless deer only)</u> | <u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u> |
| Nelson County (west of Route 151, except on national forest lands) | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Nelson County (national forest lands) | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Nelson County (east of Route 151) | Saturday prior to the third Monday in November through the first Saturday in January |
| New Kent County | Saturday prior to the third Monday in November through the first Saturday in January |
| Northampton County | Saturday prior to the third Monday in November through the first Saturday in January |
| Northumberland County | Saturday prior to the third Monday in November through the first Saturday in January |

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| Nottoway County | Saturday prior to the third Monday in November through the first Saturday in January |
| Orange County | Saturday prior to the third Monday in November through the first Saturday in January |
| Orange County (private lands and antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October |
| Orange County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Page County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Page County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Patrick County | Saturday prior to the third Monday in November and for 28 consecutive days following |
| Pittsylvania County | Saturday prior to the third Monday in November through the first Saturday in January |
| Powhatan County | Saturday prior to the third Monday in November through the first Saturday in January |
| Prince Edward County | Saturday prior to the third Monday in November through the first Saturday in January |
| Prince George County | Saturday prior to the third Monday in November through the first Saturday in January |
| Prince William County | Saturday prior to the third Monday in November through the first Saturday in January |
| Prince William County (antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin and national forest lands) | Saturday prior to the third Monday in November and for 14 28 consecutive days following |
| Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin) | Saturday prior to the second Monday in November through the first Saturday in January |
| <u>Pulaski County (national forest lands)</u> | <u>Saturday prior to the third Monday in November and for 14 consecutive days following</u> |
| <u>Pulaski County (disease focus zones defined by the department, antlerless deer only)</u> | <u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u> |
| Rappahannock County | Saturday prior to the third Monday in November through the first Saturday in January |
| Rappahannock County (private lands and antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October |

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| Rappahannock County (disease focus zones defined by the department, antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Richmond County | Saturday prior to the third Monday in November through the first Saturday in January |
| Roanoke County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Rockbridge County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Rockingham County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Russell County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Scott County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Shenandoah County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Shenandoah County (non-national forest lands antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |
| Smyth County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Southampton County | Saturday prior to the third Monday in November through the first Saturday in January |
| Spotsylvania County | Saturday prior to the third Monday in November through the first Saturday in January |
| Stafford County | Saturday prior to the third Monday in November through the first Saturday in January |
| Suffolk (City of) (east of Dismal Swamp Line) | October 1 through November 30 |
| Suffolk (City of) (west of Dismal Swamp Line) | Saturday prior to the third Monday in November through the first Saturday in January |
| Surry County | Saturday prior to the third Monday in November through the first Saturday in January |
| Sussex County | Saturday prior to the third Monday in November through the first Saturday in January |
| Tazewell County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Virginia Beach (City of) | October 1 through November 30 |
| Warren County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Warren (non-national forest lands antlerless deer only) | First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March |

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| Washington County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Westmoreland County | Saturday prior to the third Monday in November through the first Saturday in January |
| Wise County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| Wythe County | Saturday prior to the third Monday in November and for 14 consecutive days following |
| York County | Saturday prior to the third Monday in November through the first Saturday in January |

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 14 consecutive days following within the incorporated limits of any city or town that allows deer hunting.

4VAC15-90-290. ~~Special quality deer management areas. (Repealed.)~~

~~A. The board hereby designates the following areas posted by the Department of Wildlife Resources as special quality deer management areas with special antlered buck harvest.~~

~~B. Special Fairystone quality deer management area. It shall be unlawful to kill an antlered deer on the special Fairystone quality deer management area unless the deer has at least four antler points, each greater than one inch in length, on either the right or left antler.~~

VA.R. Doc. No. R21-6836; Filed August 23, 2021, 10:37 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).**

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

Effective Date: September 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort

Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments prohibit transfer of summer flounder between vessels at sea in accordance with interstate and federal regulations.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, E, F, and G of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops, and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina or New Jersey vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina or New Jersey vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection L of this section.

C. From February 25 through April 7, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

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2. Land in Virginia more than a total of 15,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From June 15 through August 15, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 12,500 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From September 8 through October 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of ~~12,000~~ 15,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

F. From November 1 through December 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 12,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

G. From January 1 through December 31, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

H. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

I. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed, and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection K of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection K of this section.

J. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

K. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

L. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the

amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

M. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

N. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

O. It shall be unlawful to transfer or offload summer flounder from one vessel to another vessel at sea.

V.A.R. Doc. No. R22-6934; Filed August 25, 2021, 10:11 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-720. **Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40 through 4VAC20-720-85).**

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

Effective Date: October 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish the 2021-2022 areas of public oyster harvest, public oyster harvest seasons, and oyster resource conservation measures.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means the Public Grounds within the Coan River consisting of Public Grounds 77 and 78 of Northumberland County described as:

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Corrotoman Hand Tong Area" means all public grounds, in that area of the Corrotoman River between a line beginning at Ball Point, Latitude 37° 40.65133000' N., Longitude 76° 28.4440000' W.; thence easterly to a point at the western side of the mouth of Taylor Creek, at Latitude 37° 40.97331000' N., Longitude 76° 27.59471000' W.; upstream to a line from Bar Point, Latitude 37° 41.65256000' N., Longitude 76° 28.66195000' W.; thence easterly to Black Stump Point, Latitude 37° 41.7360900' N., Longitude 76° 28.1212200' W.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the

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Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Rotation Area 1" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pier head at Fleeton Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico River Light; Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence westerly to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence northerly crossing the entrance to Towles Creek at the offshore ends of the jetties and continuing along the mean low water line to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W., said point being the point of beginning.

"Great Wicomico River Rotation Area 2" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence

due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water line to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence easterly to Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W., said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consists of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Area 1" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence southeasterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence southeasterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence southeasterly to the northeast corner of the western draw span pier of the James River Bridge (U.S. Route 17), Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence southwesterly along the upstream side of the James River Bridge to the mean low water line; thence northwesterly along the mean low water line, crossing Kings Creek at the headlands and continuing along the mean low water line to a point on the shore at Rainbow Farm Point in line with VMRC Markers "STH" and "SMT," located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green

Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 2" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; thence southeasterly along the mean low water line to the upstream side of the James River Bridge (U.S. Route 17); thence westerly along the James River Bridge to the northeast corner of the western draw span pier, Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence northwesterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence northwesterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence northwesterly to the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 3" means those public grounds of Isle of Wight County and Nansemond County (City of Suffolk) located in the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the

Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means that area of Mobjack Bay consisting of Public Ground 2 of Mathews County (Pultz Bar) and Public Ground 25 of Gloucester County (Tow Stake) described as:

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

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Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38°

08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an unnamed cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Ground 9 and Public Ground 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75°

42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northernmost point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northernmost point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northernmost point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek

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Entrance Buoy Green Can "1", Latitude 37° 52.100000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N.,

Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5310000' N., Longitude 76° 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Unassigned ground" means all grounds not assigned pursuant to §§ 28.2-600 through 28.2-633 of the Code of Virginia, established pursuant to § 28.2-551 of the Code of Virginia, or set aside by court order, or those grounds set aside by declarations or regulation by the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 100, 102, 104, 107, and 112 of Northumberland County described as:

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 100 of Northumberland County is located in the South Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 00.2292779' N., Longitude 76° 32.2244222' W.; thence southwesterly to Corner 2, Latitude 38° 00.2183904' N., Longitude 76° 32.2488009' W.; thence westerly to Corner 3, Latitude 38° 00.2156893'

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N., Longitude 76° 32.3156220' W.; thence northwesterly to Corner 4, Latitude 38° 00.4024997' N., Longitude 76° 32.3338888' W.; thence continuing northeasterly to Corner 5, Latitude 38° 00.5806170' N., Longitude 76° 32.1957546' W.; thence continuing easterly to Corner 6, Latitude 38° 00.5798424' N., Longitude 76° 31.9506788' W., thence continuing southeasterly to Corner 7, Latitude 38° 00.5076459' N., Longitude 76° 31.9387425' W.; thence heading along the mean low water southwesterly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 112 of Northumberland County is located in the Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 01.8449428' N., Longitude 76° 32.2191877' W.; thence northeasterly to Corner 2, Latitude 38° 01.8783929' N., Longitude 76° 31.9970988' W.; thence southeasterly to Corner 3, Latitude 38° 01.7997003' N., 76° 31.9569302' W.; thence continuing southeasterly to Corner 4, Latitude 38° 01.6848729' N., Longitude 76° 31.5931801' W.; thence southerly to Corner 5, Latitude 38° 01.5760153'

N., 76° 31.5931801' W.; thence westerly to Corner 6, Latitude 38° 01.6860521' N., Longitude 76° 32.2820100' W.; thence northerly to Corner 1, said corner being the point of beginning.

"York River Hand Tong Area" means that area of the York River consisting of a portion of Public Ground 31 of Gloucester County (Aberdeen Rock), Public Ground 901 of Gloucester and King and Queen Counties and that portion of Public Ground 4 of King and Queen County that is in waters approved by the Virginia Department of Health for the harvest of Shellfish (Bell Rock) described as:

Public Ground 31 of Gloucester County, known as Aberdeen Rock, is that portion of Public Ground between a line from Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.74276' N., Longitude 76° 35.49063' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB," Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

Public Ground 901 of Gloucester and King and Queen Counties is located in the York River at the mouth of the Propotank River, beginning at said point being Corner 1, located at Latitude 37° 26.0291178' N., Longitude 76° 42.4769473' W.; thence northwesterly to Corner 2, Latitude 37° 26.1502199' N., Longitude 76° 42.5504403' W.; thence continuing northwesterly to Corner 3, Latitude 37° 26.2593188' N., Longitude 76° 42.5639668' W.; thence southeasterly to Corner 4, Latitude 37° 26.0537949' N., Longitude 76° 42.3217587' W.; thence southwesterly to Corner 5, Latitude 37° 26.0023548' N., Longitude 76° 42.4076221' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 4 of King and Queen County, known as Bell Rock, is located in the York River, beginning at said point being Corner 1, located at Latitude 37° 29.1377467' N., Longitude 76° 45.0390139' W.; thence southerly to Corner 2, Latitude 37° 29.0456979' N., Longitude 76° 45.0642131' W.; thence northwesterly to Corner 3, Latitude 37° 29.5582048' N., Longitude 76° 45.8484481' W.; thence continuing northwesterly to Corner 4, Latitude 37° 29.8480848' N., Longitude 76° 46.5362330' W.; thence northeasterly to Corner 5, Latitude 37° 30.0087805' N., Longitude 76° 46.3513889' W.; thence continue southeasterly to Corner 6, Latitude 37° 29.6554103' N., Longitude 76° 45.5620462' W., thence continuing southeasterly to Corner 7, Latitude 37° 29.1838193' N., Longitude 76° 44.8908342' W., thence continue southeasterly to Corner 8, Latitude 37° 29.1094227' N., Longitude 76° 44.7985114' W., thence continue southeasterly to Corner 9, Latitude 37° 28.9796379' N., Longitude 76° 44.6726329' W., thence continue southeasterly to Corner 10, Latitude 37° 28.7771294' N.,

Longitude 76° 44.5058580' W., thence continue southeasterly to Corner 11, Latitude 37° 28.6286905' N., Longitude 76° 44.4140389' W., thence continue southeasterly to Corner 12, Latitude 37° 28.4745509' N., Longitude 76° 44.3267558' W., thence continue southeasterly to Corner 13, Latitude 37° 28.4379124' N., Longitude 76° 44.2964890' W., thence continue southeasterly to Corner 14, Latitude 37° 28.3255929' N., Longitude 76° 44.2037875' W., thence continue southeasterly to Corner 15, Latitude 37° 28.2389865' N., Longitude 76° 44.1706101' W., thence continue southeasterly to Corner 16, Latitude 37° 28.2157560' N., Longitude 76° 44.1552324' W., thence westerly to Corner 17, Latitude 37° 28.1396622' N., Longitude 76° 44.3698473' W., thence northerly to Corner 18, Latitude 37° 28.7398061' N., Longitude 76° 44.7807027' W., thence continue northerly to Corner 19, Latitude 37° 28.8838652' N., Longitude 76° 44.8818391' W., thence easterly to Corner 20, Latitude 37° 28.9140411' N., Longitude 76° 44.8163514' W. thence northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.7427600' N., Longitude 76° 35.4906300' W.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2020~~ 2021, through April 30, ~~2021~~ 2022 (hand tong only).

2. Milford Haven: December 1, ~~2020~~ 2021, through February 28, ~~2021~~ 2022 (hand tong only).

3. Rappahannock River Area 9: October 1, ~~2020~~ 2021, through December 31, ~~2020~~ 2021 (hand tong only).

4. Corrotoman Hand Tong Area: October 1, ~~2020~~ 2021, through December 31, ~~2020~~ 2021.

5. Little Wicomico River: October 1, ~~2020~~ 2021, through December 31, ~~2020~~ 2021 (hand tong only).

6. ~~Coon River~~ Nomini Creek Area: October 1, ~~2020~~ 2021, through ~~December 31, 2020~~ January 31, 2022 (hand tong only).

7. Yeocomico River Area: October 1, ~~2020~~ 2021, through December 31, ~~2020~~ 2021 (hand tong only).

8. York River Hand Tong Area: ~~December 1, 2020~~ October 1, 2021, through February 28, ~~2021~~ 2022 (hand tong only).

9. York River Rotation Area Areas 1 and 2: October 1, ~~2020~~ 2021, through November 30, ~~2020~~ 2021 (hand tong only).

10. James River ~~Areas Area 1, 2, and 3~~: October 1, ~~2020~~ 2021, through ~~October 31, 2020~~ November 30, 2021, and February 1, ~~2021~~ 2022, through February 28, ~~2021~~ 2022 (hand tong only).

11. James River Areas 2 and 3: October 1, 2021, through October 15, 2021, and February 1, 2022, through February 28, 2022 (hand tong only).

~~11. 12. Pocomoke Sound Area: December 1, 2020 2021, through January 31, 2021 February 28, 2022 (hand tong only).~~

13. Mobjack Bay Area: October 1, 2021, through January 31, 2022 (hand tong only).

~~12. York River Rotation Area 1: February 1, 2021, through February 28, 2021 (hand scrape only).~~

~~13. 14. Rappahannock River Rotation Area 6 3: November 1, 2020 2021, through November 30, 2020 2021, and January 1, 2021 2022, through January 31, 2021 2022 (hand scrape only).~~

~~14. 15. Rappahannock River Area 7 5: December 1, 2020 2021, through December 31, 2020 2021, and February 1, 2021 2022, through February 28, 2021 2022 (hand scrape only).~~

~~15. 16. Great Wicomico River Rotation Area 2 1: December 1, 2020 2021, through January 31, 2021 2022 (hand scrape only).~~

17. James River Area 1: December 1, 2021, through January 31, 2022 (hand scrape only).

~~16. 18. James River Areas 1, 2, and 3: November 1, 2020 October 18, 2021, through January 31, 2021 2022 (hand scrape only).~~

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~~17. Pocomoke Sound Area: February 1, 2021, through February 28, 2021 (hand scrape only).~~

~~18. 19. Upper Chesapeake Bay - Blackberry Hangs Area: February 1, 2021 2022, through February 28, 2021 2022 (hand scrape only).~~

~~19. 20. Pocomoke Sound Rotation Area 2 1: December 1, 2020 2021, through February 28, 2021 2022 (dredge only).~~

~~20. 21. Tangier Sound Rotation Area 2 1: December 1, 2020 2021, through February 28, 2021 2022 (dredge only).~~

~~21. 22. Deep Rock Area: December 1, 2020 2021, through February 28, 2021 2022 (patent tong only).~~

~~22. 23. Upper Chesapeake Bay - Blackberry Hangs Area: October 1, 2020 18, 2021, through October 31, 2020 2021 (patent tong only).~~

~~23. 24. Rappahannock River Rotation Area 1: November 1, 2020, through November 30, 2020, and February 1, 2021, through March 12, 2021 October 18, 2021, through February 14, 2022 (patent tong only).~~

~~24. 25. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2020 2021, through March 31, 2021 2022 (by hand and hand tong only).~~

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in this subsection.

1. James River Seed Area: October 1, 2020 2021, through May 31, 2021 2022 (hand tong only).

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2020 2021, through May 31, 2021 2022 (hand tong only).

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through B ~~13~~, B ~~21~~ 20 through B ~~23~~ 24, and C. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after ~~2~~ 12 p.m. from the areas described in 4VAC20-720-40 B ~~12~~ 14 through B ~~20~~ from December 1, 2020, through January 31, 2021 19. ~~It~~ In addition, it shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after ~~12~~ noon from the areas described in 4VAC20-720-40 B ~~12~~

through B ~~20~~ from November 1, 2020, through November 30, 2020, and February 1, 2021, through February 28, 2021. In addition, it shall be unlawful for any boat with an oyster dredge or hand scrape aboard to leave the dock until one hour before sunrise or return to the dock after sunset.

C. On the seaside of the Eastern Shore, it shall be unlawful for any person to harvest by hand or attempt to harvest oysters by hand prior to sunrise or after sunset. It shall be unlawful for any person to harvest oysters by hand tong or attempt to harvest oysters by hand tong prior to sunrise or after 2 p.m.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area and the areas described in 4VAC20-720-40 B 1 through B ~~13~~ except by hand tong. It shall be unlawful for any person to have a hand scrape or oyster dredge on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters by any gear from the seaside of the Eastern Shore except by hand or hand tong. It shall be unlawful to harvest oysters that are not submerged at mean low water by any gear other than by hand.

C. It shall be unlawful to harvest oysters from the areas described in 4VAC20-720-40 B ~~12~~ 14 through B ~~18~~ 19 by any gear except hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board his vessel while he is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board his vessel while he is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area ~~2~~ 1, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the areas described in 4VAC20-720-40 B ~~21~~ 22 through B ~~23~~ 24 except by patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish with a hand scrape from the public oyster grounds as described in 4VAC20-720-70 C unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds ~~in the Pocomoke and Tangier Sounds Rotation Area 2, as described in 4VAC20-720-70 E~~, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds, as described in

4VAC20-720-70 F, unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the seaside of the Eastern Shore as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster by hand license. It shall be unlawful for any person to harvest shellfish from the public oyster grounds on the seaside of the Eastern Shore by hand tong, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75 A and B, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand scrape or dredge license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels clean cull oysters when the vessel is using the hand scrape or oyster dredge.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand or hand tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 14 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 28 bushels clean cull oysters when the vessel is using hand tongs or harvesting by hand.

C. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area as described in 4VAC20-720-75 and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid patent tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels of clean cull oysters harvested from the areas described in 4VAC20-720-40 B when the vessel is using patent tongs.

D. In the Pocomoke and Tangier Sounds Rotation Area ~~2~~ 1, ~~no blue crab bycatch is allowed.~~ It shall be unlawful to possess on board any vessel more than 250 hard clams.

E. It shall be unlawful to possess any blue crabs on board any vessel with an oyster scrape or oyster dredge.

4VAC20-720-85. James River seed quota and monitoring.

A. An oyster seed harvest quota of ~~120,000~~ 90,000 bushels of seed is established for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area. Once it has been projected and announced that the quota of seed has been attained, it shall be unlawful for any person to harvest seed oysters from these areas.

B. Of the ~~120,000-bushel~~ 90,000-bushel seed quota described in subsection A of this section no more than 30,000 bushels of this quota may be harvested from October 1 through December 31. However, if it is projected and announced that 30,000 bushels of seed have been harvested before December 31, it shall be unlawful for any person to harvest seed oysters from that date forward until January 1.

C. Of the 90,000-bushel seed quota described in subsection A of this section, no more than 60,000 bushels of this quota may be harvested from January 1 through May 31.

D. Any person harvesting or landing oyster seed from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, shall report monthly on forms provided by the Virginia Marine Resources Commission all harvest of seed oysters. Reporting requirements shall consist of that person's Commercial Fisherman Registration License number, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

~~D.~~ E. It shall be unlawful for any person harvesting seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, to fail to contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of harvest or landing and provide that person's name, Commercial Fisherman Registration License number, time, date, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

V.A.R. Doc. No. R22-6936; Filed August 25, 2021, 11:21 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-1250. Pertaining to the Tagging of Shellfish (amending 4VAC20-1250-20, 4VAC20-1250-30).

Regulations

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

Effective Date: October 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments clarify that shellfish must be tagged by a certified dealer before transporting for replanting.

4VAC20-1250-20. Definitions.

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

"Bulk shellfish tag" means a shellfish tag that shall only be used for shellfish harvested from a single harvest area in any one day and accompanies a conveyance containing multiple containers of shellfish.

"Certified dealer" means a person to whom certification is issued by the Virginia Department of Health for the purposes of introducing shellfish into commerce.

"Certified dealer tag" means a shellfish tag, which is approved by the Virginia Department of Health, Division of Shellfish Sanitation, that shall only be used for shellfish harvested from a single harvest area, in any one day, and those shellfish are either loose in a conveyance or in a single container.

"Container" means any bag, box, sack, tote, or other receptacle that contains shellfish to be held, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.

"Conveyance" means any form of transport, either mechanical, such as a boat or truck, or nonmechanical that is used to transport shellfish from the harvest area to the landing site or from the landing site to a certified dealer or other use.

"Direct marketing" means any shellfish or shellstock that is landed and sold without any post-harvest processing.

"Harvest" means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a conveyance.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

~~"Oysters" mean those oysters 2 1/2 inches or greater in shell length.~~

"Replant" or "replanting" means to place after harvest shellfish into waters as allowable by applicable law or permit.

"Restricted-use shellstock" means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for direct marketing or raw consumption.

"Restricted-use shellstock tag" means a Virginia Marine Resources Commission-issued green tag that shall only be used by a certified dealer who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

"Shellfish" or "shellstock" means all species of bivalve molluscan shellfish.

"Single harvest area" means one of the water areas established by the Virginia Marine Resources Commission for reporting fisheries statistics.

"Shellfish harvester tag" means a shellfish tag that shall only be used for shellfish harvested from a single harvest area, in any one day, and those shellfish are either loose in a conveyance or in a single container.

"Shucker packer" means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

"Temperature control" means the use of ice or mechanical refrigeration, which is capable of lowering the temperature of the shellstock and maintaining it at 50°F (10°C) or less, as approved by the Virginia Department of Health, Division of Shellfish Sanitation.

4VAC20-1250-30. Shellfish identification.

A. Any person harvesting shellfish for commercial purposes shall affix a shellfish harvester tag to each container of shellfish, except as provided in subsection E of this section, before leaving any single harvest area. The shellfish harvester tag shall remain in place while the shellfish are transported from the harvest area to the landing site and from the landing site to a certified dealer or for any other use. Any transport of shellfish to a certified dealer requires that the shellfish harvester tag remain affixed to each container of shellfish until the container is emptied or shipped and re-tagged by a certified dealer.

B. The shellfish harvester tag, the bulk shellfish tag, and the green restricted-use shellstock tag shall be durable, waterproof, approved by the Virginia Marine Resources Commission or the Virginia Department of Health prior to use, and at least 13.8 square inches in size.

C. The shellfish harvester tag shall contain all of the following indelible and legible information, in the following order:

1. The harvester's Virginia Marine Resources Commission identification number or Virginia Marine Resources Commission oyster aquaculture harvester permit number or clam aquaculture harvester permit number;

2. The date of harvest, time that any shellfish harvest began, and time that harvested shellfish were offloaded and placed under temperature control;
3. An acknowledgement of whether or not those shellfish, described in subdivision 2 of this subsection, were placed in a Virginia Department of Health, Division of Shellfish Sanitation-approved storage container with a layer of ice that continuously and completely covered the oysters;
4. The most accurate identification of the harvest location or aquaculture site, including the abbreviated name of the state of harvest and the Virginia Marine Resources Commission's designation of the growing area by indexing, administrative, or geographic designation, and the minimum identification requirement shall be to specify a single harvest area from the listing, as described in 4VAC20-1250-50;
5. The type and quantity of harvested shellfish; and
6. The following statement, in bold capitalized letters: "THIS TAG IS REQUIRED TO BE ATTACHED, UNTIL THE CONTAINER IS EMPTY OR IS RE-TAGGED, AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

D. For any quantities of shellfish commercially harvested from a single harvest area, in any one day, that are loose and not containerized aboard any conveyance, the harvester shall prepare a shellfish harvester tag for that quantity of shellfish, which shall accompany that quantity of shellfish during transport from the single harvest area to the landing site and from the landing site to a certified dealer; or for ~~any other use~~ transport to any area for replanting.

E. When multiple containers of shellfish are harvested from a single harvest area, in any one day, and placed in any conveyance, the lot may be tagged with a bulk shellfish tag, for that quantity of shellfish, which shall accompany that quantity of shellfish during transport from the harvest area to the landing site and from the landing site to a certified dealer; or for ~~any other use~~ transport to any area for replanting. In addition to the information required in subsection C of this section, any bulk shellfish tag shall also include:

1. The following statement in bold capitalized letters: "ALL SHELLFISH CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND ARE FROM A SINGLE AREA OF HARVEST"; and
2. The number of individual containers in the lot.

F. Certified shucker packers shall use a green restricted-use shellstock tag for the harvest of restricted-use shellstock from a single harvest area in any one day. The restricted-use shellstock tag shall accompany that quantity of shellfish during transport from the harvest area to the landing site and from the landing site to the certified shucker packer. In addition to the information required in subsection C of this section, any restricted-use shellstock tag shall also include:

1. The certified shucker packer name and address; the Virginia Department of Health, Division of Shellfish and Sanitation certification number; and the following statement in bold capitalized letters: "FOR SHUCKING BY A CERTIFIED DEALER OR POST HARVEST PROCESSING ONLY"; and
2. The quantity of restricted-use shellstock in the lot.

G. Certified dealers may use their certified dealer tag in place of a shellfish harvester tag as provided in subsection A of this section, except as provided in subsection F of this section.

H. All commercially harvested shellfish shall be tagged by a certified dealer prior to being sold, marketed, consumed, or transported to any location other than to a certified dealer or for replanting.

VA.R. Doc. No. R22-6935; Filed August 25, 2021, 10:14 a.m.

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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-160. Regulations Governing Secondary School Transcripts (amending 8VAC20-160-10 through 8VAC20-160-50).**

Statutory Authority: §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 12, 2021.

Agency Contact: Joseph Wharff, Associate Director, Office of Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-3370, or email joseph.wharff@doe.virginia.gov.

Basis: The State Board of Education's overall regulatory authority may be found in § 22.1-16 of the Code of Virginia. Authority for promulgating regulations governing standards for accrediting public schools may be found in § 22.1-253.13:3 of the Code of Virginia.

Purpose: Secondary school transcripts are a complete record of a student's coursework, grades, and credits and provide concrete evidence to postsecondary institutions and the workforce of a student's preparation in matriculating, joining the military, or entering the workforce. It is imperative that the Regulations Governing Secondary School Transcripts be updated periodically to align with the needs of postsecondary education and the workforce.

Substance: The proposed action includes the following amendments:

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In 8VAC20-160-10. Definitions, words and terms that are outdated are revised or deleted, and new words or terms are added that align with secondary and postsecondary expectations. One revision was made to this section and is included as a result of feedback from the January 23, 2020, State Board of Education meeting. The definition of "verified unit of credit" or "verified credit" was changed to accurately reflect the definition provided in the Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131).

In 8VAC20-160-20. Effective date, the date that the Secondary School Transcript Regulations become effective for students who take secondary courses for credit is changed to 2020-2021.

In 8VAC20-160-30. Format options, certain required elements for secondary school transcripts are revised or deleted and new elements added to align with secondary and postsecondary expectations.

Generally, information is added to meet postsecondary demands, and obsolete or no longer needed information is deleted.

Issues: The advantage to public and the Commonwealth of the revisions to the Regulations Governing Secondary School Transcripts is that updated information and language will align with the needs of postsecondary institutions and business and industry to better position students in the Commonwealth to successfully transition to life after high school.

There are no disadvantages to this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In addition to clarifications and elimination of obsolete language, the Board of Education (Board) proposes to: 1) no longer require that secondary school transcripts include gender, 2) add completion of training in first aid, cardiopulmonary resuscitation (CPR), and automated external defibrillator (AED) to the list of required elements in the transcript, 3) no longer require that the transcript by default include SAT and ACT scores, 4) allow electronic signatures and dating of signatures on the transcript, 5) no longer require that the school profile data sheet contain the grade distribution for the school, and 6) no longer require that Advanced-level Placement (AP) and International Baccalaureate (IB) courses be weighted in determining grade point averages (GPAs).

Background. According to the Department of Education (DOE), the last full revision to the Regulations Governing the Secondary School Transcripts was conducted in 2007. DOE formed a stakeholder group to help update the regulation. The stakeholder group was comprised of professionals from large school divisions and in-state colleges and universities that respectively regularly transmit and review high school transcripts.

The regulation includes lists of items required to be on the secondary school transcript and school profile data¹ sheet. School divisions may include other items, but all required items must be on the transcript and school profile data sheet.

All school divisions have free use of transcript processing software through a state contract.

Estimated Benefits and Costs.

Gender: The current regulation requires that the gender of the student be indicated on each transcript. Under the proposal, gender would be removed from the list of required items. Thus, whether or not to include gender on the transcript would be up to the individual school divisions to decide. According to DOE, the stakeholders stated that information on gender is gathered in other ways and is not needed on the official transcript.

Training in first aid, CPR, and AED: Effective with the students who entered the ninth grade in the 2018-2019 school year, completion of training in first aid, CPR, and AED is required for graduation with either a Standard Diploma or an Advanced Studies Diploma.² The Board proposes to add completion of training in these areas to be on the transcript. This could be beneficial for graduates in that some potential employers may find the completion of such training to be valuable in job candidates.

SAT and ACT: Under the current regulation, SAT and ACT scores are included on the transcript by default, but can be removed by written request of parents, guardians, or others having legal control. The proposal would change the default to not including SAT and ACT scores on the transcript. Local school divisions could optionally have a policy that would allow the scores to be added by written request. The proposal could be beneficial for students whose SAT or ACT scores are less impressive than their grades and other college application materials. A significant percentage of colleges now do not require SATs or ACTs. Though the current regulation specifies that the scores can be removed by written request, in practice students and parents or guardians may not be aware of the option or do not have time to make the written request and have it processed due to impending application deadlines.

Electronic Signature: The current regulation states that the transcript must include the signature, date of the signature, and title of the school official signing. The Board proposes to add language to allow for the signature, date, and title of school official to be transmitted through a secure and verified electronic method. This proposal could save the staff time associated with physically signing and dating every transcript.

Grade Distribution: The regulation requires that a secondary school profile data sheet, for each school reflected on the transcript, be attached to each student transcript sent to colleges, universities, and prospective employers. Additionally, the regulation specifies the items required to be on the school profile data sheet. The Board proposes to remove grade distribution from the items required to be on the school profile data sheet. Whether or not to include grade distribution on the school profile data sheet would be up to the individual

school divisions to decide. A school's grade distribution can be useful information for postsecondary institutions looking at transcripts, particularly if the school does not include class rank (class ranking is optional). If the transcript does not have grade distribution or class rank, it may be difficult for postsecondary institutions to know how well the student did compared to that student's schoolmates based only on the GPA. Four of the nine colleges and universities in the stakeholder group indicated a preference that grade distribution not be removed from the items required to be on the school profile data sheet.³

Moreover, by it being more difficult for postsecondary institutions to know how well the student performed in high school compared to his or her schoolmates based only on the GPA, students at schools with relatively strict grading may not be viewed as positively as they would if the admissions office had grade distribution information available. Conversely, students at schools with relatively lenient grading may be viewed more positively than deserved compared to students at other high schools.⁴ It seems likely that school divisions that grade relatively strictly would be less likely to not include the grade distribution since it could be disadvantageous for their students.

Weighting AP and IB courses for GPA: The current regulation requires that AP and IB courses be weighted in determining GPAs, but does not specify how much extra weight is to be given to these courses. The Board proposes to no longer require, but still allow, weighting of AP and IB courses. This proposed amendment allows additional flexibility to school divisions and should not diminish college and university understanding of student performance as long as how GPA is calculated remains explicit and which courses on the transcript are AP or IB remains clear. However, the potential elimination of giving extra weight to AP and IB courses at some school divisions would likely affect class rank and may affect which student is valedictorian at high schools in such school divisions.

Businesses and Other Entities Affected. The proposed amendments affect the 132 local school divisions in the Commonwealth, and the high schools within those school divisions. No school divisions appear to be disproportionately affected. Postsecondary institutions and employers that review high school transcripts would also be affected.

According to DOE, it would take school staff half a day or less to make the changes to the transcript processing files required by the proposal. On the other hand, the proposal to allow electronic signatures and dating would save school staff time.

Small Businesses⁵ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected.⁷ The proposed amendments affect all Virginia localities in that all localities have students and staff associated with public high schools. No localities appear to be disproportionately affected. The proposal would require school staff time half a day or less to make the changes required by

the proposal. This would likely be considered part of existing staff's regular work responsibility and would not require additional funds. Additionally, school staff time would be saved by allowing electronic signatures and dating.

Projected Impact on Employment. The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not appear to substantively affect the use and value of private property nor real estate development costs.

¹The proposed regulation defines "secondary school profile data" as "information given in a summary format of a particular secondary school."

²See <https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section51/>. Students with an individualized education plan or 504 Plan that documents that they cannot successfully complete this training are granted a waiver from this graduation requirement

³Data source: DOE

⁴Experienced admissions staff at in-state post-secondary schools would likely gain a rough approximation of this information over time. Out-of-state post-secondary schools would likely be less well informed.

⁵Pursuant 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."

⁶"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency would like to provide clarification to the Estimated Costs and Benefits related to item 6 (Grade Distribution) of the Economic Impact Analysis. Clarification and additional context on the stakeholder group's decision for removal of grade distribution to the secondary school transcript is provided here.

Justification of removal of grade distribution from secondary school transcript: Many on the stakeholder group, particularly those at the secondary level felt that the grade distribution is a potentially misleading data point. Concern was expressed about how broadly a grade distribution might be interpreted, meaning a lot of students on the higher end could be interpreted as grade inflation, but it could diminish the efforts of a school where there were a significant number of high achieving students. The group agreed that the grade distribution could certainly provide some context as to where a specific student fell within a class but questioned whether those are really the predictors of success in college. In addition, it is not evident whether the grades in the distribution actually reflect students in college prep coursework. Some institutes of higher education did express that the grade distribution is helpful, especially as it relates to understanding the context of the senior class. Keeping the grade distribution was also supported for schools who don't add class rank to transcripts.

It is important to note that with removal of the grade distribution from the transcript regulations, school divisions can still choose to add grade distribution to the secondary

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school transcript. School divisions will be advised to make decisions that are in the best interests of their students and the postsecondary institutions they serve.

Summary:

The proposed amendments (i) eliminate the requirement that secondary school transcripts include gender; (ii) add completion of training in first aid, cardiopulmonary resuscitation, and automated external defibrillator to the list of required elements in the transcript; (iii) eliminate the requirement that the transcript by default include SAT and ACT scores; (iv) allow electronic signatures and dating of signatures on the transcript; (v) eliminate the requirement that the school profile data sheet contain the grade distribution for the school; and (vi) eliminate the requirement that Advanced-level Placement and International Baccalaureate courses be weighted in determining grade point averages.

8VAC20-160-10. Definitions.

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

~~"Accelerated course" means a course that can be completed in less than the normal amount of time; the process of progressing through the school grades at a rate faster than that of the average student, either by skipping grades or by rapidly mastering the work of one course and moving on to the next higher course.~~

~~"Advanced-level courses/programs courses or programs" means those academic, career/technical, fine and performing arts, or interdisciplinary high school courses/programs that enable students to acquire and master advanced knowledge. Such courses may be suitable for weighted credit in order to encourage students to take these courses and to be rewarded for the extra endeavor and academic performance these courses/programs require.~~

"Advanced Placement (AP) course" means an advanced-level course with a syllabus equivalent ~~to the relevant Advanced Placement syllabus disseminated~~ approved by the College Board.

"Assessment component" means any of the means by which one obtains information on the progress of the learner and the effectiveness of instruction; quantitative data, objective measures, subjective impressions, tests, and observations may all serve as instruments for deciding whether instructional objectives have been attained.

"Certificate of Program Completion award date" means the date when a Certificate of Program Completion is awarded. A Certificate of Program Completion is not ~~to be included as a diploma option, as provided in 8VAC20-131-50 and 8VAC20-131-51.~~

~~"Commonwealth College Course Collaborative (CCCC)" means a set of approved courses taken in high school that fully transfer as core requirements and degree credits at Virginia colleges and universities.~~

~~"Commonwealth Scholar" means a student who completes all of the requirements for at least a Standard Diploma and additional prescribed rigorous coursework in foreign language, history, mathematics, science, and other approved discipline areas consistent with the United States Department of Education's State Scholars Initiative.~~

~~"Credit" means a standard or a verified credit as specified in Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131).~~

"Credit summary" means the number of courses successfully completed in each discipline ~~as required for graduation.~~

"Curriculum" means an official guide prepared for use by administrators, supervisors, and teachers of a particular school or school system as an aid to teaching in a given subject or area of study for a given grade; includes the goals and objectives of the course, the expected outcomes, assessment component, and the scope and nature of the materials to be studied.

"Curricular program" means the overarching academic or special programs available at an individual school or within a school division. Examples include Advanced Placement, International Baccalaureate, Dual Enrollment, Career and Technical Education (CTE) academy or magnet programs, or early college.

"Dual enrollment course" means a course, which may be advanced-level, that carries both high school and college credit.

"Early College Scholar" means a student who signs the Early College Scholars agreement and completes the requirements of the program, which includes a prescribed number of potentially transferable college credits, maintaining a "B" average or better, and earning an Advanced Studies diploma.

"Grade point average" means a measure of average scholastic success in all high school credit-bearing courses taken by a student during a certain term or semester, or accumulated for several terms or semesters; obtained by dividing grade points by number of courses taken.

"Graduation date" means the date when diploma requirements have been met and a diploma is awarded.

"Honors course" means a an advanced-level course offered to academically advanced students to provide opportunities to study and learn with other advanced students and to accelerate their learning in a specific content area. These courses are designed to be more challenging by covering additional topics or some topics in greater depth providing students an opportunity to deepen their knowledge and understanding in a

specific content area through additional rigor and course extensions beyond minimum state standards.

"Industry certification credential" means a career and technical education credential that is earned by successfully completing a Board of Education-approved industry certification examination, a state-issued professional license, or an occupational competency examination.

"International Baccalaureate (IB) course" means an advanced-level course with a syllabus approved by the International Baccalaureate Organization (IBO) and meeting the criteria offered through the IBO program.

"Secondary course" means a high school-level course of study that awards high school credits. ~~In addition to providing content and knowledge, secondary courses encourage students to develop higher level thinking skills such as problem solving, critical analyses and syntheses of ideas. Students are encouraged to understand, appreciate, and formulate ideas related to scientific, technical and social concepts.~~

"Secondary school profile data" means information given in a summary format of a particular secondary school, ~~such as location; description; achievement data; definition of curriculum; grading scale, grade distribution; weighted grades; rank in class, if a ranking procedure is used; graduation requirements; and an explanation of advanced level, accelerated, and honors courses, industry certifications, and other specialized programs.~~

"Secondary school transcript" means an official list of secondary courses taken by a student, except those purged from a middle school record in accordance with 8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia, showing the final grade received for each course, with definitions of the various grades given.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successful completes (i) 140 clock hours of instruction and the requirements of the course or (ii) alternative requirements to the 140-clock hours of instruction as developed by a local school division as provided for in 8VAC20-131-110.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and (i) achieves a passing score on a corresponding end-of-course SOL test; (ii) achieves a passing score on an additional test as defined in 8VAC20-131-5 as part of the Virginia Assessment Program; (iii) meets the criteria for the receipt of a locally awarded verified credit conferred in accordance with board criteria and guidelines as provided in 8VAC20-131-110 B 3 when the student has not passed a corresponding SOL test in English, mathematics, laboratory science, or history and social science; or (iv) meets the criteria for the receipt of a verified credit for English (writing) by demonstrating mastery of the content of the associated course

on an authentic performance assessment, as provided in 8VAC20-131-110 B 4.

"Weighted course" means an advanced-level course in which credit is increased as determined by local school board policies and defined on the school profile.

8VAC20-160-20. Effective date.

The secondary school transcript regulations shall become effective for students who take secondary courses for credit beginning in ~~2008-2009~~ 2020-2021.

8VAC20-160-30. Format options.

Localities have options for the secondary school transcript format. They may use the Department of Education model or develop their own following board regulations. Localities ~~may also be encouraged to use a digital data exchange format (XML is preferred)~~ are encouraged to use a digital data exchange format (XML is preferred) for electronic transcript transmission whenever possible. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers.

The required information is as follows:

1. Name of school division;
2. Student legal name;
3. State Testing Identifier (STI);
4. Birthdate;
- ~~5. Gender;~~
- ~~6. Home~~ 5. Primary address;
- ~~7. Home telephone~~ 6. Primary phone number;
- ~~8. 7. Graduation date;~~
- ~~9. 8. Type of diploma, to include from the following: "Advanced Studies," "Standard," or "Other Diplomas Authorized by the Board of Education";~~
- ~~10. 9. Type of industry certification credential and date of completion, if applicable;~~
- ~~11. 10. Certificate awarded, either a High School Equivalency test (eg., GED, HiSet, TASC) or Certificate of Program Completion and award date, if applicable no diploma has been awarded;~~
11. Completion of training in First Aid, Cardiopulmonary Resuscitation (CPR), and Automated External Defibrillator (AED);
12. Notation of Early College Scholar Designation;
- ~~13. Notation of Commonwealth Scholar Designation;~~
- ~~14. 13. Name, address, email address, and telephone number of schools student attended each year each school at the time at which high school credits were awarded, address of school, and telephone number;~~

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~~15.~~ 14. Number of days absent within any given school year in which the student is taking courses for high school credit;

~~16.~~ Course 15. All high school credit bearing course work listed by year with grades to include all repeated courses except those purged from a middle school record in accordance with Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131);

~~17.~~ 16. Total credits earned by year;

~~18.~~ 17. A list of verified credits earned, including any credits earned by substitution;

~~19.~~ Credits 18. Standard and verified credits to date;

~~20.~~ 19. Grade point average;

~~21.~~ Credit 20. Overall standard credit summary for entire school experience;

~~22.~~ 21. Key to symbols and abbreviations used to denote accelerated courses, advanced-level courses, Commonwealth College Course Collaborative courses, honors courses, and summer school courses, or credits earned by substitution;

~~23.~~ 22. Notification of whether school/program ranks students; if so, the rank in class with given number of semesters used for computation;

~~24.~~ 23. Final driver education grade;

~~25.~~ Test record, to include at least the highest score earned, if applicable, on college performance related standardized tests such as SAT and ACT, excluding Standards of Learning (SOL) test scores, except that each 24. A local school board ~~shall~~ may adopt a policy setting forth ~~the~~ a procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child's standardized test ~~record excluded from scores, such as SAT and ACT, included in~~ the student transcript (opt ~~out~~ in);

~~26.~~ 25. Signature and title of school official or transmission through a secure and verified electronic method;

~~27.~~ 26. Date of school official signature or transmission through a secure and verified electronic method;

~~28.~~ 27. School name;

~~29.~~ 28. School address;

~~30.~~ 29. Telephone number of school;

~~31.~~ 30. Fax number of school;

~~32.~~ 31. The school's Department of Education College Entrance Examination Board (CEEB) 7-digit code number.

8VAC20-160-40. Profile data sheet.

A secondary school profile data sheet, for each school reflected on the transcript, if applicable, shall be attached to

each student transcript sent to colleges, universities, and prospective employers. Schools may furnish additional information. The accreditation status of a high school shall not be included on the school profile data sheet. No standard format is required. The profile data sheet must contain the following information:

1. Name of school counseling director or school counselor;
2. Name, address, and telephone number of school;
3. Description - school/community;
4. Achievement data to include SAT ~~and/or~~ or ACT scores using the most recent data available in comparison with Virginia and the nation;
5. Description of ~~curriculum~~ curricular progress;
6. Grading scale;
- ~~7.~~ Grade distribution;
- ~~8.~~ 7. Explanation of advanced-level, ~~accelerated, and honors~~ courses;
- ~~9.~~ 8. Weighted grades, explanation of weighting courses and the computation, if applicable;
- ~~10.~~ 9. Explanation of rank in class, if applicable:
 - a. List courses excluded from computation;
 - b. Explanation of computation of pass/fail courses;
 - c. Student groups included/excluded from ranking in class;
- ~~11.~~ 10. Graduation requirements.

8VAC20-160-50. Weight of advanced-level courses.

~~Advanced Placement (AP) and International Baccalaureate (IB) Advanced-level~~ courses ~~shall~~ may be weighted. Local school boards shall determine which other courses/programs are to receive weighted credits, the amount of weight such courses shall receive, and how those weighted credits will be used in the determination of grade point averages in the school or school division. Local school boards shall consider equitable access to advanced-level courses when determining weighting.

VA.R. Doc. No. R20-6103; Filed August 16, 2021, 5:16 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 8VAC20-780. Standards for Licensed Child Day Centers (amending 8VAC20-780-10, 8VAC20-780-20, 8VAC20-780-30, 8VAC20-780-40, 8VAC20-780-60, 8VAC20-780-70, 8VAC20-780-80, 8VAC20-780-130, 8VAC20-780-140, 8VAC20-780-160, 8VAC20-780-180, 8VAC20-780-190, 8VAC20-780-240, 8VAC20-780-320, 8VAC20-780-350, 8VAC20-780-400, 8VAC20-780-420, 8VAC20-780-460, 8VAC20-780-500, 8VAC20-780-510, 8VAC20-780-530, 8VAC20-780-550, 8VAC20-780-560, 8VAC20-780-580; adding 8VAC20-780-245, 8VAC20-780-355).

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

Effective Date: October 13, 2021.

Agency Contact: Rebecca Ullrich, Director, Early Childhood Access and Enrollment, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-7578, or email rebecca.ullrich@doe.virginia.gov.

Background: Chapters 860 and 861 of the 2020 Acts of Assembly transferred regulatory authority for licensure of child day centers from the State Board of Social Services to the State Board of Education as of July 1, 2021. Amendments to the Standards for Licensed Child Day Centers previously were part of an action by the State Board of Social Services and are now being promulgated under the State Board of Education given the transfer of regulatory authority.

Summary:

The amendments align requirements of licensed programs with requirements for providers receiving federal Child Care and Development Funds. In addition to making many clarifying changes, the amendments (i) remove the list of exemptions to licensure requirements from the regulation, (ii) require licensees to have written procedures for prevention of shaken baby syndrome and for safe sleeping practices, (iii) require licensees to document all known food allergies and sensitivities and dietary restrictions of children in their care and require that parents provide instructions from a physician regarding their child's food allergies, (iv) allow children defined by the regulation as homeless who do not have documentation of immunization or physical examination to attend licensed facilities for 90 days before such documentation must be produced, (v) allow any unimmunized child to attend a licensed child day center for 90 days (180 days in some cases) while immunizations are brought up to date so long as the child has had one dose of each required immunization before attendance, (vi) require annual training, (vii) require all direct care staff to complete first aid and cardiopulmonary resuscitation (CPR) training and allow all hours of first aid and CPR training to count toward annual training requirements, (viii) institute new group size restrictions, (ix) require licensees to formulate and implement a plan to ensure that children receive care by consistent staff, and (x) revise emergency preparedness plan requirements.

Additional amendments include (i) procedural components for the continuity of operations in the emergency preparedness plan; (ii) notifying parents if their child comes into contact with any food to which the child is allergic as identified in the written care plan; (iii) reporting of attendance records for each group of children and all injuries that result in the referral for treatment from a medical professional; (iv) submitting documentation of tuberculosis screening at the time of employment and prior to coming into contact with children and requiring that documentation of tuberculosis screening is completed within 30 calendar days of employment; (v) considering certain requirements for program directors employed prior to October 13, 2021, who meet the current education and experience qualifications to be met; (vi) requiring only new staff, hired after October 13, 2021, to complete orientation; (vii) exempting cooperative preschool parent volunteers who count in child to staff ratios from orientation requirements and training requirements, except for four hours of training annually; (viii) requiring staff must complete, within 30 days of the first day of employment, first aid and cardiopulmonary resuscitation (CPR) orientation training appropriate to the age of children in care; (ix) removing the requirement for school age children of the opposite sex to use the restroom separately; (x) requirements for timeout; (xi) allowing the use of cloth diapers, even if there has not been an adverse reaction to disposable diapers, when disposal requirements are met; (xii) requiring at least one staff in each classroom or area where children are present to be certified in first aid and CPR within 90 days of October 13, 2021; (xiii) requiring at least two staff certified in first aid and CPR must always be present at the center wherever children are in care; and (xiv) exempting staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing from the first aid certification requirement.

8VAC20-780-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means children from birth to 16 months.
2. "Toddler" means children from 16 months up to two years.

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3. "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.

4. "School age" means children eligible to attend public school, age five or older by September 30 of that same year. Four-year-old or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Balanced mixed-age grouping" means a program using a curriculum designed to meet the needs and interests of children in the group and is planned for children who enter the program at three through five years of age. The enrollment in the balance mixed-age grouping comprises a relatively even allocation of children in each of three ages (three to six years) and is designed for children and staff to remain together with turnover planned only for the replacement of exiting students with children of ages that maintain the class balance.

"Body fluids" means urine, feces, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Camp" means a child day camp that is a child day center for school age children that operates during the summer vacation months only. Four-year-old children who will be five by September 30 of the same year may be included in a camp for school age children.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children younger than 13 years of age in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child younger than 13 years of age for less than a 24-hour period. ~~Note: This "Child day program"~~ "Child day program" does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.

"Children with special needs" means children with developmental disabilities, ~~mental retardation~~ intellectual disabilities, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way to reduce the amount of filth through the use of water with soap or detergent or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Education.

"Department's representative" means an employee or designee of the Virginia Department of Education, acting as the authorized agent of the superintendent.

"Evening care" means care provided after 7 p.m. but not through the night.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group of children" means the children assigned to a staff member or team of staff members.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"High school program completion or the equivalent" means an individual has earned a high school diploma ~~or General Education Development (G.E.D.) certificate~~, passed a high school equivalency examination approved by the Board of Education, or has completed a program of home instruction in accordance with § 22.1-254.1 of the Code of Virginia equivalent to high school completion.

"Homeless child" means a child who lacks a fixed, regular, and adequate nighttime residence and includes a child who is:

1. Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; sometimes referred to as doubled-up;
3. Living in a motel, hotel, trailer park, or camping ground due to lack of alternative adequate accommodations;
4. Living in a congregate, temporary, emergency, or transitional shelter;
5. Awaiting or in foster care placement;
6. Abandoned in a hospital;

7. Living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

8. A migratory child as defined in 20 USC § 6399 who qualifies as homeless because the child is living in circumstances described in subdivisions 1 through 6 of this definition.

"Independent contractor" means an entity that enters into an agreement to provide specialized services or staff for a specified period of time.

"Individual service, education or treatment plan" means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations, and intervention strategies. The service, education or treatment plan clearly shows documentation and reassessment or evaluation strategies.

"Intervention strategies" means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

"Licensee" means any individual, corporation, partnership, association, public limited liability company, local government, state agency, including any department institution, authority, instrumentality, board, other administrative agency of the Commonwealth, or corporation ~~other legal or commercial entity that operates or maintains a child day center~~ to whom the license is issued.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the facility is restricted.

"Minor injury" means a wound or other specific damage to the body such as, ~~but not limited to,~~ abrasions, splinters, bites that do not break the skin, and bruises.

"Overnight care" means care provided after 7 p.m. and through the night.

"Parent" means the biological or adoptive parent or legal guardian of a child enrolled in or in the process of being admitted to a center.

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

"Physician's designee" means a physician, licensed nurse practitioner, licensed physician assistant, licensed nurse (R.N. or L.P.N.), or health assistant acting under the supervision of a physician.

"Primitive camp" means a camp where places of abode, water supply system, or permanent toilet and cooking facilities are not usually provided.

"Programmatic experience" means time spent working directly with children in a group that is located away from the

child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Resilient surfacing" means:

1. For indoor and outdoor use underneath and surrounding equipment, impact absorbing surfacing materials that comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials' standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004.

2. Hard surfaces such as asphalt, concrete, dirt, grass, or flooring covered by carpet or gym mats do not qualify as resilient surfacing.

"Sanitized" means treated in such a way to remove bacteria and viruses from inanimate surfaces through using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of the item is sprayed or dipped into the disinfectant solution and allowed to air dry ~~after use of the disinfectant solution~~ on the surface for a minimum of two minutes or according to the disinfectant solution instructions.

"Serious injury" means a wound or other /specific damage to the body such as, ~~but not limited to,~~ unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that is inflicted upon the brain of an infant or young child. The injury can occur during violent shaking, causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means the ~~facility or building in which a child day center is located~~ movement of occupants of the building to designated protected spaces within the building.

"Short-term program" means a child day center that operates less than 12 weeks a year.

"Special needs child day program" means a program exclusively serving children with special needs.

"Specialty camps" means those centers that have an educational or recreational focus on one subject such as dance, drama, music, or sports.

"Sponsor" means an individual, partnership, association, public agency, corporation, or other legal entity in whom the

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ultimate authority and legal responsibility is vested for the administration and operation of a center subject to licensure.

"Staff" means administrative, activity, and service personnel including the licensee when the licensee is an individual who works in the center, and any persons counted in the staff-to-children ratios or any persons working with a child without sight and sound supervision of a staff member.

"Staff positions" are defined as follows:

1. "Aide" means the individual designated to be responsible for helping the program leader in supervising children and in implementing the activities and services for children. Aides may also be referred to as assistant teachers or child care assistants.

2. "Program leader" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children. Program leaders may also be referred to as child care supervisors or teachers.

3. "Program director" means the primary, onsite director or coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not personally performing these functions.

4. "Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director. The administrator may perform staff orientation or training or program development functions if the administrator meets the qualifications of 8VAC20-780-190 and a written delegation of responsibility specifies the duties of the program director.

"Standard precautions" means an approach to infection control. According to the concept of standard precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.

"Superintendent" means Superintendent of Public Instruction.

"Therapeutic child day program" means a specialized program, including therapeutic recreation programs, exclusively serving children with special needs when an individual service, education, or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

~~"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if~~

~~known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.~~

"Volunteer" means a person who works at the center and:

1. Is not paid;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

8VAC20-780-20. Legal base authority.

A. Chapter 14.1, Article 3 (§ 22.1-289.010 et seq.) and Article 4 (§ 22.1-289.030 et seq.) of Title 22 of the Code of Virginia describes the responsibility of the Department of Education for the regulation of child day programs.

B. Section 22.1-16 of the Code of Virginia authorizes the State Board of Education to promulgate regulations to carry out its powers and duties. Pursuant to § 22.1-289.046 of the Code of Virginia, for child day programs that operate at a location that is currently approved by the Department of Education for school occupancy and that houses a public school during the school year, the public school building; vehicles that are owned by the public school and used to transport children attending the child day program; and meals served to children that are prepared by the public school are not subject to inspection or approval.

C. Nothing in this chapter shall be construed to contradict or to negate any provisions of the Code of Virginia which may apply to child day centers.

8VAC20-780-30. Purpose and applicability.

A. The purpose of these standards is to protect children under the age of 13 years who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children; and
2. Reducing risks in the environment.

B. The standards in this chapter apply to child day centers as defined in 8VAC20-780-10 ~~servicing children under the age of 13~~ that are required to be licensed by the department.

8VAC20-780-40. Operational responsibilities.

A. Applications for licensure shall conform with Article 3 (§ 22.1-289.010 et seq.) and Article 4 (§ 22.1-289.030 et seq.) of Chapter 14.1, of Title 22.1 of the Code of Virginia and the regulation entitled General Procedures and Information for Licensure, 8VAC20-820.

B. Pursuant to § 22.1-289.034 of the Code of Virginia and the regulation entitled Background Checks for Child Day

Programs and Family Day Systems, 8VAC20-770, the applicant and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children, shall be of good character and reputation ~~and shall not be guilty of an offense as defined in § 22.1-289.034 of the Code of Virginia; shall not have been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia; and is not the subject of a founded complaint of child neglect or abuse within or outside the Commonwealth.~~

C. The sponsor shall afford the superintendent or his agents the right at all reasonable times to inspect facilities and to interview his agents, employees, and any child or other person within his custody or control, provided that no private interviews may be conducted with any child without prior notice to the parent of such child.

D. The license shall be posted in a place conspicuous to the public (§ 22.1-289.011 of the Code of Virginia).

E. The operational responsibilities of the licensee shall include, ~~but not be limited to,~~ ensuring that the center's activities, services, and facilities are maintained in compliance with these standards, the center's own policies and procedures that are required by these standards, and the terms of the current license issued by the department.

F. Every center shall ensure that ~~any~~ advertising is not misleading or deceptive as required by § 22.1-289.027 of the Code of Virginia.

G. The center shall meet the proof of child identity and age requirements as stated in § 22.1-289.049 of the Code of Virginia.

H. The sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate.

1. A public sponsor may have equivalent self-insurance that is in compliance with the Code of Virginia.
2. Evidence of insurance coverage shall be made available to the department's representative upon request.

I. The center shall develop written procedures for injury prevention.

J. Injury prevention procedures shall be updated at least annually based on documentation of injuries and a review of the activities and services.

K. The center shall develop written procedures for prevention of shaken baby syndrome or abusive head trauma, including coping with crying babies, safe sleeping practices, and sudden infant death syndrome awareness.

L. The center shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

M. The center shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions documented in the allergy plan required in 8VAC20-780-60 A 8. This list shall be dated and kept confidential in each room or area where children are present.

N. The center shall develop written playground safety procedures which that shall include:

1. Provision for active supervision by staff to include positioning of staff in strategic locations, scanning play activities, and circulating among children; and
2. Method of maintaining resilient surface.

~~L.~~ O. Hospital-operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe or emergency situation and shall develop a written plan for emergency operations, for submission to and approval by the Department of Education.

~~M.~~ P. When children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

8VAC20-780-60. Children's records.

A. Each center shall maintain and keep at the center a separate record for each child enrolled which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;
2. Name, home address, and home phone number of each parent who has custody;
3. When applicable, work phone number and place of employment of each parent who has custody;
4. Name and phone number of child's physician;
5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;
6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;
7. Allergies and intolerance to ~~food~~, medication; or any other substances, and actions to take in an emergency situation;

8. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;

9. Chronic physical problems and pertinent developmental information and any special accommodations needed;

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~~9. Health information as required by 8VAC20-780-130 through 8VAC20-780-150;~~

~~Exception: When a center is located on the same premises where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation.~~

10. Written agreements between the parent and the center as required by 8VAC20-780-90;

11. Documentation of child updates and confirmation of up-to-date information in the child's record as required by 8VAC20-780-420 E 3;

12. Any blanket permission slips and opt out requests;

13. Previous child day care and schools attended by the child;

14. Name of any additional programs or schools that the child is concurrently attending and the grade or class level;

15. Documentation of viewing proof of the child's identity and age; ~~and~~

16. First and last dates of attendance;

17. Documentation of health information as required by 8VAC20-780-130, 8VAC20-780-140, and 8VAC20-780-150; and

18. Documentation of the enrollment of a homeless child enrolled under provision of 8VAC20-780-130 C or 8VAC20-780-140 A.

B. The requirements in subdivision A 17 of this section does not apply, and the center is not required to maintain duplicates of the school's health record if:

1. The center is located on the same premises where a child attends school;

2. The child's record has a statement verifying the school's possession of the health record; and

3. The school's records are accessible during the center's hours of operation.

~~B. C.~~ The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

8VAC20-780-70. Staff records.

~~A.~~ The following staff records shall be kept for each staff person:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering; and name, address, and telephone number of a person to be notified in an emergency which shall be kept at the center.

2. For staff hired after March 1, 1996, documentation that two or more references as to character and reputation as well as competency were checked before employment or volunteering. If a reference check is taken over the phone, documentation shall include:

- a. Dates of contact;
- b. Names of persons contacted;
- c. The firms contacted;
- d. Results; and
- e. Signature of person making call.

3. Background checks as required by the regulation entitled Background Checks for Licensed Child Day Programs and Family Day Systems (8VAC20-770).

~~4. Written information~~ Documentation to demonstrate that the individual possesses the education, ~~orientation training, staff development,~~ certification, and experience required by the job position, and orientation and training as required in 8VAC20-780-240 and 8VAC20-780-245.

5. First aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the staff member.

6. Health information as required by 8VAC20-780-160 and 8VAC20-780-170.

7. Information, to be kept at the center, about any health problems ~~which~~ that may interfere with fulfilling the job responsibilities.

8. Date of separation from employment.

~~B. Exception: Background check records for independent contractors must be kept in accordance with 8VAC20-770-40 of the background check regulation.~~

8VAC20-780-80. Attendance records; reports.

~~A. The center shall keep a written record of children in attendance each day. For each group of children, the center shall maintain a written record of daily attendance that documents the arrival and departure of each child in care as it occurs.~~

B. Reports shall be filed and maintained as follows:

1. The center shall inform the superintendent's representative as soon as practicable but not to exceed one ~~working~~

business day of the circumstances surrounding the following incidents:

- a. Death of a child while under the center's supervision; ~~and~~
- b. Missing child when local authorities have been contacted for help; or
- c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

2. The center shall inform the department's representative as soon as practicable, but not to exceed two business days, of any injury to a child that occurs while the child is under the supervision of the center and requires outside medical attention.

3. Any suspected incident of child abuse shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

8VAC20-780-130. Immunizations for children.

A. The center shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

~~Exemptions (subsection C of § 22.1 271.2 of the Code of Virginia and 12VAC5 110 110 of the Regulations for the Immunizations of School Children): Documentation of immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C, or other Department of Health approved form that one or more of the required immunizations may be detrimental to the child's health.~~

B. The center may allow a child to attend contingent upon a conditional enrollment for a period of 90 days if the child received at least one dose of each of the required vaccines and the child possesses a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

C. If a child is homeless and does not have documentation of the required immunizations, the center may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

D. Documentation related to the child's conditional enrollment shall be maintained in the child's record.

~~E. The center shall obtain documentation of additional immunizations once every six months for children under the age of two years.~~

~~E. F. The center shall obtain documentation of additional immunizations once between each child's fourth and sixth birthdays.~~

G. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the center on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

8VAC20-780-140. Physical examinations for children.

A. Each child shall have a physical examination by or under the direction of a physician:

- 1. Before the child's attendance; or
- 2. Within ~~one month~~ 30 days after the first day of attendance.

If a child is homeless and does not have documentation of a physical examination, the center may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required physical examination.

B. If the child has had a physical examination prior to attendance, it shall be within the time period prescribed ~~below~~ in this subsection:

- 1. Within two months prior to attendance for children six months of age and younger;
- 2. Within three months prior to attendance for children aged seven months through 18 months;
- 3. Within six months prior to attendance for children aged 19 months through 24 months; and
- 4. Within 12 months prior to attendance for children two years of age through five years of age.

C. Exceptions:

~~1. Children transferring from a facility licensed by the Virginia Department of Education, certified by a local department of public welfare or social services, registered as a small family day home by the Virginia Department of Education or by a contract agency of the Virginia~~

Regulations

Department of Education, or approved by a licensed family day system:

~~a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.~~

~~b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with 8VAC20-780-130 and this section.~~

C. When a child transfers from a facility licensed by the Virginia Department of Education, approved by a licensed family day system, or voluntarily registered by the Virginia Department of Education, a new physical examination is not required if a copy of the physical examination from the originating program is maintained in the child's record.

~~2. D.~~ Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

E. A new physical examination is not required for a school age child if a copy of the physical examination required for his entry into a Virginia public kindergarten or elementary school is kept in the child's record.

8VAC20-780-160. Tuberculosis screening for staff and independent contractors.

A. Each staff member and individual from an independent contractor shall submit documentation of a negative tuberculosis screening.

~~Documentation of the screening shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.~~

1. Documentation of the screening shall be submitted at the time of employment and prior to coming into contact with children.

2. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department.

B. Acceptable forms of documentation of tuberculosis screening are:

1. A clearance statement signed by a physician, the physician's designee or an official of the local health department. This statement shall include language that the individual does not have any current symptoms of active tuberculosis, does not have either a risk factor for acquiring tuberculosis infection or a risk factor for progression to

active tuberculosis disease as defined by the local health department, or has been treated for these conditions in the past, and is currently free of tuberculosis in a communicable form. Individuals who have a risk factor for progression to active tuberculosis disease as defined by the Virginia Department of Health shall submit documentation as stated in subdivision 2 or 3 of this subsection;

2. The results of a negative tuberculin skin test (TST). The documentation shall include the date the test was given and results of the test and be signed by a physician, physician's designee or an official of the local health department.

3. The results of a chest x-ray negative for active tuberculosis disease. The documentation shall include the date of the test and location where the examination was performed.

C. At least every two years from the date of the initial screening or testing, or more frequently if recommended by a licensed physician or the local health department, staff members and individuals from independent contractors shall obtain and submit the results of a follow-up tuberculosis screening as stated in subsection B of this section.

D. Any staff member or individual from an independent contractor who develops symptoms compatible with active tuberculosis disease, regardless of the date of the last tuberculosis screening or assessment, shall obtain and submit within 14 days a determination of noncontagiousness by a physician or local health department.

1. Until such determination is made, that staff member may not be permitted to work at the center.

2. Any staff member or individual from an independent contractor who comes in contact with a known active case of tuberculosis or who tests positive on a tuberculin skin test, regardless of the date of the last tuberculosis screening or assessment, shall submit within 30 days a statement indicating that all needed follow-up for the incident has been completed and that the individual is free of tuberculosis in a communicable form. This statement shall be signed by a physician, physician's designee or an official of the local health department.

8VAC20-780-180. General qualifications.

~~A. No staff shall be guilty of an offense, as defined in § 22.1-289.034 of the Code of Virginia.~~

~~B.~~ Staff shall be:

1. Of good character and reputation;

2. Capable of carrying out assigned responsibilities;

3. Capable of accepting training and supervision; and

4. Capable of communicating effectively both orally and in writing as applicable to the job responsibility.

~~C. B.~~ Staff who work directly with children shall be capable of communicating with emergency personnel.

~~D. C.~~ Staff who drive a vehicle transporting children shall disclose any moving traffic violation that occurred five years prior to or during employment or assignment as a driver.

~~E. D.~~ For therapeutic child day programs and special needs child day programs, staff who work with children shall have knowledge of the groups being served and skills specific to the special needs of the children in care including, ~~but not limited to,~~ functional abilities, accommodations, assessment techniques, behavior management, and medical and health concerns.

8VAC20-780-190. Program director qualifications.

A. Program directors shall be at least 21 years of age and shall meet one of the following:

1. A graduate degree in a child-related field such as, ~~but not limited to,~~ elementary education, nursing, or recreation from a college or university and six months of programmatic experience;
2. An endorsement or bachelor's degree in a child-related field such as, ~~but not limited to,~~ elementary education, nursing, or recreation from a college or university and one year of programmatic experience;
3. Forty-eight semester hours or 72 quarter hours of college credit from a college or university of which 12 semester hours or 18 quarter hours are in child-related subjects and one year of programmatic experience;
4. Two years of programmatic experience with one year in a staff supervisory capacity and at least one of the following education backgrounds:
 - a. A one-year early childhood certificate from a college or university that consists of at least 30 semester hours;
 - b. A child development credential that requires:
 - (1) High school program completion or the equivalent;
 - (2) 480 hours working with children in a group which could include a supervised practicum; ~~and~~
 - (3) Determination of competency in promoting children's development, providing a safe and healthy environment, managing the classroom environment ~~and/or~~ or childhood program, and promoting positive and productive relationships with ~~parents/guardians~~ parents or guardians; and
 - (4) At least 120 ~~clock~~ hours of child-related training taught by an individual or by an organization with expertise in early childhood teacher preparation provided that the training facilitator:
 - (a) Documents the student's mastery and competence;
 - (b) Observes the student's application of competence in a classroom setting;

(c) Has a combination of at least six years of education (leading to a degree or credential in a child-related field) or programmatic experience; and

(d) Has at least 12 semester hours or 180 ~~clock~~ hours in a child-related field, a child development credential or equivalent, and two years of programmatic experience with one year in a staff supervisory capacity; or

c. A certification of qualification from an internationally or nationally recognized Montessori organization; ~~or,~~

~~5. Three years of programmatic experience including one year in a staff supervisory capacity and fulfilled a high school program completion or the equivalent.~~

~~a. Such programmatic experience shall be obtained in a child day center that offers a staff training program that includes: written goals and objectives; assessment of the employee's participation in the training; and the subject areas of first aid, human growth and development, health and safety issues and behavioral management of children.~~

~~b. Such employees shall complete 120 hours of training during this three year period and provide documentation of completing the training.~~

~~e. Effective June 1, 2008, program directors shall meet a qualification as stated in subdivisions 1 through 4 of this subsection.~~

~~6. Exception (a): Program directors hired before June 1, 2005, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year three semester hours or six quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded by June 1, 2009.~~

~~Exception (b): Program directors hired or promoted on or after June 1, 2005, until June 1, 2006, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year six semester hours or nine quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded no later than June 1, 2007.~~

B. Program directors without management experience shall have one college course in a business-related field, 10 ~~clock~~ hours of management training, or one child care management course that satisfactorily covers the management functions of:

1. Planning;
2. Budgeting;
3. Staffing; and
4. Monitoring.

Regulations

~~*Note:~~ Management experience is defined as at least six months of on-the-job training in an administrative position that requires supervising, orienting, training, and scheduling staff.

C. For program directors of therapeutic child day programs and special needs child day programs, education and programmatic experience shall be in the group care of children with special needs.

D. Notwithstanding subsection A of this section, a person between 19 and 21 years of age may serve as a program director at a short-term program serving only school age children if the program director has daily supervisory contact by a person at least 21 years of age who meets one of the program director qualification options.

E. A program director employed prior to October 13, 2021, who met the education and experience qualifications in effect immediately prior to October 13, 2021, and who has been continuously employed as a child day center director, is considered to have met the requirements of this section.

8VAC20-780-240. Staff training and development orientation.

~~A. Staff shall receive the following training by the end of their first day of assuming job responsibilities: The Virginia Department of Education-sponsored orientation course shall be completed within 90 calendar days of employment.~~

B. Staff shall complete orientation training in subsection C of this section prior to the staff member working alone with children and no later than seven days of the date of assuming job responsibilities.

C. Orientation training shall be appropriate to the age of the children in care and include all of the following facility specific topics:

1. Job responsibilities and to whom they report;
2. The policies and procedures listed in subsection ~~B~~ D of this section, 8VAC20-780-420 A, and the standards in this chapter that relate to the staff member's responsibilities;
3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;
4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;
5. Confidential treatment of personal information about children in care and their families; ~~and~~
6. ~~The standards in this chapter that relate to the staff member's responsibilities~~ The center's policies and procedures on the administration of medication;
7. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-

caused event such as violence at a child care facility and the emergency preparedness plan as required by 8VAC20-780-550 A through K;

8. Prevention of sudden infant death syndrome and use of safe sleep practices;

9. Prevention of shaken baby syndrome and abusive head trauma, including procedures to cope with crying babies or distraught children;

10. Prevention of and response to emergencies due to food and other allergic reactions including:

- a. Recognizing the symptoms of an allergic reaction;
- b. Responding to allergic reactions;
- c. Preventing exposure to the specific food and other substances to which the child is allergic; and
- d. Preventing cross contamination; and

11. Prevention and control of disease.

~~B. By the end of the first day of supervising children~~ D. Prior to working alone with children and within seven days of the first day of employment, staff shall be provided in writing with the center's information listed in 8VAC20-780-420 A and the following:

1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies, and general emergencies;
5. Policy for any administration of medication; ~~and~~
6. ~~Procedures for response to natural and man made disasters~~ Emergency evacuation, relocation, shelter-in-place, and lockdown procedures; and
7. Precautions in transporting children, if applicable.

~~C. Program directors and staff who work directly with children shall annually attend 10 hours of staff development activities that shall be related to child safety and development and the function of the center. Such training hours shall increase according to the following:~~

- ~~1. June 1, 2006—12 hours~~
- ~~2. June 1, 2007—14 hours~~

3. June 1, 2008 – 16 hours

4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by 8VAC20-780-530 and training in medication administration and daily health observation of children as required by subsection D of this section.

5. Exceptions to training requirements are as follows:

- a. Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.
- b. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parent volunteers, or other persons who participate and volunteer in a cooperative preschool center on behalf of a child attending such cooperative preschool center, including such volunteers who are counted in the staff to child ratios required in 8VAC20-780-340, shall complete four hours of training per year and shall be exempt from orientation and training requirements applicable to staff of child day programs. This orientation and training exemption shall not apply to any parent volunteer or other person as referred to in this subdivision if the cooperative preschool center has entered into a contract with the department or a local department to provide child care services funded by the Child Care and Development Block Grant.
- c. Staff who are employed at a short term program shall obtain 10 hours of staff training per year.

D. 1. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

- a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.
- b. Staff required to have the training shall be retrained at three year intervals.

2. The decision to administer medicines at a facility may be limited by center policy to:

- a. Prescribed medications;
- b. Over the counter or nonprescription medications; or

e. No medications except those required for emergencies or by law.

3. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer over the counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

- a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.
- b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.
- c. Staff required to have the training shall be retrained at three year intervals.

4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

- a. Components of daily health check for children;
- b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;
- c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;
- d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
- e. Staff occupational health and safety practices in accordance with Occupational Safety and Health

Regulations

~~Administration's (OSHA) Bloodborne Pathogens regulation.~~

E. Within 30 days of the first day of employment, staff must complete orientation training in first aid and cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care.

F. Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

1. Universal Standard precautions procedures;
2. Activity adaptations;
3. Medication administration;
4. Disabilities precautions and health issues; and
5. Appropriate intervention strategies.

~~F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.~~

G. Volunteers who work more than six hours per week shall receive training on the center's emergency procedures within the first week of volunteering.

H. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parent volunteers, or other persons who participate and volunteer in a cooperative preschool center on behalf of a child attending such cooperative preschool center, including such volunteers who are counted in the staff-to-child ratios required in 8VAC20-780-340, shall complete four hours of training per year, and shall be exempt from orientation requirements applicable to staff of child day programs. This orientation exemption shall not apply to any parent volunteer or other person as referred to in this subsection if the cooperative preschool center has entered into a contract with the department or a local department to provide child care services funded by the Child Care and Development Block Grant.

I. Documentation of orientation training shall be kept by the center in a manner that allows for identification by individual staff member, is considered part of the staff member's record, and shall include:

1. Name of staff;
2. Training topics;
3. Training delivery method;
4. The entity or individual providing training; and
5. The date of training.

8VAC20-780-245. Ongoing training.

A. Staff shall complete annually a minimum of 16 hours of training appropriate to the age of children in care.

B. Training completed to meet the requirements of this section shall be in addition to completing orientation requirements in 8VAC20-780-240.

C. Staff who do not work with a group of children at the center shall only be required to complete annual training on emergency preparedness and response, child abuse and neglect, and mandated reporter requirements.

D. Staff who work with a group of children at the center and are employed at a short-term program shall only be required to obtain a minimum of 10 hours of staff training per year.

E. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parent volunteers, or other persons who participate and volunteer in a cooperative preschool center on behalf of a child attending such cooperative preschool center, including such volunteers who are counted in the staff-to-child ratios required in 8VAC20-780-340, shall complete four hours of training per year and shall be exempt from training requirements applicable to staff of child day programs. This training exemption shall not apply to any parent volunteer or other person as referred to in this subsection if the cooperative preschool center has entered into a contract with the department or a local department to provide child care services funded by the Child Care and Development Block Grant.

F. Volunteers who work more than six hours per week shall be required to complete annual training on the center's emergency procedures.

G. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually complete four additional hours of training. At least eight hours of annual training shall be on topics related to the care of children with special needs.

H. Annual training shall be relevant to staff's job responsibilities and the care of children, and include topics such as:

1. Child development including physical, cognitive, social, and emotional development;
2. Behavior management and positive guidance techniques;
3. Prevention and control of infectious diseases;
4. Prevention of sudden infant death syndrome and use of safe sleep practices;
5. Prevention of and response to emergencies due to food and other allergic reactions including:
 - a. Recognizing the symptoms of an allergic reaction;
 - b. Responding to allergic reactions;

c. Preventing exposure to the specific food and other substances to which the child is allergic; and

d. Preventing cross contamination;

6. The center's policies and procedures on the administration of medication;

7. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

8. Prevention of shaken baby syndrome and abusive head trauma including procedures to cope with crying babies or distraught children;

9. Signs and symptoms of child abuse and neglect and requirements for mandated reporters;

10. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event such as violence at a child care facility and the center's specific emergency preparedness plan as required 8VAC20-780-550 A through K;

11. Handling and storage of hazardous materials and the appropriate disposal of diapers and other items contaminated by body fluids;

12. CPR and first aid;

13. Precautions in transporting children if applicable; and

14. If applicable, the recommended care requirements related to the care and development of children with special needs.

I. Training on the center's emergency preparedness plan shall be completed annually and each time the plan is updated.

J. Medication administration:

1. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist pursuant to § 54.1-3408 of the Code of Virginia; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training shall be retrained at three-year intervals.

2. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health and the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as reading and following manufacturer's instructions; observing relevant laws, policies, and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals.

3. Any child for whom emergency medications (such as albuterol, glucagon, and epinephrine auto injector) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

K. Daily health observation training shall include the following:

1. Components of daily health check for children;

2. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;

3. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;

4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

Regulations

L. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

M. Documentation of training shall be kept by the center in a manner that allows for identification by individual staff member, is considered part of the staff member's record, and shall include:

1. Name of staff;
2. Training topic;
3. Evidence that training on each topic required in this section has been completed;
4. Training delivery method;
5. The entity or individual providing training;
6. The number of training hours or credit hours received; and
7. The date of training.

N. Medication administration training required in subsection J of this section and daily health observation training required in subsection K of this section may count toward the annual training hours required in this section.

8VAC20-780-320. Restroom areas and furnishings.

A. Centers shall ~~be provided with~~ have at least two toilets and two sinks.

B. Each restroom area provided for children shall:

1. Be within a contained area, readily available and within the building used by the children (~~Exception:~~ Restrooms used by school age children at camps are not required to be located within the building);
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F (~~Exception:~~ Camps are exempt from the requirement that running water be warm); and
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of children.

C. For restrooms available to males, urinals shall not be substituted for more than one-half the required number of toilets.

D. An adult size toilet with privacy shall be provided for staff use. Staff toilets may be counted in the number of required toilets for children only if children are allowed unrestricted access to them. Primitive camps are not required to have a toilet with privacy for staff.

~~Exception: Primitive camps are not required to have a toilet with privacy for staff.~~

E. Centers shall ~~be provided with~~ have at least one toilet and one sink per 20 preschool children and at least one standard size toilet and one sink per 30 school age children. When sharing restroom areas with other programs, the children in those programs shall be included in the toilet and sink ratio calculations. The toilet and sink ratio appropriate to the younger age group shall apply.

F. When child size toilets, urinals, and low sinks are not available in restrooms used by children of preschool age and younger, one or more platforms or sets of steps shall be provided.

~~G. School age children of the opposite sex shall not use the same restroom at the same time.~~

~~H. A restroom used for school age children that contains more than one toilet shall have at least one toilet enclosed.~~

~~I. H. Restrooms used by school age children at primitive camps are not required to have:~~

1. Sinks, if adequate water, supplies, and equipment for hand washing are available; and
2. Flushable toilets, if the number of sanitary privies or portable toilets constructed and operated in accordance with the applicable law and regulations of the Virginia Department of Health meets the toilet ratio stated in subsection E of this section. No privy or outdoor toilet shall be located within 75 feet of other buildings or camp activities.

8VAC20-780-350. Staff-to-children ratio and group size requirements.

~~A. Staff shall be counted in the required staff to children ratios only when they are directly supervising children. The maximum group size limitations specified in Table 1 shall be followed whenever children are in care.~~

| | <u>Age</u> | <u>Maximum Group Size</u> |
|-----------|--|---------------------------|
| <u>1.</u> | <u>Birth up to 16 months</u> | <u>12</u> |
| <u>2.</u> | <u>16 months up to 24 months</u> | <u>15</u> |
| <u>3.</u> | <u>2 year olds</u> | <u>24</u> |
| <u>4.</u> | <u>3 year olds up to school age eligible</u> | <u>30</u> |

~~B. A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements. The staff-to-children ratios specified in Table 2 are required whenever children are in care.~~

| TABLE 2. Ratio Requirements | | |
|-----------------------------|--|-------------------------|
| | Age | Ratio (staff: children) |
| <u>1.</u> | <u>Birth up to 16 months</u> | <u>1:4</u> |
| <u>2.</u> | <u>16 months up to 24 months</u> | <u>1:5</u> |
| <u>3.</u> | <u>2 year olds</u> | <u>1:8</u> |
| <u>4.</u> | <u>3 year olds up to school age eligible</u> | <u>1:10</u> |
| <u>5.</u> | <u>School age eligible up to 9 years</u> | <u>1:18</u> |
| <u>6.</u> | <u>9 years through 12 years</u> | <u>1:20</u> |

C. When children are regularly in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

D. ~~During the designated rest period and the designated sleep period of evening and overnight care programs, the ratio of staff to children may be double the number of children to each staff required by subdivisions E 2 through 4 and 7 of this section if:~~

- ~~1. A staff person is within sight and sound of the resting/sleeping children;~~
- ~~2. Staff counted in the overall rest period ratio are within the building and available to ensure safe evacuation in an emergency; and~~
- ~~3. An additional person is present at the center to help, if necessary.~~

E. ~~The following ratios of staff to children are required wherever children are in care:~~

- ~~1. For children from birth to the age of 16 months: one staff member for every four children;~~
- ~~2. For children 16 months old to two years: one staff member for every five children;~~
- ~~3. For two year old children: one staff member for every eight children effective June 1, 2006;~~
- ~~4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children effective June 1, 2006;~~
- ~~5. For children from age of eligibility to attend public school through eight years, one staff member for every 18 children; and~~
- ~~6. For children from nine years through 12 years, one staff member for every 20 children effective June 1, 2006.~~

~~7. Notwithstanding subdivisions 4 and 5 of this subsection and subsection C of this section, the ratio for balanced mixed age groupings of children shall be one staff member for every 14 children, provided:~~

- ~~a. If the program leader has an extended absence, there shall be sufficient substitute staff to meet a ratio of one staff member for every 12 children.~~
- ~~b. The center shall have readily accessible and in close classroom proximity auxiliary persons sufficient to maintain a 1:10 adult to child ratio for all three year olds who are included in balanced mixed age groups to be available in the event of emergencies.~~
- ~~c. The program leader has received training in classroom management of balanced mixed age groupings of at least eight hours.~~

Group size limitations shall not apply during:

1. Designated rest periods as described in this section;
2. Outdoor activity as described in 8VAC20-780-370, 8VAC20-780-380, and 8VAC20-780-390;
3. Transportation and field trips as described in 8VAC20-780-580;
4. Meals and snacks served as described in 8VAC20-780-560; or
5. Special group activities, or during the first and last hour of operation when the center operates more than six hours per day.

E. Group size requirements in subsection A of this section do not apply to children school age eligible through 12 years of age.

F. The center shall develop and implement a written policy and procedure that describes how the center will ensure that each group of children receives care by consistent staff or team of staff members.

G. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

H. A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

I. For children ages 16 months through preschool age, during the designated rest period, when children are resting or in an inactive state, the following rest period ratios are permitted if the requirements of subsections J through N of this section are met:

1. Children 16 through 24 months of age: one staff per 10 children.
2. Children two years of age: one staff per 16 children.
3. Children of preschool age: one staff per 20 children.

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J. Staff required by rest period ratios shall be within sight and sound at all times in the same space as the resting or sleeping children.

K. In addition to the staff required by rest period ratios, an additional staff member shall always be available on-site to offer immediate assistance. The staff required by rest period ratios shall be able to summon the additional staff member without leaving the room or area of the sleeping or resting children.

L. Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-children ratio shall meet the ratios as required in subsection B of this section.

M. One staff member shall not supervise more than one room or area during rest time.

N. Centers providing evening and overnight care shall meet the requirements of subsections I through this subsection N of this section during sleep periods.

O. The ratio for balanced-mixed-age groupings of children shall be one staff member for every 14 children provided:

1. The center has additional staff who are readily accessible in the event of an emergency to maintain a ratio of one staff member for every 10 children when three-year-olds are included in the balanced-mixed-age group; and

2. The lead teacher has received at least eight hours of training in classroom management of balanced-mixed-age groupings.

P. A maximum group size of 28 shall be followed whenever children in care are in balanced-mixed-age groupings.

Q. With a parent's written permission and a written assessment by the program director and program leader, a center may choose to assign a child to a different age group if such age group is more appropriate for the child's developmental level and the staff-to-children ratio and group size shall be for the established age group.

1. If such developmental placement is made for a child with a special need, a written assessment by a recognized agency or professional shall be required at least annually. These assignments are intended to be a permanent new group and staff members for the child.

2. A center may temporarily reassign a child from his regular group and staff members for reasons of administrative necessity but not casually or repeatedly disrupt a child's schedule and attachment to his staff members and group.

G. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:

~~1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.~~

~~2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.~~

~~3. For children diagnosed as educable mentally retarded (EMR) or developmentally delayed or diagnosed with attention deficit/hyperactivity disorder (AD/HD): one staff member to five children.~~

~~4. For children diagnosed with specific learning disabilities: one staff member to six children.~~

~~5. When children with varied special needs are regularly in ongoing groups, the staff to children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.~~

~~6. Note: Whenever 8VAC20-780-350 E requires more staff than 8VAC20-780-350 G because of the children's ages, 28VAC20-780-350 E shall take precedence over 8VAC20-780-350 G.~~

H. For therapeutic child day programs, in each grouping of school-age children, the following ratios of staff to children are required according to the special needs of the children in care:

~~1. For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.~~

~~2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities; attention deficit/hyperactivity disorder (AD/HD), or other health impairments: one staff member to five children.~~

~~3. For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to six children.~~

~~4. For children diagnosed with specific learning disabilities, or speech or language impairments: one staff member to eight children.~~

~~5. When children with varied special needs are regularly in ongoing groups, the staff to children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.~~

8VAC20-780-355. Staff-to-children ratio requirements for therapeutic and special needs program staff.

A. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.

2. For children diagnosed as having an intellectual disability with significant sub-average intellectual functioning and deficits in adaptive behavior, or with physical and sensory disabilities, or with autism: one staff member to four children.

3. For children diagnosed as having an intellectual disability in the mild range of development, children with a developmental delay, or children diagnosed with attention deficit/hyperactivity disorder (ADHD): one staff member to five children.

4. For children diagnosed with specific learning disabilities: one staff member to six children.

5. When children with varied special needs are included in a group, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

6. Whenever 8VAC20-780-350 B requires more staff than 8VAC20-780-355 A because of the children's ages, 8VAC20-780-350 B shall take precedence over 8VAC20-780-355 A.

B. For therapeutic child day programs, in each grouping of school age children, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.

2. For children diagnosed as having an intellectual disability with significant sub-average intellectual functioning and deficits in adaptive behavior, or with physical and sensory disabilities, ADHD, or other health impairments: one staff member to five children.

3. For children diagnosed as having an intellectual disability in the mild range of development, or developmentally delayed: one staff member to six children.

4. For children diagnosed with specific learning disabilities or speech or language impairments: one staff member to eight children.

5. When children with varied special needs are included in a group, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

C. Group size requirements in 8VAC20-780-350 A do not apply to therapeutic child day programs.

8VAC20-780-400. Behavioral guidance.

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family backgrounds;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

B. Behavioral guidance shall be constructive in nature, age and stage appropriate, and shall be intended to redirect children to appropriate behavior and resolve conflicts.

C. When time out is used as a behavior guidance technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall be appropriate to the child's developmental level and individual needs;
3. It shall not be used with infants or toddlers;
4. The child shall be in a safe, lighted, well-ventilated place, and within actual sight and sound of a staff member; and
5. The child shall not be left alone inside or outside the center.

8VAC20-780-420. Parental involvement.

A. Before the child's first day of attending, parents shall be provided in writing the following:

1. The center's philosophy and any religious affiliation;
2. Operating information, including the hours and days of operation and holidays or other times closed, and the phone number where a message can be given to staff;
3. The center's transportation policy;
4. The center's policies for the arrival and departure of children, including procedures for verifying that only persons authorized by the parent are allowed to pick up the child, picking up children after closing, and when a child is not picked up for emergency situations including ~~but not limited to~~ inclement weather or natural or man-made disasters;
5. The center's policy regarding any medication or medical procedures that will be given;
6. The center's policy regarding application of:
 - a. Sunscreen;

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- b. Diaper ointment or cream; and
- c. Insect repellent.

7. Description of established lines of authority for staff;

8. Policy for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

9. The custodial parent's right to be admitted to the center as required by § 22.1-289.054 of the Code of Virginia;

10. Policy for communicating an emergency situation with parents;

11. The appropriate general daily schedule for the age of the enrolling child;

12. Food policies;

13. Discipline policies including acceptable and unacceptable discipline measures; and

14. Termination policies.

B. Staff shall promptly inform parents when persistent behavioral problems are identified; such notification shall include any disciplinary steps taken in response.

C. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program (§ 22.1-289.054 of the Code of Virginia).

D. The center shall provide opportunities for parental involvement in center activities.

E. Communication.

1. For each infant, the center shall post a daily record which can be easily accessed by both the parent and the staff working with the child. The record shall contain the following information:

- a. The amount of time the infant slept;
- b. The amount of food consumed and the time;
- c. A description and time of bowel movements;
- d. Developmental milestones; and
- e. For infants, who are awake and cannot turn over by themselves, the amount of time spent on their stomachs.

2. If asked by parents, staff shall provide feedback about daily activities, physical well-being, and developmental milestones.

3. Parents shall be provided at least semiannually in writing information on their child's development, behavior, adjustment, and needs.

- a. Staff shall provide at least semiannual scheduled opportunities for parents to provide feedback on their children and the center's program.

b. Staff shall request at least annually parent confirmation that the required information in the child's record is up to date.

c. Such sharing of information shall be documented.

d. Short-term programs (as defined in 8VAC20-780-10) are exempt from this requirement.

4. Parents shall be informed of reasons for termination of services.

8VAC20-780-460. Swimming and wading activities; staff and supervision.

A. The staff-to-children ratios required by 8VAC20-780-350 ~~E, G, and H~~ B and 8VAC20-780-355 ~~A and B~~ shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.

2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

C. The lifeguard certification shall be obtained from an organization such as, ~~but not limited to,~~ the American Red Cross, the YMCA, or the Boy Scouts.

8VAC20-780-500. Hand washing and toileting procedures.

A. Hand washing.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.

2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.

3. Staff shall wash their hands with soap and running water ~~before and after helping a child use the toilet or a diaper change, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding;~~

a. Before and after helping a child use the toilet;

b. Before and after a diaper change;

c. After the staff member uses the toilet;

d. After any contact with body fluids;

e. Before feeding or helping children with feeding; and

f. Before preparing or serving food or beverages.

~~4. Exception:~~ If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering; soiled clothing.

1. The diapering area shall be accessible and within the building used by children.
2. There shall be sight and sound supervision for all children when a child is being diapered.
3. The diapering area shall ~~be provided with~~ have the following:
 - a. A sink with running warm water not to exceed 120°F;
 - b. Soap, disposable towels, and single use gloves such as surgical or examination gloves;
 - c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;
 - d. The appropriate disposal container as required by subdivision ~~5~~ 6 of this subsection; and
 - e. A leakproof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.

~~5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.~~

~~6.~~ Disposable diapers shall be disposed in a leakproof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

~~7.~~ 6. When cloth diapers are used, a separate leakproof storage system as specified in ~~this~~ subdivision 5 of this subsection shall be used for each individual child.

~~8.~~ 7. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers.

~~Exception:~~ 8. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. Toilet training. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

8VAC20-780-510. Medication.

A. The decision to administer medicines at a facility may be limited by center policy to administer:

1. Prescribed medications;
2. Over-the-counter or nonprescription medications; or
3. No medications except those required for emergencies or by law.

B. Prescription and nonprescription medication shall be given to a child:

1. According to the center's written medication policies; and
2. Only with written authorization from the parent.

C. Medication shall be administered by a staff member who is 18 years of age or older.

~~B.~~ D. Nonprescription medication shall be administered by a staff member or independent contractor who meets the requirements in ~~8VAC20-780-240 D 1 or 3 F 1 or F 3~~ 8VAC20-780-245 J 1 or J 2.

~~C.~~ E. The center's procedures for administering medication shall:

1. Include any general restrictions of the center.
2. For nonprescription medication, be consistent with the manufacturer's instructions for age, duration, and dosage.
3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-counter medication may be allowed with written authorization from the child's physician and parent.
4. Include methods to prevent use of outdated medication.

~~D.~~ F. The medication authorization shall be available to staff during the entire time it is effective.

~~E.~~ G. Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

~~F.~~ H. Nonprescription medication shall be in the original container with the direction label attached.

~~G.~~ I. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

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1. The medication is administered by a staff member or an independent contractor who meets the requirements in ~~8VAC20-780-240 D-1~~ 8VAC20-780-245 J;

2. The center has obtained written authorization from a parent or guardian;

3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

~~H.~~ J. When needed, medication shall be refrigerated.

~~I.~~ K. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

~~J.~~ L. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

~~K.~~ M. If a key is used, the key shall not be accessible to the children.

~~L.~~ N. Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Staff member administering the medication;
5. Any adverse reactions; and
6. Any medication error.

~~M.~~ O. Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

~~N.~~ P. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

8VAC20-780-530. First aid training and cardiopulmonary resuscitation (CPR) ~~and rescue breathing.~~

~~A. There shall be at least one staff member trained in first aid, cardiopulmonary resuscitation, and rescue breathing as appropriate to the age of the children in care who is on the~~

~~premises during the center's hours of operation and also one person on field trips and wherever children are in care.~~

~~1. This person shall be available to children; and~~

~~2. This person shall have current certification by the American Red Cross, American Heart Association, National Safety Council, or other designated program approved by the Department of Education.~~

A. At least one staff in each classroom or area where children are present shall have, within 90 days of October 13, 2021:

1. Current certification in cardiopulmonary resuscitation (CPR) as appropriate to the age of the children in care from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council. The training shall include an in-person competency demonstration; and

2. Current certification in first aid from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council.

B. CPR and first aid certification training may count toward the annual training hours required in 8VAC20-780-245.

C. There shall be at least two staff members who meet the requirements of subsection A of this section present on the premises during the center's hours of operation, on fieldtrips, and wherever children are in care.

~~B.~~ D. Primitive camps shall have a staff member on the premises during the hours of operation who has at least current certification in first responder training.

E. Staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

8VAC20-780-550. Procedures for emergencies.

A. The center shall have ~~an~~ a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation and relocation, shelter-in-place, and lockdown. The plan, which shall be developed in consultation with local or state authorities, ~~addresses~~ shall include the most likely to occur emergency scenario or scenarios, including ~~but not limited to~~ fire, severe storms, loss of utilities, natural disaster, chemical spills, intruder, ~~and~~ violence at or near the center, terrorism specific to the locality, and other situations, including facility damage that requires evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (~~intruder, shelter in place such as for tornado, or chemical hazard~~), such as intruder, evacuation, lockdown, and shelter-in-place for tornado or chemical hazards;

2. Emergency communication to include:
 - a. Establishment of center emergency officer and back-up officer to include 24-hour contact telephone number for each;
 - b. Notification of local authorities (~~fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.~~), such as fire and rescue, law enforcement, emergency medical services, poison control, health department, and parents; and local media; and
 - c. Availability and primary use of communication tools;
3. Evacuation to include:
 - a. Assembly points, ~~head counts~~ methods to account for all children at the assembly point and relocation site, primary and secondary means of egress, and complete evacuation of the buildings;
 - b. Securing of essential documents (~~sign-in record, parent contact information, etc.~~) and special healthcare supplies to be carried off site on immediate notice; and, including attendance records, parent contact information, emergency contact information, and information on allergies or food intolerances;
 - c. Methods to ensure any health care needs to include medications and care plans; emergency contact information for staff; and supplies are taken to the assembly point or relocation site;
 - d. Method of communication after the evacuation with parents and emergency responders;
 - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation; and
 - f. Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;
4. Shelter-in-place to include:
 - a. Scenario applicability, such as tornado or chemical spill, inside assembly points, ~~head counts~~ methods to account for all children at the safe locations, and primary and secondary means of access and egress;
 - b. Securing of essential documents (~~sign-in records, parent contact information, etc.~~) and special health supplies to be carried into the designated assembly points; and, including attendance records, parent contact information, emergency contact information, and information on allergies;
 - c. Methods to ensure any health care needs to include medications and care plans; emergency contact information for staff; and supplies are taken to the assembly point or relocation site;
 - d. Method of communication after the shelter-in-place with parents and emergency responders;
- e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and
- f. Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;
5. Facility containment procedures, (e.g., closing of fire doors or other barriers) and shelter in place scenario (e.g., intruders, tornado, or chemical spills); Lockdown, to include:
 - a. Facility containment procedures, such as closing of fire doors or other barriers, scenario applicability, assembly points, and methods to account for all children at the safe locations;
 - b. Method of communication with parents and emergency responders;
 - c. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and
 - d. Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;
6. Continuity of operations to ensure that essential functions are maintained during an emergency;
- ~~6.~~ 7. Staff training requirement, drill frequency, and plan review and update; and
- ~~7.~~ 8. Other special procedures developed with local authorities.
- C. Emergency evacuation and shelter-in-place ~~procedures/maps~~ procedures or maps shall be posted in a location conspicuous to staff and children on each floor of each building.
- D. The center shall implement a monthly practice evacuation drill ~~and a minimum of two shelter in place practice drills per year for the most likely to occur scenarios.~~
- E. Shelter in place procedures shall be practiced a minimum of twice per year.
- F. Lockdown procedures shall be practiced at least annually.
- G. Documentation shall be maintained of emergency evacuation, shelter-in-place, and lockdown drills that includes:
 1. Identity of the person conducting the drill;
 2. The date and time of the drill;
 3. The method used for notification of the drill;
 4. The number of staff participating;
 5. The number of children participating;
 6. Any special conditions simulated;

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~~7.~~ The time it took to complete the drill;

~~8.~~ Problems encountered, if any; and

~~9.~~ For emergency evacuation drills only, weather conditions.

~~E.~~ H. The center shall maintain a record of the dates of the practice drills for one year. For centers offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

~~F.~~ I. A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible place at each telephone.

~~G.~~ J. Each camp location shall have an emergency preparedness plan and warning system.

~~H.~~ K. The center shall prepare a document containing local emergency contact information, potential shelters, hospitals, evacuation routes, etc., that pertain to each site frequently visited or of routes frequently driven by center staff for center business (~~such as field trips, pick-up/drop-off of children to or from schools, etc.~~) such as field trips or pick up or drop off of children to or from schools etc. This document must be kept in vehicles that centers use to transport children to and from the center.

~~I.~~ L. Parents shall be informed of the center's emergency preparedness plan.

~~J.~~ M. Based on local authorities and documented normal ambulance operation, if an ambulance service is not readily accessible within 10 to 15 minutes, other transportation shall be available for use in case of emergency.

~~K.~~ N. The center or other appropriate official shall notify the parent immediately if a child is lost, requires emergency medical treatment, or sustains a serious injury.

~~L.~~ O. The center shall notify the parent by the end of the day of any known minor injuries.

~~M.~~ P. The center shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Staff present and treatment;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Staff and parent signatures or two staff signatures; and
8. Documentation on how parent was notified.

Q. A parent shall be notified immediately of any confirmed or suspected allergic reaction and the ingestion of or contact

with any food in the written care plan required in 8VAC20-780-60 A 8 even if a reaction did not occur.

8VAC20-780-560. Nutrition and food services.

A. Centers shall schedule appropriate times for snacks or meals, or both, based on the hours of operation and time of the day (e.g., a center open only for after school care shall schedule an afternoon snack; a center open from 7 a.m. to 1 p.m. shall schedule a morning snack and midday meal).

B. The center shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The center shall schedule snacks or meals so that there is a period of at least 1-1/2 hours but no more than three hours between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids as outlined in subsection D of this section.

F. When centers choose to provide meals or snacks, the following shall apply:

1. Centers shall follow the most recent, age-appropriate nutritional requirements of ~~a recognized authority such as~~ the Child and Adult Care Food Program of the United States Department of Agriculture (USDA).
2. Children shall be allowed second helpings of food listed in the USDA's child and adult care meal patterns.
3. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week.
4. Children three years of age or younger may not be offered foods that are considered to be potential choking hazards.
5. A menu listing foods to be served for meals and snacks during the current one-week period shall:
 - a. Be dated;
 - b. Be posted in a location conspicuous to parents or given to parents;
 - c. List any substituted food; and
 - d. Be kept on file for one week at the center.
6. Powdered milk shall not be used except for cooking.

G. When food is brought from home, the following shall apply:

1. The food container shall be sealed and clearly dated and labeled in a way that identifies the owner;

2. The center shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

H. If a catering service is used, it shall be approved by the local health department.

~~I. Food shall be prepared, stored, and transported in a clean and sanitary manner.~~

~~J. Contaminated or spoiled food shall not be served to children.~~

~~K. J.~~ Tables and high chair trays shall be:

1. Sanitized before and after each use for feeding; and
2. Cleaned at least daily.

~~L. K.~~ Children shall be encouraged to feed themselves.

~~M. L.~~ Staff shall sit with children during meal times.

~~N. M.~~ No child shall be allowed to drink or eat while walking around.

N. Food shall be prepared, stored, and transported in a clean and sanitary manner.

O. When food is prepared to which a child in care is allergic, staff shall take steps to avoid cross contamination to prevent an allergic reaction.

P. A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in 8VAC20-780-60 A 8.

8VAC20-780-580. Transportation and field trips.

A. If the center provides transportation, the center shall be responsible from the time the child boards the vehicle until returned to the parents or person designated by the parent.

B. Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the center is responsible for ensuring that the requirements of this subsection are met.

C. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and stated maximum number of passengers in a given vehicle ~~shall not be~~ is not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one staff member or the driver always remains in the vehicle when children are present;

5. The following information is in transportation vehicles:

- a. Emergency numbers as specified in 8VAC20-780-550 ~~F I~~ and ~~H K~~;
- b. The center's name, address, and phone number; ~~and~~
- c. A list of the names of the children being transported; ~~and~~
- d. Allergy care plan and information as specified in 8VAC20-780-60 A 7 and A 8; and

6. Staff who transport children shall be 18 years of age or older.

D. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

E. Children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

F. The staff-to-children ratios of 8VAC20-780-350 ~~E, G, and H B~~ and 8VAC20-780-355 shall be followed on all field trips. The staff-to-children ratios need not be followed during transportation of school age children to and from the center. One staff member or adult is necessary in addition to the driver when 16 or more preschool or younger children are being transported in the vehicle.

G. The center shall make provisions for providing children on field trips with adequate food and water.

H. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

I. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

J. There shall be a communication plan between center staff and staff who are transporting children or on a field trip.

K. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

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L. Parental permission for transportation and field trips shall be secured before the scheduled activity.

M. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

VA.R. Doc. No. R22-6894; Filed August 25, 2021, 9:07 a.m.

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

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

Title of Regulation: 8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).

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

Effective Date: August 30, 2021.

Agency Contact: Lori Buchanan, Business Services Specialist, Office of the Vice President for Policy and Governance, Virginia Polytechnic Institute and State University, 319 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-9512, or email lorib90@vt.edu.

Summary:

The amendment updates the university's parking regulations to reflect revised parking and traffic procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the Parking and Traffic Operational Manual, ~~2020-21~~ 2021-22 Academic Year, Volume ~~28~~ 29, Virginia Tech Transportation Services, revised July ~~2020~~ 2021.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC105-11)

~~Parking and Traffic Operational Manual, 2020-21 Academic Year, Volume 28, Transportation Services, Virginia Tech (rev. 7/2020)~~

[Parking and Traffic Operational Manual, 2021-22 Academic Year, Volume 29, Transportation Services, Virginia Tech \(rev. 7/2021\)](#)

VA.R. Doc. No. R22-6932; Filed August 23, 2021, 12:46 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: 10VAC5-210. Motor Vehicle Title Lending (amending 10VAC5-210-10 through 10VAC5-210-95).

Statutory Authority: §§ 6.2-2214 and 12.1-13 of the Code of Virginia.

Effective Date: September 15, 2021.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218-0640, telephone (804) 786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

Summary:

The amendments conform the regulation to Chapters 1215 and 1258 of the 2020 Acts of Assembly and make technical changes to the regulation. Specifically, amendments (i) modify the definitions; (ii) reorganize and update the motor vehicle title lending pamphlet; (iii) require an applicant's surety bond be retained in the event that a person's application for a license is withdrawn or denied; (iv) clarify that licensees need to continuously maintain the requirements and standards for licensure prescribed in § 6.2-2206 of the Code of Virginia; (v) remove the requirement that a licensee provide each prospective borrower with a separate printed notice before the licensee furnishes the borrower with a loan application or receives information relating to loan qualification; (vi) require a licensee to post the schedule of finance charges and notice prescribed by subdivision 15 of § 6.2-2215 of the Code of Virginia on its website as well as in each licensed location; (vii) update the required contents of the annual report that licensees are required to furnish to the Commissioner of Financial Institutions; (viii) establish that if a licensee performs certain loan functions on or through its website or

mobile application and any other products or services are offered or sold to Virginia residents using such website or mobile application, then the offer or sale of such other products or services constitutes other business; (ix) impose specific conditions on the conduct of a check cashing business from a licensee's motor vehicle title lending offices; (x) revise the condition that specifically pertains to the operation of an automated teller machine from a licensee's motor vehicle title lending offices; (xi) prohibit a licensee from providing a consumer with an envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity; (xii) establish that a licensee's advertisements need to comply with the disclosure requirements for advertisements that are contained in Regulation Z (12 CFR Part 1026); (xiii) require a licensee to maintain copies of any notices or disclosures that the licensee furnishes to a borrower; and (xiv) eliminate the annual fee that is currently imposed on companies that are granted a license between January 1 and September 15 of the year of the assessment.

Changes to the proposed regulation include the following: (i) adding a definition for the terms "open-end credit" and "open-end credit plan;" (ii) amending the posting requirement to also be applicable to licensees that operate over the Internet; (iii) prohibiting licensee from making a motor vehicle title loan to a person who has an outstanding motor vehicle title loan from another licensee; (iv) requiring a licensee to include a question in its loan application about whether an applicant currently has a motor vehicle title loan from any other motor vehicle title lender; and (v) requiring a licensee to include in its annual report the average number of days that a motor vehicle title loan was outstanding.

AT RICHMOND, AUGUST 24, 2021

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00001

Ex Parte: In the matter of Adopting
Revisions to the Regulations Governing
Motor Vehicle Title Lending

ORDER ADOPTING REGULATIONS

On January 11, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's regulations governing motor vehicle title lending under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia ("Chapter 22"), which are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code ("Chapter 210"). The Bureau submitted the proposed amendments to the Commission because Chapters 1215 and 1258 of the 2020 Virginia Acts of Assembly ("Chapters 1215

and 1258") made extensive revisions to Chapter 22 that became effective on January 1, 2021. The proposed regulations sought to align Chapter 210 with the revisions effected by Chapters 1215 and 1258, as well as clarify certain aspects of the legislation. The Bureau also proposed other technical changes and revisions, which are summarized in the Commission's Order to Take Notice.

The Order to Take Notice and the proposed regulations were published in the Virginia Register of Regulations on February 1, 2021, posted on the Commission's website, and sent to all Chapter 22 licensees and other interested persons. The Order to Take Notice invited all interested persons to participate and required that any comments or requests for a hearing on the proposed regulations be submitted in writing on or before February 12, 2021.

Comments on the proposed regulations were timely filed by the Office of the Attorney General, The Pew Charitable Trusts, and the Virginia Poverty Law Center. The Commission did not receive any requests for a hearing.

The Bureau considered the comments filed and responded to them in its Response to Comments ("Response"), which the Bureau filed with the Clerk of the Commission on May 11, 2021. In its Response, the Bureau recommended that the Commission further amend various sections of the proposed regulations.

NOW THE COMMISSION, having considered this matter, finds that the proposed regulations should be modified to incorporate the specific changes the Bureau recommended in its Response, and that the modified proposed regulations should be adopted effective September 15, 2021. The Commission expresses appreciation to those who submitted written comments.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as modified herein and attached hereto, are adopted effective September 15, 2021.

(2) This Order and the attached regulations shall be made available on the Commission's website: scc.virginia.gov/pages/Case-Information.

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

(4) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

A COPY of this Order and the attached regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached regulations to all Chapter 22 licensees, those persons who submitted comments in this

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proceeding, and such other interested persons as he may designate.

10VAC5-210-10. Definitions.

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

"Act" means Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, and calendars, etc.

~~"Bureau" means the Bureau of Financial Institutions.~~

~~"Business day" for purposes of the Act and this chapter means a day on which the licensee's office licensee is open for business as posted as required by subsection B of 10VAC5-210-50 able to make loans pursuant to the Act.~~

~~"Commission" means the State Corporation Commission.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

~~"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.~~

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle and willing to accept such payments, payment effected by use of a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system.

"Liquid assets" for purposes of the Act and this chapter means cash funds held in a checking account or savings account at a depository institutions institution, money market funds, commercial paper, and treasury bills.

["Open-end credit" or "open-end credit plan" shall have the meaning set forth in § 6.2-300 of the Code of Virginia.]

"Prepaid card" means a card with a network logo (e.g., Visa, MasterCard, American Express, or Discover) that is used by a cardholder to access money that has been loaded onto the card in advance.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2200 of the Act Code of Virginia.

10VAC5-210-20. Requirements for licensees; reporting requirements; acquisitions.

A. A licensee shall maintain in its own name unencumbered liquid assets per approved place of business ~~in Virginia~~ of at least \$75,000 at all times.

1. The minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

2. A licensee shall upon request by the bureau submit proof that it is complying with the provisions of this subsection.

B. After receiving its license from the commission, a licensee shall give written notice to the bureau [~~of its commencement of business~~] within 10 days [~~thereafter~~ after it commences business].

C. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact, if any, on the activities of the licensee ~~in Virginia~~:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. The Attorney General or any other Virginia governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

3. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

4. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's motor vehicle title lender license, title pawn license, or similar license; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its motor vehicle title lending, title pawn, or similar business; or (iii) takes any other action against the licensee relating to its motor vehicle title lending, title pawn, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

5. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed motor vehicle title lending, title pawn, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in motor vehicle title lending, title pawn, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in motor vehicle title lending, title pawn, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

D. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

E. If a person has filed a bond with the bureau, as required by § 6.2-2204 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making motor vehicle title loans; or
3. The person's application for a license is withdrawn or denied.

F. ~~Within 30~~ A licensee or former licensee shall provide the following information to the bureau within 10 days after a such person's license is surrendered or revoked, the former licensee shall provide the bureau with or the licensed business is otherwise closed: (i) the name names, address addresses, email addresses, and telephone number numbers of a designated contact person and the person who consumers may contact to make payment arrangements for outstanding motor vehicle title loans; (ii) the location of the licensee's or former licensee's motor vehicle title loan records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding motor vehicle title loans.

G. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all motor vehicle title loans that the person made while licensed as a motor vehicle title lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making motor vehicle title loans.

H. Loans made pursuant to the Act prior to January 1, 2021, that remain outstanding on or after January 1, 2021, may be collected in accordance with the preexisting terms of the loan

contracts provided that such terms were permitted by law when the loans were made.

I. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2206 of the Code of Virginia.

10VAC5-210-30. Notice and Motor vehicle title lending pamphlet.

~~A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a~~ A licensee shall provide ~~the prospective borrower~~ each applicant for a motor vehicle title loan with ~~(i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.~~

~~B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice. 2. The written notice shall be printed on a single 8 1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24 point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The end of each application form shall contain a separate acknowledgment shall state stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities." 3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2 2209 of the Code of Virginia. The acknowledgment shall be initialed and dated by each applicant for a motor vehicle title loan.~~

C. ~~The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice Information from Lender," etc.) shall be printed in bold type.~~

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D. The required text of the ~~borrower rights and responsibilities~~ pamphlet shall be as follows:

MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan ~~in Virginia~~ under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or ~~on the Internet~~ at <http://www.scc.virginia.gov/bfi> [scc.virginia.gov](http://www.scc.virginia.gov).

In General: You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, [~~or~~] friends, [or] a cash advance on a credit card [~~, or an account with overdraft protection~~].

Notice from Lender: ~~A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.~~

Information from Lender: Virginia law prohibits a motor vehicle title lender from providing you with any false, misleading, or deceptive information.

Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; ~~or~~ (ii) you currently have another motor vehicle title loan from ~~either the same motor vehicle title lender or any other motor vehicle title lender~~ conducting a motor vehicle title lending business ~~in Virginia~~; or (iii) you currently have a short-term loan from any lender that is licensed to make this type of loan under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

Prohibition on Obtaining Loan on Same Day Another Loan was Repaid: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from ~~either the same motor vehicle title lender or any other motor vehicle title lender~~ conducting a motor vehicle title lending business ~~in Virginia.~~

Verification of Income: Before making a motor vehicle title loan to you, a lender must make a reasonable attempt to verify and document your income.

Prohibition on Loans to Covered Members of the Armed Forces and their Dependents: Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

Certificate of Title / Other Security Interests: Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the motor vehicle department in the state where your motor vehicle is registered and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

Maximum Loan Amount: A motor vehicle title lender cannot loan you more than ~~50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide \$2,500.~~

Minimum and Maximum Loan Term / Monthly Payments: Under Virginia law, your loan term cannot be ~~either less than 120 days or more than 12~~ 24 months. Your loan term also cannot be less than six months unless your total monthly payment will not exceed the greater of (i) 5.0% of your verified gross monthly income or (ii) 6.0% of your verified net monthly income. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal, fees, and interest combined. ~~However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.~~

Interest, Fees, and Other Loan Costs Charges: ~~The following are the maximum interest rates that a Δ motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding:~~ (i) 22% per month on the portion of the outstanding balance up to and including \$700 interest at a simple annual rate not to exceed 36%; and (ii) 18% per month on the portion of the outstanding balance between \$700.01 and \$1,400; and (iii) 15% per month on the portion of the outstanding balance of \$1,400.01 and higher. As long as these maximum rates are not

~~exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the initial principal is higher than \$700 a monthly maintenance fee that does not exceed the lesser of \$15 or 8.0% of your originally contracted loan amount, provided that the maintenance fee is not added to your loan balance on which interest is charged. In addition to interest and the monthly maintenance fee, a motor vehicle title lender may charge you for the actual cost of recording its lien with the motor vehicle department in the state where your motor vehicle is registered a deposit item return fee for the actual amount incurred by the motor vehicle title lender, not to exceed \$25, if your check or electronic payment is returned unpaid because the account on which it was drawn was closed by you or contained insufficient funds, or you stopped payment on the check or electronic payment.~~

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to ~~five percent~~ 5.0% of the amount of the payment, but not to exceed \$20.

Note that if your originally contracted loan amount is \$1,500 or less, a motor vehicle title lender cannot charge or receive from you a total amount of fees and charges greater than 50% of your loan amount. If your loan amount is more than \$1,500, the total amount of fees and charges cannot exceed 60% of your loan amount.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender or a person acting on behalf of the lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be ~~directly or indirectly charged, contracted for, collected, or received, or recovered by~~ a motor vehicle title lender.

The interest, fees, and charges mentioned in this section may not be charged, collected, or received unless they are included in your written loan agreement.

Costs of Repossession and Sale: A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, ~~preparing for sale,~~ and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. However, the total amount charged to you for the repossession and sale of your motor vehicle cannot exceed 5.0% of your originally contracted loan amount. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

Written Loan Agreement: A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original copy of your signed loan agreement ~~at the time you sign it.~~ If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

Property Insurance: A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

Prohibition on Obtaining Funds Electronically / Authority to Prepare Checks / Electronic Payments / Obtaining PINs: A motor vehicle title lender is prohibited from ~~electronically debiting your deposit account or obtaining any of your funds by electronic means. The lender also cannot obtain~~ obtaining any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. If the motor vehicle title lender is equipped to handle and willing to accept such payments, you may make a payment on your loan by using a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system. However, the lender is prohibited from obtaining or receiving a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with your loan. If you have authorized electronic payments for your loan, you have the right to remove your authorization at any time.

Loan Proceeds: You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender or an affiliate of the lender is prohibited from charging you a fee for cashing the check. Similarly, a check cashier located in the same office as the motor vehicle title lender is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

~~**Other Businesses:** A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.~~

Using Motor Vehicle Title Loan to Purchase Products or Services [~~or Repay Other Loans~~]: A motor vehicle title lender is You are prohibited from making you a using any of the money from your motor vehicle title loan ~~so that you can~~ to purchase another product or service sold (i) at the motor vehicle title lender's business location, or (ii) on or through the

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motor vehicle title lender's website or mobile application. ~~A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.~~

Right to Cancel or Rescind: You have the right to cancel or rescind your motor vehicle title loan at any time prior to ~~the~~ close 5 p.m. of the third business day ~~on the next day the motor vehicle title lender is open~~ immediately following the date your day you entered into the loan is made agreement by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, ~~or~~ debit card, ~~or the Automated Clearing House system.~~ If you timely cancel or rescind your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

Cash—Payments / Partial Payments / Prepayments / Refinancing: You are permitted to make payments on your motor vehicle title loan by cash, certified check, cashier's check, money order, or if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, debit card, or the Automated Clearing House system. You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the along with a statement of the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to ~~its specified due~~ the maturity date of the loan without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance ~~as well as the total amount of interest that you will be required to pay.~~

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any ~~accrued and unpaid~~ interest and ~~other charges~~ fees that you may owe on your motor vehicle title loan. If you prepay your loan in full or your loan is refinanced with another motor vehicle title loan, the motor vehicle title lender must refund to you a prorated portion of loan charges, except for any deposit item return fees and late charges, based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted. The lender must provide you with the refund in the form of cash or a check [as soon as reasonably possible and] no later than two business days after you prepay your loan in full or your loan is refinanced. Your loan may be refinanced with another motor vehicle title loan only if the new

loan is made by the same motor vehicle title lender (i.e., the lender who made the loan that you are currently obligated to repay).

Lender to Return Original Loan Agreement and Certificate of Title: Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take any action necessary to ~~reflect the termination of~~ terminate its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the motor vehicle department in the state where your motor vehicle is registered.

~~**No Rollovers, Extensions, Etc.:** A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.~~

Failure to Repay: Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. **IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS AND SELL YOUR MOTOR VEHICLE** (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

Repossession and Sale of your Motor Vehicle: If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must (i) allow you to recover any personal items from your motor vehicle promptly and at no cost, and (ii) send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the redemption amount, which is the sum of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, or debit card, or the Automated Clearing House system.

Within ~~30~~ 10 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive ~~any surplus~~ all proceeds from the sale in excess of the sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on redemption amount specified in the notice that the motor vehicle title lender sent you prior to selling your motor vehicle title loan through the date. However, the motor vehicle title lender repossessed your motor vehicle; and (iii) may reduce the amount that you receive by any additional reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle that were not included in the redemption amount.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met ~~in order~~ for a motor vehicle title lender to collect the reasonable costs of repossessing, ~~preparing for sale,~~ and selling your motor vehicle.

~~**Violation of the Virginia Consumer Protection Act Legal Action Against Lender:**~~ You have the right to bring a civil action against a motor vehicle lender if you suffer a loss as a result of the motor vehicle title lender violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney fees, expert witness fees, and court costs you have incurred in connection with your civil action. Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may also be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have

against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or ~~on the Internet at <http://www.sec.virginia.gov/bfi>~~ www.sec.virginia.gov. Complaints must be filed in writing with the Bureau of Financial Institutions. ~~Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416 and include copies of supporting documentation.~~

10VAC5-210-40. Posting of charges and contact information for complaints.

Licensees shall conspicuously post in each licensed location and on their websites the schedule of finance charges and notice required by subdivision ~~4~~ 15 of § 6.2-2215 of the Code of Virginia in accordance with the provisions of this section.

A. The minimum size for the poster in licensed locations shall be 24 inches by 18 inches.

B. The title for the schedule of finance charges, which shall be printed or displayed in ~~at least 48 point~~ bold type, shall be "SCHEDULE OF FINANCE CHARGES FOR MOTOR VEHICLE TITLE LOANS." The title for the notice, which shall also be printed or displayed in ~~at least 48 point~~ bold type, shall be "HOW TO FILE A COMPLAINT AGAINST US."

C. The schedule of finance charges and notice shall be printed or displayed in ~~at least 24 point~~ bold type.

D. The notice shall contain the following statement: "Should you wish to file a complaint against us, you may contact the Virginia Bureau of Financial Institutions at (800) 552-7945 or ~~on the Internet at <http://www.sec.virginia.gov/bfi>~~. ~~Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416 www.sec.virginia.gov.~~"

10VAC5-210-50. Additional business requirements and restrictions.

A. Each original license shall be prominently posted in each place of business of the licensee.

~~B.~~ A licensee shall post [on its website, and] in or on its licensed locations [so that the posting is legible from the outside,] the days and hours during which it is open for business [so that the posting is legible from outside].

~~C.~~ B. A licensee shall endeavor to provide the loan documents, ~~printed notice,~~ and pamphlet required by 10VAC5-210-30; in a language other than English when a prospective borrower is unable to read the materials printed in English.

~~D.~~ C. A licensee shall not [(i) make a motor vehicle title loan to a person who has an outstanding motor vehicle title loan from another licensee or (ii)] knowingly make a motor vehicle

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title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make [these determinations] and the [this determination] in ~~subsection F of this section~~, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. [Do you currently have a motor vehicle title loan from any other motor vehicle title lender?]

~~2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?~~

~~3. [2.] Are you (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?~~

~~4. [2, 3.] Are you married to an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?~~

~~5. [3, 4.] Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?~~

~~6. [4, 5.] Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?~~

~~E. D.~~ A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

~~F. A licensee shall not knowingly make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.~~

~~G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.~~

~~H. E.~~ A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower

~~by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution. This subsection shall not be construed to prohibit a licensee from accepting a payment made by good funds instrument.~~

~~I. F.~~ If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office as the licensee or any affiliated check casher to charge the borrower a fee for cashing the check.

~~J. G.~~ A borrower shall have the right to cancel or rescind a motor vehicle title loan agreement at any time on or before 5 p.m. of the close of third business on the next business day immediately following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels or rescinds a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, ~~contract for~~, collect, receive, recover, or require a borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

~~K. H.~~ A licensee shall give a borrower a signed, dated receipt for each ~~cash~~ payment made ~~in person~~, which shall state the updated balance due on the loan.

~~L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.~~

~~M. I.~~ A licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

~~N. J.~~ When sending the written notices and accounting specified by subsection 19 of § 6.2-2215 and § 6.2-2217 of the

Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

~~Q. K.~~ A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed the lesser of \$20 or 5.0% of the amount of the payment. A payment shall be considered ~~to be~~ timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

~~P. L.~~ Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, ~~contract for~~, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

~~Q. M.~~ Pursuant to ~~subdivision 2 of § 6.2-2201 of the Code of Virginia and subdivision 17 of § 6.2-2215 of the Code of Virginia~~, a licensee shall not make a motor vehicle title loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating motor vehicle title loans through its own employees.

~~R. N.~~ A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a motor vehicle title loan transaction.

~~S. O.~~ A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

~~T. P.~~ A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

~~U. Q.~~ A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter.

10VAC5-210-60. Annual reporting requirements.

When making the annual report required by § 6.2-2210 of the Code of Virginia, in addition to other information required by the commissioner, a licensee shall provide the following data regarding motor vehicle title loans made under the Act:

1. The total number and dollar amount of ~~motor vehicle title loans made by the licensee.~~
2. The total number of individual borrowers to whom ~~motor vehicle title loans were made by the licensee.~~
3. The minimum, ~~and maximum, and average loan amount of motor vehicle title loans made by the licensee~~ amounts.
4. The minimum, maximum, and average contracted Annual Percentage Rate of motor vehicle title loans made by the licensee Rates.
5. The minimum, maximum, and average term loan terms (in days) ~~of motor vehicle title loans made by the licensee [, and the average number of days that a loan was outstanding]~~.
6. The total contracted loan charges.
7. The total loan charges paid by borrowers.
8. The total number and dollar amount of deposit item return fees paid by borrowers.
9. The total number of loans that went into default.
10. The total number of individual borrowers that failed to make a monthly payment on a ~~motor vehicle title loan~~ for at least 60 days.
- ~~7.~~ 11. The total number of motor vehicles that were repossessed by or on behalf of the licensee.
12. The total number of motor vehicles that were surrendered to the licensee.
13. The total number of motor vehicles that were redeemed by borrowers after being repossessed or surrendered.
- ~~8.~~ 14. The total number of repossessed or surrendered motor vehicles that were sold by or on behalf of the licensee.
15. The total fair market value, as stated in the loan agreements, of repossessed or surrendered motor vehicles that were sold by or on behalf of the licensee.
16. The total amount of proceeds the licensee received from the sale of repossessed or surrendered motor vehicles.
17. The total amount of sale proceeds paid to borrowers pursuant to subsection C of § 6.2-2217 of the Code of Virginia.
18. The total amount of charges paid by borrowers for the repossession and sale of motor vehicles, including charges the licensee collected or recovered through the proceeds it received from the sale of repossessed or surrendered motor vehicles.
19. The total number of charged-off loans and the total dollar amount charged off.
- ~~9.~~ 20. The total number and dollar amount of personal money judgments against borrowers that were obtained by

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or on behalf of the licensee along with a breakdown of ~~this total~~ these totals that identifies the number and dollar amount of judgments the licensee pursued based on each of the following borrower actions: (i) intentionally damaging or destroying a motor vehicle that secures a title loan; (ii) intentionally concealing a motor vehicle that secures a title loan; (iii) giving the licensee a lien on a motor vehicle that is already encumbered by an undisclosed prior lien; and (iv) subsequently giving a security interest in, or selling, a motor vehicle that secures a title loan to a third party, without the licensee's written consent.

10VAC5-210-70. ~~Other~~ Conducting other business in motor vehicle title lending offices.

A. This section governs the conduct of any business other than motor vehicle title lending where a licensed motor vehicle title lending business is conducted. As used in this section, the term "other business operator" refers to a ~~licensed motor vehicle title lender licensee~~ licensee or third party, including an affiliate or subsidiary of the ~~licensed motor vehicle title lender licensee~~ licensee, who conducts or wants to conduct other business from one or more motor vehicle title lending offices.

1. Pursuant to ~~subdivision 18 of § 6.2-2215~~ 6.2-2218.1 of the Code of Virginia, a licensee shall not conduct the business of making motor vehicle title loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a ~~registered~~ check cashing business registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, a short-term lending business licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. No person shall engage in the business of selling insurance or enrolling borrowers under group insurance policies from any office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted.

3. ~~Pursuant to § 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted, unless the person is licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia and the loans are made in accordance with Chapter 18 of Title 6.2 of the Code of Virginia. Accordingly, a person registered or required to be registered as a check casher shall not make motor vehicle title loans. This section shall not apply to any other business that is transacted solely with persons residing outside of Virginia.~~

4. Notwithstanding any provision of this section or order entered by the commission prior to January 1, 2021, the business of making loans under an open-end credit plan as described in § 6.2-312 of the Code of Virginia shall not be conducted from any office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted. However, if prior to January 1, 2021, a licensee received commission authority for an other business operator to conduct open-end credit business from the licensee's motor vehicle title lending offices, the other business operator may continue collecting payments on any outstanding open-end loans (i) in accordance with the preexisting terms of the open-end credit agreements provided that such terms were permitted by law when the agreements were made, and (ii) subject to the conditions that were imposed by the commission in its approval order.

5. Notwithstanding any provision of this section or order entered by the commission prior to January 1, 2021, a licensee shall not make motor vehicle title loans at the same location at which the licensee, or any affiliate or owner of the licensee, conducts business under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia. However, if prior to January 1, 2021, a licensee received commission authority for the licensee or its affiliate or owner to make consumer finance loans from the licensee's motor vehicle title lending offices, then the licensee or its affiliate or owner may continue collecting payments on any outstanding consumer finance loans (i) in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made, and (ii) subject to the general conditions set forth in subsection D of this section.

6. If a licensee accepts loan applications, sends or receives loan-related information or documents, disburses loan funds, or accepts loan payments on or through the licensee's website or mobile application, and any other products or services are or will be offered or sold to Virginia residents on or through such website or mobile application, then the offer or sale of such other products or services shall constitute the conduct of other business and shall be subject to all of the provisions of this section to the same extent as if such other business was conducted by an other business operator from the licensee's motor vehicle title lending offices.

B. No other business shall be conducted in a location where a licensee conducts a motor vehicle title lending business unless the proposed other business is financial in nature and the licensee obtains prior approval from the commission. Applications for approval shall be made in writing on a form provided by the commissioner, and shall be accompanied by payment of the a \$300 fee required by law and any information relating to the application that the commissioner may require. In acting upon an application, the commission shall consider (i) whether the other business operator has the general fitness

to warrant belief that the business will be operated in accordance with law; (ii) whether the applicant has been operating its motor vehicle title lending business in accordance with the Act and this chapter; and (iii) any other factors that the commission deems relevant.

1. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

2. Prior approval from the commission shall not be required for a licensee to conduct a motor vehicle title lending business from one or more locations where an other business operator will conduct (i) a registered check cashing business under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, or (ii) a licensed short-term lending business under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. However, the conduct of these other businesses from a licensee's motor vehicle title lending offices shall otherwise be governed by this section, including the conditions prescribed in subsections D, E, and K of this section.

C. Written Except as provided in subdivision B 2 of this section, written evidence of commission approval of each other business conducted by an other business operator should be maintained at each approved location ~~where such other business is conducted.~~

D. All approved other businesses in motor vehicle title lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing or registration requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's motor vehicle title lending business and in a different location within the licensee's motor vehicle title lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

E. ~~If a licensee receives commission authority for an other business operator to conduct~~ conducts a payday short-term lending business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday short-term loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday short-term loan from the other business operator.
2. The other business operator shall not make a payday short-term loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.
3. The other business operator and the licensee shall not make a payday short-term loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday short-term loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

5. The other business operator shall be licensed or exempt from licensing under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

F. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter

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from the licensee's motor vehicle title lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

G. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation ~~and~~ or electronic tax filing services, or (ii) facilitating third party tax preparation ~~and~~ or electronic tax filing services, from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, ~~arrange, or broker~~ a motor vehicle title loan that is secured by ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~ ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

H. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a motor vehicle title loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, ~~arrange, or broker~~ a motor vehicle title loan that is secured by ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~ ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from

licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

I. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be licensed or exempt from licensing under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia.

2. Pursuant to subdivision A 5 of this section, the other business shall be conducted by a person other than the licensee or an affiliate or owner of the licensee.

3. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

~~2.~~ 4. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

~~3.~~ 5. The licensee and other business operator shall not make a motor vehicle title loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. 6. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

J. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's motor vehicle title lending offices, the other business operator shall not charge a fee or receive other compensation in connection with

the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a motor vehicle title loan from that was made by the licensee or any other lender conducting business from the licensee's motor vehicle title lending offices.

K. If an other business operator conducts a check cashing business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be registered or exempt from registration under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia.

2. If the other business operator is registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, then the other business operator shall not make any loans unless the other business operator is licensed under, and the loans are made in accordance with, Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

3. The other business operator shall not charge a fee to cash a check issued by the licensee or any other person operating in the licensee's motor vehicle title lending offices.

L. The commission may impose any additional conditions upon the conduct of other business in motor vehicle title lending offices that it deems necessary and in the public interest.

M. Except as otherwise provided in subdivision A 4 of this section, the conditions set forth or referred to in subsections D through L of this section shall supersede the conditions set forth in the commission's approval orders entered prior to January 1, 2021.

N. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-210-100.

10VAC5-210-80. Advertising.

A. A licensee shall disclose the following information in its advertisements:

1. The name of the motor vehicle title lender as set forth in the license issued by the commission.
2. A statement that the motor vehicle title lender is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the motor vehicle title lender (i.e., VTL-XXX).

B. The information required by subsection A of this section shall be disclosed in accordance with the disclosure standards prescribed in § 6.2-2218 B of the Code of Virginia.

C. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

D. Every advertisement used by, or published on behalf of, a licensee shall comply with the disclosure requirements for advertisements contained in Regulation Z (12 CFR Part 1026).

10VAC5-210-90. Books, accounts, and records; responding to requests from the bureau.

A. A licensee shall maintain in its licensed offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved.

B. In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after final payment is made on any motor vehicle title loan:

1. The signed and dated loan application.
2. The motor vehicle title loan agreement. If a loan has been repaid or satisfied in full, a licensee shall maintain a copy of the motor vehicle title loan agreement with the word "paid" or "canceled" along with documentation showing that the licensee released its security interest in the borrower's motor vehicle.
3. A record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Supporting documentation shall include any factors used to determine the value of the motor vehicle, including the motor vehicle's condition, features, mileage, as well as the name of the pricing guide that the licensee relied upon in making the loan.
4. Any disclosures that were given to a borrower pursuant to the Truth in Lending Act (15 USC § 1601 et seq.) or any other federal or state laws.
5. The certificate of title for the motor vehicle, which shall reflect the licensee's security interest unless the borrower canceled, rescinded, or fully satisfied the motor vehicle title loan prior to the licensee recording its security interest with the motor vehicle department in the state where the motor vehicle is registered.
6. Any notices or disclosures that a licensee is required to furnish to a borrower pursuant to the Act or this chapter.

C. A licensee shall maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee, including motor vehicles that are voluntarily surrendered by borrowers. The log or record shall include the following information: (i) the borrower's first and

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last name; (ii) the make, model, year, and vehicle identification number of the motor vehicle; (iii) the date the motor vehicle was repossessed; (iv) the date the motor vehicle was sold; (v) the name of the purchaser; and (vi) the sale price of the motor vehicle. Furthermore, in addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee:

1. The written notices and accounting sent by the licensee to a borrower pursuant to § 6.2-2217 of the Code of Virginia along with the proof of mailing from the United States Postal Service or other common carrier.
2. Supporting documentation of the sale of the motor vehicle and the proceeds derived from the sale.
3. The check or other method of payment used to deliver any excess proceeds from the sale of the motor vehicle to a borrower.

D. A motor vehicle title lender shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including ~~but not limited to~~ solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

E. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-2212 of the Code of Virginia.

F. If a licensee or former licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. ~~Licensees~~ A licensee or former licensee may arrange for service from a business record destruction vendor.

10VAC5-210-95. Schedule of annual fees for the examination, supervision, and regulation of motor vehicle title lenders.

Pursuant to § 6.2-2213 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by ~~persons licensed~~ licensees under the Act. The assessment defrays the costs of the examination, supervision, and regulation of licensees by the bureau.

The annual fee shall be \$500 per office plus \$2.85 per motor vehicle title loan made by each licensee. The annual fee shall be computed on the basis of (i) the number of offices, authorized and opened, as of December 31 of the year preceding the year of the assessment, and (ii) the number of motor vehicle title loans made under the Act during the calendar year preceding the year of the assessment.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before September 15 for the current calendar year. The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment (~~i.e., the number of offices and motor vehicle title loans made~~). ~~In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened, as of September 15 of that year.~~

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the reimbursement for expenses authorized by subsection B of § 6.2-2213 of the Code of Virginia.

VA.R. Doc. No. R21-6616; Filed August 25, 2021, 11:47 a.m.



TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Titles of Regulations: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60, 13VAC10-180-90).**

13VAC10-200. Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits (adding 13VAC10-200-10 through 13VAC10-200-70).

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

October 7, 2021 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond VA 23220

Public Comment Deadline: October 7, 2021.

Agency Contact: Loréyna Adkins, Paralegal, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5603, or email loreyna.adkins@vhda.com.

Summary:

The proposed amendments to the Rules and Regulations for Allocation of Low-Income Housing Tax Credits (13VAC10-180):

- (i) add point categories for geothermal heating and cooling, solar thermal water heating, and solar electric and add point categories for resident services, telehealth services, and onsite child care and provide points for applicants having a principal with a required ownership interest that is a socially disadvantaged individual as defined by federal law;*
- (ii) provide for both a per unit and per square foot total development cost limit and provide discretion to remove cost for certain incentivized amenities from total development cost before applying cost limits;*
- (iii) add points for exterior walls that are constructed using fiber cement board; for flexible unit design allowing for isolation space; and for applicants that enter into at least one contract for services provided by certain Small, Women-owned, and Minority-owned (SWaM) and Service Disabled Veteran-owned businesses; and add future points for experienced developers working with a local housing authority and increase points for individual unit Wi-Fi;*
- (iv) add provisions designed to protect the long-term affordability of developments, full compliance by applicants and principals with the Internal Revenue Code and the Plan, and preserve the right of first refusal by a qualified nonprofit organization at the close of the compliance period;*
- (v) make having an entry shelf or ledge a points item only in developments for the elderly and make free Wi-Fi in the community room mandatory;*
- (vi) replace the existing requirements for experienced developer points with new requirements;*
- (vii) remove the penalty for new construction in rural areas;*
- (viii) reduce points for exterior walls constructed using brick or other similar low-maintenance material and reduce points for the 9/4 hybrid program; revise, and in one instance remove, the accessibility point categories; and remove points for Internet infrastructure;*

- (ix) increase penalties for deals not meeting minimum design and construction requirements and add penalty points for seeking a credit refresh after January 1, 2022;*
- (x) allow the plan of development to be a standalone point item; allow staff to move deals between the nonprofit or the new construction pool, or both, to the appropriate geographic pool to best or fully allocate credits; and allow local housing authority pool deals to roll to and compete in their geographic pools;*
- (xi) increase the cap on the total amount of credits that may be awarded in any credit year to any applicant; increase the percentage of future year's allocation that can be forward allocated; increase the accessible supportive housing pool percentage of available credits; and increase the nonprofit pool credit request cap;*
- (xii) clarify requirements to compete in the local housing authority pool;*
- (xiii) implement a curing period for minor and immaterial defects in an application;*
- (xiv) require disclosure of availability of Virginia Housing Development Authority (VHDA) renter education and incentivize electronic payments of fees to VHDA;*
- (xv) incorporate federal compliance updates; and*
- (xvi) make other miscellaneous administrative clarification changes.*

The proposed amendments also implement §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, which establish the Virginia housing opportunity tax credit (HOTC), including (i) providing a program of \$15 million per year, a one-year credit period, and a five-year program duration, all resulting in an aggregate \$75 million program; (ii) allowing the HOTC to be stand-alone or awarded in connection with federal low-income housing tax credits (LIHTC); (iii) addressing how successful HOTC projects will be selected, options to award per LIHTC rankings or to prioritize other significant state housing needs, and the amount of HOTC to be awarded successful applicants; and (iv) defining terms for the HOTC program, the process for issuance by Virginia Housing Development Authority of an eligibility certificate for HOTC, recapture provisions, and applicable administrative fees.

13VAC10-180-50. Application.

A. Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

B. Application for a reservation of credits shall:

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1. ~~Shall~~ be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that is prepared by a housing market analyst ~~that who~~ meets the authority's requirements for an approved analyst, as set forth on the application form, instructions, or other communication available to the public, that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director. In addition to the market study contained in the application, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

~~The application should~~ 2. ~~Should~~ include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised.

~~The~~ 3. ~~Shall~~ include the following cost information, if applicable, ~~needs to be included in the application to~~ determine the feasible credit amount: ~~site~~

- a. ~~Site~~ acquisition costs, ~~site~~
- b. ~~Site~~ preparation costs, ~~construction~~
- c. ~~Construction~~ costs, ~~construction~~
- d. ~~Construction~~ contingency, ~~general~~
- e. ~~General~~ contractor's overhead and profit, ~~architect~~
- f. ~~Architect~~ and engineer's fees, ~~permit~~
- g. ~~Permit~~ and survey fees, ~~insurance~~
- h. ~~Insurance~~ premiums, ~~real~~
- i. ~~Real~~ estate taxes during construction, ~~title~~
- j. ~~Title~~ and recording fees, ~~construction~~
- k. ~~Construction~~ period interest, ~~financing~~
- l. ~~Financing~~ fees, ~~organizational~~
- m. ~~Organizational~~ costs, ~~rent-up~~

- n. ~~Rent-up~~ and marketing costs, ~~accounting~~
- o. ~~Accounting~~ and auditing costs, ~~working~~
- p. ~~Working~~ capital and operating deficit reserves, ~~syndication~~
- q. ~~Syndication~~ and legal fees, ~~development~~
- r. ~~Development~~ fees, and ~~other~~
- s. ~~Other~~ costs and fees.

4. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments.

~~C.~~ Any application that exceeds the cost limits described ~~below in this subsection~~ shall be rejected from further consideration ~~hereunder~~ and shall not be eligible for any reservation or allocation of credits. ~~For an application submitted in calendar year 2019 only, the~~ ~~The~~ higher of the following two cost limit calculations: ~~per-unit cost or per-square-foot cost~~ may be ~~used~~ ~~utilized~~ by an applicant. ~~Effective January 1, 2020, only the per square foot cost limits shall apply.~~

1. ~~Per unit cost limits.~~

a. ~~Inner Northern Virginia.~~ The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: \$387,809 per unit plus up to an additional \$43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: \$338,564 per unit.

b. ~~Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City.~~ The total development cost of proposed developments in Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City may not exceed (i) for new construction or adaptive reuse: \$288,087 per unit plus up to an additional \$43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: \$203,138 per unit.

e. ~~Balance of the state.~~ The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: \$215,450 per unit plus up to an additional \$43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition and rehabilitation: \$166,204 per unit.

Costs, subject to a per unit limit set by the executive director, attributable to equipping units with electrical and plumbing

~~hook-ups for dehumidification systems and attributable to installing approved dehumidification systems will not be included in the calculation of the per-unit cost limits in the preceding subdivision 1.~~

~~The cost limits are 2015 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of 2016 by the authority in accordance with Marshall & Swift cost factors for such quarter, and the adjusted will be indicated on the application form, instructions, or other communication available to the public.~~

~~2. Per square foot cost limits.~~ The authority will at least annually establish per-unit and per-square-foot cost limits based upon historical cost data of tax credit developments in the Commonwealth. Such limits will be indicated on the application form, instructions, or other communication available to the public. The cost limits will be established for new construction, rehabilitation, and adaptive reuse development types. The authority will establish geographic limits ~~utilizing Marshall & Swift cost factors.~~ For the purpose of determining compliance with the cost limits, the value of a development's land and acquisition costs and such other expenses as the executive director determines are appropriate for the good of the plan will not be included in total development cost. Compliance with per-square-foot applicable cost limits will be determined both at the time of application and also at the time the authority issues the IRS Form 8609, with the higher of the two limits being applicable at the time of IRS Form 8609 issuance.

D. Each application shall include ~~plans~~;

1. ~~Plans~~ and specifications in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications.

2. In the case of rehabilitation, ~~the application must include~~ a physical needs assessment in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

~~Each application must include an~~ 3. An environmental site assessment (Phase I) in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

~~Each application shall include evidence~~ 4. Evidence of ~~(i) sole~~

- a. ~~Sole~~ fee simple ownership of the site of the proposed development by the applicant, ~~(ii) lease~~
- b. ~~Lease~~ of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application

that the development will be held for occupancy by low-income persons or families, or ~~(iii) right~~

c. Right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site.

Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in ~~clause (iii) above~~ subdivision 4 c of this subsection.

No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases, or has the right to acquire or lease the site of the proposed development as described in ~~the preceding sentence~~ this subsection.

In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

~~Each application shall include written~~ 5. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

~~Each application shall include, in a form required by the executive director, a~~ 6. A certification, ~~in a form required by the executive director,~~ of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which ~~the~~

- a. ~~The~~ principals have or had an ownership or participation interest, ~~the~~
- b. ~~The~~ location of such developments, ~~the~~
- c. ~~The~~ number of residential units and low-income housing units in such developments, ~~and such~~
- d. ~~Such~~ other information as more fully specified by the executive director.

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7. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the ~~above~~ information provided in this subdivision or any other information available to the authority, the executive director determines that the principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant.

8. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

~~Each application shall include, in a form required by the executive director, a~~ 9. A certification, in a form required by the executive director, that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

E. The application ~~should~~:

1. Should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. ~~The application shall~~

2. Shall include a certification by the applicant as to the full extent of all federal, state and local subsidies that apply (or that the applicant expects to apply) with respect to each building or development. ~~The~~

3. May be required by the executive director ~~may also require to include~~ the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under

the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

F. Each applicant shall commit in the application to provide ~~relocation~~:

1. Relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

2. Unless prohibited by an applicable federal subsidy program, ~~each applicant shall commit in the application to provide~~ a leasing preference to individuals ~~(i) in~~:

a. In a target population identified in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth, ~~(ii) having~~

b. Having a voucher or other binding commitment for rental assistance from the Commonwealth, and ~~(iii) referred~~

c. Referred to the development by a referring agent approved by the authority. The leasing preference shall not be applied to more than 10% of the units in the development at any given time. The applicant may not impose tenant selection criteria or leasing terms with respect to individuals receiving this preference that are more restrictive than the applicant's tenant selection criteria or leasing terms applicable to prospective tenants in the development that do not receive this preference, the eligibility criteria for the rental assistance from the Commonwealth, or any eligibility criteria contained in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth.

3. Free Wi-Fi access in the community room of the development and such access shall be restricted to resident only usage.

4. A disclosure, to be acknowledged by tenant, of the availability of renter education from the authority.

G. Each applicant shall commit in the application ~~not~~:

1. Not to require an annual minimum income requirement that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

~~Each applicant shall commit in the application to~~ 2. To waive its right to request to terminate the extended low-income housing commitment through the qualified contract process, as described in the IRC.

Further, any application submitted by an applicant containing a principal that was a principal in an owner that has previously requested, on or after January 1, 2019, a qualified contract in the Commonwealth (regardless of whether the extended low-income housing commitment was terminated through such

process) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

H. The authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement and other program requirements. The authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in § 42(i)(7) of the IRC.

The executive director is hereby authorized to require any or all of the following with respect to applications:

1. Provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;
2. A designated form of right of first refusal document;
3. Terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests;
4. Debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and
5. Provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations, or administrative guidance.

The decision whether to institute, and the terms of, any such requirements shall be made by the executive director as reasonably determined to be necessary or appropriate to achieve the goals stated in this subsection and in the best interest of the plan. Any such requirements will be indicated on the application form, instructions, or other communication available to the public.

I. Any application submitted by an applicant containing a principal that was a principal in an owner that has, in the authority's determination, previously participated, on or after January 1, 2019, in a foreclosure in Virginia (or instrument in lieu of foreclosure) that was part of an arrangement a purpose of which was to terminate an extended low-income housing commitment (regardless whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall be rejected from further consideration for low-income housing tax credits and shall not be eligible for any reservation or allocation of credits.

J. If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive

director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

K. In any situation in which the executive director deems it appropriate, he the executive director may treat:

1. Treat two or more applications as a single application. Only one application may be submitted for each location.

~~The executive director may establish~~ 2. Establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

~~The executive director may prescribe~~ 3. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

L. After receipt of the applications local notification information data, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

M. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

N. The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct, or rehabilitate.

O. Any application seeking an additional reservation of credits for a development in excess of 10% of an existing reservation of credits for such development shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits pursuant to such application. However, such applicant may execute a consent to cancellation for such existing reservation and submit a new application for the aggregate amount of the existing reservation and any desired increase.

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13VAC10-180-60. Review and selection of applications; reservation of credits.

A. The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

B. An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. ~~(i)~~ a. The "qualified nonprofit organization" described in the preceding subdivision 1 of this subsection is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; ~~(ii) the~~

b. The executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; ~~(iii) the~~

c. The executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and ~~(iv) the~~

d. The executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. In making the determinations required by ~~the preceding subdivision~~ subdivisions 1 and ~~clauses (ii), (iii)~~ 2 b, 2 c, and ~~(iv) of this subdivision~~ 2 d of this subsection, the executive director may apply such factors as ~~he~~ the executive director deems relevant, including ~~the~~

a. ~~The~~ past experience and anticipated future activities of the qualified nonprofit organization, ~~the~~

b. ~~The~~ sources and manner of funding of the qualified nonprofit organization, ~~the~~

c. ~~The~~ date of formation and expected life of the qualified nonprofit organization, ~~the~~

d. ~~The~~ number of paid staff members and volunteers of the qualified nonprofit organization, ~~the~~

e. ~~The~~ nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, ~~the~~

f. ~~The~~ relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and ~~the~~

g. ~~The~~ proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis.

The executive director may include in the application of the ~~foregoing~~ factors described in this subdivision any other nonprofit organizations that, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the ~~foregoing~~ requirements of this subsection, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

C. The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the ~~foregoing~~ requirements of this section have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the ~~preceding~~ requirements of subsection B of this section.

D. The executive director may establish such pools (nonprofit pools) of credits as ~~he~~ the executive director may deem appropriate to satisfy the ~~foregoing requirement~~ requirements of this subsection. If any such nonprofit pools are so established, the executive director may rank the applications therein in each pool and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible

~~hereunder~~ in each pool described in this subsection (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate ~~hereunder~~; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools ~~as described above~~, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications ~~therein for those nonprofit pools~~ and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round ~~(as authorized hereinbelow)~~ of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available ~~therein in each nonprofit pool~~, the executive director may ~~either (i) leave;~~

1. Leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent ~~round or (ii) redistribute~~ rounds;

2. Redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools ~~as for which~~ the executive director shall designate reservations ~~therefore~~ in the full amount permissible ~~hereunder (which applications under this section. Applications redistributed to other pools under this subdivision shall hereinafter be referred to as "excess qualified applications"); or (iii) carry~~

3. Carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. ~~Notwithstanding anything to the contrary herein, no~~

No reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than ~~\$950,000~~ \$1,200,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

~~Notwithstanding anything to the contrary herein, applicants~~ Applicants relying on the experience of a local housing authority for developer experience points described ~~hereinbelow in this subsection~~ or using Hope VI funds from HUD in connection with the proposed development shall not

be eligible to receive a reservation of credits from any nonprofit pools.

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; ~~applicants receiving points under this subdivision 1 are not eligible for points under subdivision 5 a below~~)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia or within an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017, as follows: ~~(i) in~~

(1) In a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points); ~~(ii) in~~

(2) In any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 to be designated as a revitalization area without adoption of a further resolution (10 points); ~~(iii) in~~

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(3) In a revitalization area designated by resolution adopted pursuant to the terms of § 36-55.30:2 (15 points); ~~(iv) in~~

(4) In a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 pursuant to § 36-55.64 G of the Code of Virginia (15 points); and ~~(v) in~~

(5) In an opportunity zone and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public. (15 points).

If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision E 2 c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. Any (i) funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request; (ii) commitment to donate land or buildings or tap fee waivers from the local government; or (iii) commitment to donate land (including a below market-rate land lease) from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option with no ownership interest in the applicant shall not make the donor a principal in the applicant). Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. (The amount of such funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development cost. The applicant receives two points for each percentage point up to a maximum of 40 points.) The authority will confirm receipt of such subsidized funding prior to the issuance of IRS Form 8609.

f. Any development subject to (i) HUD's Section 8 or Section 236 program or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is or has any common interests with the current owner, directly or indirectly, the application will only

qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development unless permitted by the executive director for good cause.)

g. Any development receiving a real estate tax abatement on the increase in the value of the development. (5 points)

h. Any development receiving new project-based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development. (10 points)

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data. (20 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool ~~little or no increase in~~ with an increasing rent-burdened population. (Up to ~~minus~~ 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool; ~~the executive director may make exceptions in the following circumstances:~~

~~(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;~~

~~(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or~~

~~(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)~~

~~l. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent burdened population. (Up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at large pool, 0 points in the at large pool.)~~

l. Any proposed development for which the applicant has entered into a memorandum of understanding approved by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) with a resident service provider for the provision of resident services. Such resident services provider must have experience delivering direct, community-based services to

individuals, as evidenced by a triennial license, in good standing, with no outstanding corrective action plans from DBHDS, or an agency or program accreditation or certification such as Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or Certified Organization for Resident Engagement & Services, Council on Quality and Leadership, or CSH Quality Supportive Housing accreditation or certification. Such resident service provider may, but is not required to, be the qualified nonprofit organization qualifying applicant to compete in the nonprofit pool or having the required ownership interest and holding an option or first right of refusal that qualified applicant for points under subsection 7 d of this subsection. Experience may also be evidenced by receipt of a grant or grants by the service provider for provision of direct services to the development's residents. (15 points)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community or meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the

~~public) covering 25% or greater, up to and including 85%, 50% of the exterior walls of the development. (20 points times the percentage of exterior walls covered by brick)~~

If the exterior walls are constructed using fiber cement board covering up to 50% of the exterior walls. (20 points times the percentage of exterior walls covered by fiber cement board)

Points for brick and fiber cement board are independent and can both be awarded.

For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations. ~~(Zero points if coverage is less than 25%; 10 points if coverage is at least 25%, and an additional 15 points is available on a sliding scale if coverage is greater than 25% up to and including 85% coverage. No additional points if coverage is greater than 85%.)~~

(c) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(d) If points are not awarded pursuant to subdivision 3 f of this section for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets and showerheads. (3 points)

~~(e) If each unit is provided with the necessary infrastructure for high-speed Internet or broadband service free individual high-speed Internet access. (4 point 10 points, 12 points if such access is Wi-Fi)~~

If free Wi-Fi access is provided in the community room and such access is restricted to resident only usage. (4 points) If each unit is provided with free individual high-speed Internet access. (6 points, 8 points if such access is Wi-Fi)

(f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) If all cooking surfaces are equipped with fire prevention features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (4 points)

If all cooking surfaces are equipped with fire suppression features that meet the authority's requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

(h) For rehabilitations, equipping all units with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing

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permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

~~(l) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)~~

~~(m) (l)~~ For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(m) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)

(n) If all the water heaters meet the EPA's Energy Star qualified program requirements; or any centralized commercial system that has a 95% or greater efficiency performance rating, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

(o) If the development has a solar electric system that will remain unshaded year round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2% of the development's electrical load that can be met by the solar electric system, up to 10 points)

(p) If the development has flexible unit design allowing for isolation space. (8 points)

(q) If the development provides tenants with free on-call, telephonic, or virtual health care services with a licensed provider. (15 points)

(r) If the development provides licensed childcare on-site with a preference and discount for residents or an equivalent subsidy for tenants, determined based on household income and household size, to utilize a licensed childcare facility of tenant's choice. (15 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all bathrooms have an independent or supplemental heat source. (1 point)

(c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(d) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and

certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which (i) the greater of five units or 10% of the units will be assisted by ~~HUD project-based vouchers (as evidenced by the submission of a letter satisfactory to the authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance) or other~~ any form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; and (ii) the greater of five units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in clause (ii) above must include roll-in showers and roll-under sinks and front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). ~~(60 50 points)~~

~~c. Any development in which the greater of five units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard, (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and (iii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)~~

~~d. Any development in which 5.0%~~ c. Any development in which 10% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. ~~(45 20 points)~~

~~e. d.~~ Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the

development is ranked against other developments in any other pool of credits established by the executive director

~~¶ e.~~ Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation decrease on the Home Energy Rating System Index (HERS Index) or score an 80 or lower on the HERS Index. For adaptive reuse, the proposed development must score a 95 or lower on the HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

Any development for which the applicant agrees to obtain (i) EarthCraft Gold or higher certification; (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this paragraph are not cumulative)

Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate; or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this paragraph are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving an additional 10 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 10% of the development's eligible basis. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

~~g. f.~~ If units are constructed to include the authority's universal design features, provided that the proposed

development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~h. g.~~ Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

~~h. h.~~ Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as separate. The units financed by tax exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (~~25~~ 10 points for tax-exempt bond financing of at least 30% of aggregate units, ~~35~~ 20 points for tax-exempt bond financing of at least 40% of aggregate units, and ~~45~~ 30 points for tax-exempt bond financing of at least 50% of aggregate units; such points being noncumulative; such points will be awarded in both the application and any application submitted for credits associated with the tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. ~~Evidence that the controlling general partner or managing member of~~ A maximum of 25 cumulative points in subdivision 5 b of this subsection will be awarded to applicants with an experienced sponsor (experienced sponsor). Experienced sponsors are those principals who meet the requirements of subdivision 5 b of this subsection

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and who have an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development ~~have developed~~, subject to the following conditions:

~~(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (50 points);~~

~~(2) At least three deals as a principal and have at least \$500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entities or persons, including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points); or~~

~~(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)~~

~~Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 shall have the 50 points reduced if the controlling general partner or managing member of the applicant acted as a principal in a development receiving an allocation of credits from the authority where:~~

~~(a) Such principal met the requirements to be eligible for points under 5 (a) (1) or (2) and~~

~~(b) Such principal made more than two requests for final inspection (minus 5 points for two years).~~

~~Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 are not eligible for points under subdivision 1 above.~~

~~b. (1) Experienced sponsors may be (i) individuals; (ii) duly formed limited liability companies, limited partnerships, and corporations, whether for-profit or nonprofit, and which are in good standing in their respective state of formation and registered to do business in Virginia; (iii) local housing authorities; (iv) business trusts; and (v) trusts;~~

~~(2) Individual persons seeking points as an experienced sponsor shall not receive credit for prior participation in developments where such participation was in their capacity as either trustee or beneficiary of a trust or business trust; and~~

~~(3) Individuals and entities seeking points as an experienced sponsor may not combine ownership or prior experience with any other individual or entity to meet the requirements of this subdivision 5.~~

~~b. Points for experienced sponsor involvement shall be awarded as follows:~~

~~(1) Tier 1: Five points shall be awarded to those experienced sponsors that have placed at least one federal low-income housing tax credit (LIHTC) development in service in Virginia within the past five years, as evidenced by an IRS Form 8609 having been issued for such development. The LIHTC development must be active with no reported compliance issues remaining uncured, as determined by the executive director.~~

~~(2) Tier 2: 15 points shall be awarded to those experienced sponsors that have placed at least three LIHTC developments in service (in addition to any deal for which points are awarded in Tier 1) in any state within the past six years, as evidenced by corresponding IRS Form 8609s. Experienced sponsors must certify with the application that each of said three developments is active with no reported compliance issues remaining uncured. The executive director may confirm the applicant's certification with each state in which the three developments are located.~~

~~(3) Tier 3: Any applicant competing in the local housing authority pool may receive an additional five points for partnering with an experienced sponsor, other than a local housing authority. Applicants seeking said points must provide in their application evidence that the experienced sponsor is a principal in the Applicant (while ownership is required, no minimum ownership percentage of the experience sponsor partner is specified for points in Tier 3) and must provide a description of the assistance rendered and to be rendered by the experienced sponsor partner. Developments that move from the local housing authority pool to their geographic pool will not be eligible for said five points in the geographic pool.~~

~~c. Applicants may receive negative points toward their application as follows:~~

(1) Any applicant that includes a principal that was a principal in a development that was awarded a credit refresh after January 1, 2022. (minus 2 points for three years after the year in which the credit refresh was awarded)

(2) Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

~~e.~~ (3) Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate ~~individuals~~ individual connected to the principal attend compliance training as recommended by the authority)

~~d.~~ (4) Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the items not built or minus ~~20~~ 50 points per requirement for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may elect to seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)

~~e.~~ (5) Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

~~f.~~ (6.) Any applicant that includes a principal that was a principal in a development for which the actual cost of

construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed.)

d. In addition to the points for experienced sponsor involvement available in subdivision 5 b of this subsection, points shall be awarded to applicants for contracting for services as follows:

(1) Five points shall be awarded to applicants that enter into at least one contract for services provided by a business certified as Women-Owned, Minority-Owned or Service Disabled Veteran-owned through the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business (SWaM) certification program. The following services and roles qualify for points under this subdivision 5 d (1): (i) consulting services to complete the LIHTC application; (ii) ongoing development services through the placed in service date; (iii) general contractor; (iv) architect; (v) property manager; (vi) accounting services; or (vii) legal services. An applicant seeking points in this subdivision 5 d (1) must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider and describing the scope of the services provided or to be provided. The application must also include a copy of the service provider's certification from the Commonwealth of Virginia's Small, Women-owned, and Minority-owned Business certification program.

(2) Future points shall be awarded to an experienced sponsor that serves as a consultant or service provider to a local housing authority to receive an award of credits or place a LIHTC development in service in Virginia, as evidenced by the issuance of an IRS Form 8609 (up to a cumulative maximum of six points). Two points shall be awarded on one future application for assisting a local housing authority with its successful application for credits, as evidenced by a reservation agreement of IRC § 42(m) letter. Four points shall be awarded on one future application for providing ongoing assistance to the local housing authority through the placed in service date and receipt of IRS Form 8609. To qualify for future points under this subdivision 5 d (2), an experienced sponsor must provide in its application a certification, in a form to be developed by the executive director, from the local housing authority describing the assistance rendered by the experienced sponsor and verifying that said assistance

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was a material component to the development receiving a reservation of credits or placing in service or both.

e. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is a socially disadvantaged individual (5 points). Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. This provision shall be interpreted in accordance with 13 CFR 124.103.

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (per unit cost), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in this subdivision 6 ~~above~~. For the purpose of calculating the points to be assigned pursuant to such this subdivision 6 ~~above~~, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b ~~below~~ of this subsection. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.) If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a of this subsection. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d of this subsection. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or

right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c of this subsection. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

f. Any applicant that commits in the application to submit any payments due the authority, including reservation fees and monitoring fees, by electronic payment. (5 points)

In calculating the points for subdivisions 7 a and 7 b ~~above~~ of this subsection, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described ~~above~~ in this subsection, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 425 points (325 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

E. During its review of the submitted applications in all pools, the authority may conduct ~~its~~:

1. Its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or

its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

~~During its review of the submitted applications in all pools, the authority may conduct a~~ 2. A site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

G. The executive director may:

1. May exclude and disregard any application that ~~he~~ the executive director determines is not submitted in good faith or that he determines would not be financially feasible.

2. May determine that an application is substantially incomplete and ineligible for further review.

3. May also choose to allow for the immediate correction of minor and immaterial defects in an application. Should the executive director choose to allow correction, applicants will be given 48 hours from the time of notification to cure defects with their application. If the executive director allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable.

Examples of items that may be considered as "curable" include:

a. If the applicant has failed to include a required document, the applicant may supply the document, provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date;

b. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency, provided, however, that the information accurately reflects the state of affairs on the application deadline date;

c. The applicant may provide any required signature that has been omitted, except for applications that the executive director deems to be substantially incomplete; and

d. The applicant may cure any scrivener's error (provided, that an alleged failure to select or an alleged erroneous selection of a points item shall not be considered a scrivener's error), missing or defective notarization,

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defective signature block, or defective legal name of an individual or entity.

4. Shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (email). The applicant's corrective submission shall not be considered unless it is received by the executive director no later than 48 hours (excluding weekends and legal holidays) from the notification. If an applicant fails to respond to the notification of curable defects within the 48-hour cure period, or if an applicant's response is nonresponsive to the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold. After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) other than information submitted pursuant to this subdivision shall not be accepted or considered before preliminary reservation awards have been announced.

5. Upon assignment of points to all of the applications, ~~the executive director~~ shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to ~~40~~ 50% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

~~In~~ H. The authority shall in the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described ~~therein in that pool~~, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none,

within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision E 7 of this section, ~~and each~~. Each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision E 7 of this section and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described ~~therein in the tied for points applications~~, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

I. The executive director:

1. For each application ~~which that~~ may receive a reservation of credits, ~~the executive director~~ shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC.

In making this determination, the executive director shall consider ~~the~~:

a. The sources and uses of the funds, ~~the~~

b. The available federal, state, and local subsidies committed to the development, ~~the~~

c. The total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and ~~the~~

d. The percentage of the credit dollar amount used for development costs other than the costs of intermediaries.

~~He shall also~~ 2. Shall examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable.

~~The executive director shall~~ 3. Shall review the applicant's projected rental income, operating expenses and debt service for the credit period.

~~The executive director may~~ 4. May establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including ~~criteria~~:

a. Criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall

determine to be reasonable for the proposed development); ~~increases;~~

b. Increases in the market value of the development, and increases in operating expenses, rental income; and, ~~in~~

c. In the case of applications without firm financing commitments (~~as defined hereinabove~~) at fixed interest rates, debt service on the proposed mortgage loan.

~~The executive director may~~ 5. May, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the ~~foregoing~~ items described in this subsection as to the larger development in making such determination for the development.

J. Maximum developer's fee calculations will be indicated on the application form, instructions, or other communication available to the public. Notwithstanding such calculations of developer's fee, (i) no more than \$3 million developer's fee may be included in the development's eligible basis, (ii) no developer's fee may exceed \$5 million, and (iii) no developer's fee may exceed 15% of the development's total development cost, as determined by the authority.

~~At such time or times during each calendar year as the executive director shall designate, the executive director shall~~

K. The executive director:

1. Shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations at such time during each calendar year as the executive director shall designate. (~~For the purpose of the preceding sentence, if~~ If there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) ~~The executive director may~~

2. May rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool.

~~The executive director may also~~ 3. May establish more than one round of review and ranking of applications and reservation of credits based on such rankings, ~~and he shall.~~

4. Shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the

amount of credits so reserved exceed the maximum amount permissible under the IRC.

~~If~~ 5. May move the proposed development and the credits available to another pool if the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, ~~the executive director may move the proposed development and the credits available to another pool.~~

6. If any credits remain in any pool after moving proposed developments and credits to another pool, ~~the executive director~~ may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed ~~developments~~ development scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed ~~developments~~ development. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

7. In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, ~~the executive director may (i) leave;~~

a. Leave such unreserved credits in such pools for reservation and allocation in any subsequent rounds, ~~(ii) redistribute~~

b. Redistribute such unreserved credits to such other pools as the executive director may designate, ~~(iii) supplement~~

c. Supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan, ~~or (iv) carry~~

d. Carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year, or

e. Move a development from the nonprofit or new construction pool to its or their appropriate geographic pool to more fully or fully utilize the total amount of credits made available therein during such round.

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~~Notwithstanding anything contained herein, the~~ L. 1. The total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed ~~45%~~ 20% of Virginia's per capita dollar amount of credits for such credit year (credit cap).

2. However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth ~~above~~ in this section shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits.

3. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this ~~paragraph~~ subsection, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments.

4. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits.

5. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date.

6. Substantial relationships shall include, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): ~~(i) the~~

a. The persons are in the same immediate family (including a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; ~~(ii) the~~

b. The entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; ~~(iii) the~~

c. The entities are under the common control (e.g., the same ~~persons~~ person and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); ~~(iv) the~~

d. The person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; ~~(v) the~~

e. The entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or ~~(vi) the~~

f. The person or entity is otherwise controlled, in whole or in part, by the other person or entity.

7. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that ~~(i) such;~~

a. Such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, ~~(ii) such;~~

b. Such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and ~~(iii) such;~~

c. Such person or entity will not receive a financial benefit from the tax credits requested in the application.

8. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits.

9. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which

such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program.

10. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

~~Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall~~

M. The executive director:

1. Shall notify each applicant for such reservations of credits within a reasonable time after credits are reserved to any applicants' applications either ~~of:~~

a. Of the amount of credits reserved to such applicant's application ~~(by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter);~~ or, ~~as applicable, that~~

b. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith.

The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

~~If credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, the executive director may~~ 2. May reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years if credits are reserved to any applicants for developments that have

also received an allocation of credits from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

~~The executive director shall~~ 3. Shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

a. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter.

b. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

~~The executive director may~~ 4. May require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section).

Upon satisfaction of all such ~~aforementioned~~ requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

N. If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

O. The executive director may ~~require:~~

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1. Require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority.

2. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, ~~then the executive director may~~ (i) terminate;

a. Terminate the reservation of such credits and draw on any good faith deposit, or ~~(ii) substitute~~

b. Substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development.

If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

~~The executive director may establish~~ 3. Establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

P. Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be

entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

~~Notwithstanding the provisions of this section, the~~ Q. The executive director may make a reservation of credits ~~in:~~

1. In an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has a principal with a demonstrated capacity for supportive housing evidenced by a certification from a certifying body acceptable to the executive director or other preapproved source; and (v) for which the applicant has completed the authority's supportive housing certification form. Any such reservations made in any calendar year may be up to ~~6.0%~~ 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

~~Notwithstanding the provisions of this section, the executive director may make reservations of credits to~~ 2. To developments having unique and innovative development concepts, such as innovative construction methods or materials; unique or innovative tenant services, tenant selection criteria, or eviction policies; or otherwise innovatively contributing to the authority's identified mission and goals. The applications for such credits must meet all the requirements of the IRC and threshold score. The authority shall also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Such reservations will be for credits from the next year's per capita credits and may not exceed 12.5% of the credits expected to be available for that following calendar year. Such reservations shall not be considered in the executive director's determination that no more than ~~40%~~

50% of the next calendar year's per capita credits have been pre-reserved.

13VAC10-180-90. Monitoring for IRS compliance.

A. Federal law requires the authority to monitor developments receiving credits for compliance with the requirements of § 42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of § 42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth ~~hereinbelow~~ in this section are to qualify the authority's allocation plan of credits. The authority's obligation to monitor for compliance with the requirements of § 42 of the IRC does not make the authority liable for an owner's noncompliance, nor does the authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the building that are low-income units.
3. The rent charged on each residential rental unit in the building (including any utility allowances).
4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under § 42(g)(2) of the IRC (as in effect before the amendments made by the federal Revenue Reconciliation Act of 1989).
5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.
6. The annual income certification of each low-income tenant per unit.
7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937, 42 USC § 1401 et seq. (section 8), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's

income does not exceed the applicable income limit under § 42(g) of the IRC.

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.

9. The character and use of the nonresidential portion of the building included in the building's eligible basis under § 42(d) of the IRC (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

In addition, the owner of a low-income housing development must retain any original local health, safety, or building code violation reports or notices issued by the Commonwealth or local government (as described in subdivision C 6 of this section) for the authority's inspection. Retention of the original violation reports or notices is not required once the authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. The owner of a low-income housing development must certify annually to the authority, on the form prescribed by the authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under § 42(g)(1)(A) of the IRC, the 40-60 test under § 42(g)(2)(B) of the IRC, or the income averaging test of the ~~federal~~ Consolidated Appropriations Act of 2018 (as limited by the executive director), whichever minimum set-aside test was applicable to the development.
2. There was no change in the applicable fraction (as defined in § 42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.
3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B of this section (unless the owner has obtained a waiver from the IRS pursuant to § 42(g)(8)(B) of the IRC).
4. Each low-income unit in the development was rent-restricted under § 42(g)(2) of the IRC.
5. All units in the development were for use by the general public (as defined in IRS Regulation § 1.42-9) and that no

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finding of discrimination under the Fair Housing Act has occurred for the development. (A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 USC § 3616(a)(1), or adverse judgment from federal court.)

6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and that the Commonwealth or local government unit responsible for making local health, safety, and building code inspections did not issue a violation report for any building or low-income unit in the development. (If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification. In addition the owner must state whether the violation has been corrected.)

7. There was no change in the eligible basis (as defined in § 42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge).

8. All tenant facilities included in the eligible basis under § 42(d) of the IRC of any building in the development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.

9. If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

10. If the income of tenants of a low-income unit in the development increased above the limit allowed in § 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.

11. An extended low income housing commitment as described in § 42(h)(6) of the IRC was in effect (for buildings subject to § 7108(c)(1) of the federal Omnibus Budget Reconciliation Act of 1989).

12. All units in the development were used on a nontransient basis (except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC or single-room-occupancy units rented on a month-by-month basis under § 42(i)(3)(B)(iv) of the IRC).

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the authority, on a form prescribed by the authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The authority will review each certification set forth in subsection C of this section for compliance with the requirements of § 42 of the IRC. Also, the authority will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least the lesser of the applicable minimum sample size required by HUD's Real Estate Assessment Center (REAC) for inspections under HUD programs or 20% of the development's low-income housing units in the project rounded up to the next whole number, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units. In addition, at least once every three years, the authority will conduct on-site inspections of all the buildings in each low-income housing development and, for at least the lesser of the applicable minimum sample size required by REAC for inspections under HUD programs or 20% of the development's low-income units in the project rounded up to the next whole number, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. The authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the authority for compliance review copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the authority when the development is placed in service. The authority reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development

conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The authority will provide written notice to the owner of a low-income housing development if the authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of § 42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of § 42 of the IRC. The authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The authority may extend the correction period for up to six months, but only if the authority determines there is good cause for granting the extension.

The authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under § 42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the authority need not file Form 8823 in subsequent years to report that building's noncompliance.

The authority will retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective Form 8823. In all other cases, the authority must retain the certifications and records described in subsection C of this section for three years from the end of the calendar year the authority receives the certifications and records.

G. If the authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by Rural Development under the § 515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is

exempt from tax under § 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the authority must enter into an agreement with Rural Development or tax-exempt bond issuer. Under the agreement, Rural Development or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the authority. The authority may assume the accuracy of the information provided by Rural Development or the tax-exempt bond issuer without verification. The authority will review the information and determine that the income limitation and rent restriction of § 42(g)(1) and (2) of the IRC are met. However, if the information provided by Rural Development or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority will request the necessary additional income or rent information from the owner of the buildings. For example, because Rural Development determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under section 8, the authority may have to calculate the tenant's income for purposes of § 42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the authority such fees in such amounts and at such times as the authority shall reasonably require the owners to pay in order to reimburse the authority for the costs of monitoring compliance with § 42 of the IRC.

I. The owners of low-income housing developments that have submitted IRS Forms 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information on such owners shall submit from time to time renewals of such Forms 8821 as required by the authority throughout the extended use period.

J. The requirements of this section shall continue throughout the extended use period, notwithstanding the use of the term compliance period, except to the extent modified or waived by the executive director.

Chapter 200

Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits

13VAC10-200-10. Definitions.

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

"Applicant" means an applicant for HOTC under this chapter and also means the owner of the development to whom the HOTC are allocated.

"Authority" means the Virginia Housing Development Authority.

"Eligibility certificate" means a certificate issued by the Authority to the owner of a qualified project certifying that such project qualifies for the HOTC, has been awarded HOTC

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pursuant to the provisions of this chapter, and specifying the amount of HOTC that the owner of such qualified project may claim.

"Enabling legislation" means §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, and any amendments or supplements thereto.

"HOTC" or "credits" means the Virginia housing opportunity tax credits as created in the enabling legislation, as implemented in this chapter.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices, and other official pronouncements promulgated under the IRC.

"IRS" means the Internal Revenue Service.

"LIHTC" means the federal low-income housing tax credits as provided in § 42 of the IRC, as amended.

"Qualified application" means a written request for HOTC which is submitted by an applicant on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all mandatory items and any minimum scoring requirements as set forth on the application form, instructions, or other communication available to the public.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development, which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits under § 42.

"Qualified project" means a qualified low-income building or qualified low-income development that is located in Virginia, is placed in service on or after January 1, 2021, has received an allocation of HOTC under this chapter, and is issued an eligibility certificate.

13VAC10-200-20. General.

A. The authority is designated in the enabling legislation to administer the HOTC and is authorized to promulgate these regulations, guidelines, instructions, and documents necessary to implement and administer the HOTC and approve, allocate, and certify the use of the HOTC, including the issuance of eligibility certificates.

B. The executive director is authorized to waive or modify any provision in this chapter where the executive director deems it appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program, to the extent not inconsistent with the IRC or the enabling legislation.

13VAC10-200-30. Availability and amount of HOTC.

A. Based upon the legislative intent of § 58.1-439.30 G of the Code of Virginia, notwithstanding any provisions of the enabling legislation inconsistent with § 58.1-439.30 G, the authority will award up to \$15 million of HOTC each of the five calendar years beginning in calendar 2021 through

calendar year 2025. The credit period shall be one year. The aggregate HOTC program shall equal up to \$75 million. Any HOTC not used by taxpayer in a taxable year may be carried forward for the succeeding five years.

B. To qualify for the HOTC, the applicant must have applied for federal 9% LIHTC, and have been (i) allocated LIHTC or (ii) allowed LIHTC (i.e., determined by the authority to be eligible for LIHTC but not allocated LIHTC). In the event of alternative clause (ii) of this subsection, the HOTC may be stand-alone (i.e., not allocated to the applicant in addition to LIHTC).

C. While only LIHTC projects placed in service on or after January 1, 2021, may be eligible for HOTC, not every development receiving LIHTC and placing in service on or after January 1, 2021, will receive HOTC. Rankings and awards of HOTC to qualified projects shall be in accordance with 13VAC10-200-40.

D. The HOTC for each qualified project may be (i) up to the amount of the federal LIHTC allocated or allowed for the qualified project or (ii) a percentage of the federal LIHTC allocated or allowed for the qualified project as determined by the authority, based upon the availability of HOTC as compared to the federal LIHTC allocated or allowed for the qualified projects or such other factors the executive director deems appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program.

E. The authority may pre-allocate future years' HOTC, but such credits cannot be claimed until the calendar year designated by the authority. Subject to the requirement that the total amount of tax credits authorized under this chapter shall not exceed \$15 million per calendar year, the authority may re-allocate any HOTC that are terminated or canceled and returned to the authority.

13VAC10-200-40. Applications, ranking of applications and award of HOTC.

A. Application for a reservation of credits shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with this chapter and to make the reservation and allocation of the credits in accordance with this chapter.

B. For purposes of subsection A of this section, the authority may utilize the application submitted for LIHTC, alone or with an HOTC addendum, or may require an entirely new HOTC application be submitted.

C. The executive director may:

1. Reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or

information on the forms prescribed by the executive director.

2. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as deemed necessary or desirable to allow sufficient processing time for the Authority to make such reservations and allocations.

3. Divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors:

- a. Geographical areas of the state;
- b. Types or characteristics of housing;
- c. Construction;
- d. Financing;
- e. Owners;
- f. Occupants;
- g. Source of credits; or
- h. Any other factors deemed appropriate by the executive director to best meet the housing needs of the Commonwealth.

D. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with Rules and Regulations for Multi-Family Housing Developments (13VAC10-20).

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

- 1. According to points assigned pursuant to 13VAC10-180, Rules and Regulations for Allocation of Low-Income Housing Tax Credits; or
- 2. Such other methodology for assigning points as determined by the executive director to promote the goals and interests of the Commonwealth in the HOTC program. Such methodology may include prioritizing one or more of the following:
 - a. Unfunded developments in the At-Large pools of the 9% LIHTC competition, in order to produce more LIHTC units in Virginia;
 - b. Unfunded developments in the Local Housing Authority pool of the 9% LIHTC competition or other developments that are a part of a local housing authority's public housing revitalization efforts;
 - c. 9% LIHTC developments that have not yet placed in service having equity funding gaps, in order to make such developments feasible;

d. Developments that preserve existing affordable housing;

e. Developments with rents and income limits that are more deeply targeted than required by the LIHTC program;

f. Developments in high-opportunity areas; or

g. Developments providing enhanced tenant services, as defined by the Authority.

The executive director may exclude and disregard any application that the executive director determines is not submitted in good faith or would not be financially feasible.

F. Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. Applications with the highest rankings shall receive allocations up to the allowable amount, determined by the executive director pursuant to 13VAC10-200-30, prior to any allocations to lower ranking applicants.

In the event of a tie in the number of points assigned to two or more projects, the executive director shall select one or more of such applications by lot for an award of credits.

G. Within a reasonable time after credits are reserved to any applicant applications, the executive director shall notify each applicant for such reservations of credits either:

- 1. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein and by this chapter, or
- 2. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance with this chapter.

H. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the binding commitment issued or to be issued to the applicant and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall notify the applicant of the board's determination.

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I. The authority shall provide the Department of Taxation with copies of HOTC award letters and eligibility certificates, or summary reports of the HOTC award letters and eligibility certificates no less than annually.

J. In the event the Authority terminates an applicant's award of LIHTC pursuant to 13VAC10-180-60 or the applicant enters into a cancellation agreement with the Authority for such award, the award of HOTC shall also immediately terminate or be canceled, as applicable, and the Authority will notify the Department of Taxation accordingly.

13VAC10-200-50. Eligibility certificate.

Upon the authority's approval of a final cost certification that complies with the authority's requirements and the satisfaction of all requirements set forth in the HOTC award letter issued by the authority, the executive director shall issue an eligibility certificate to a qualified project.

13VAC10-200-60. Recapture of HOTC.

A. The authority will monitor the developments receiving HOTC in the same manner it monitors LIHTC properties pursuant to the IRC and in accordance with 13VAC10-180, Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

B. If under § 42 of the IRC, a portion of any federal LIHTC taken on a qualified project is required to be recaptured or is otherwise disallowed during the credit period, the taxpayer claiming HOTC with respect to such project shall also be required to recapture a portion of any HOTC. The percentage of HOTC subject to recapture shall be equal to the percentage of LIHTC subject to recapture or otherwise disallowed during such period. Any tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

C. In the event the HOTC is awarded as a stand-alone credit, the percentage of HOTC subject to recapture shall be equal to the percentage of LIHTC that would have been subject to recapture or otherwise disallowed, as determined by the executive director, during such period.

13VAC10-200-70. Fees.

The executive director may impose application, allocation, certification, and monitoring fees designed to recoup the costs of the authority in administering the HOTC. Such fees shall be payable at such time as the executive director shall require.

VA.R. Doc. No. R22-6902; Filed August 23, 2021, 2:37 p.m.



TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Final Regulation

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

Title of Regulation: 16VAC30-110. Medical Fee Schedules Regulations (amending 16VAC30-110-10).

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

Effective Date: October 15, 2021.

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

Summary:

The amendments update the medical fee schedule regulations to include the 2022 Medical Fee Schedules that will be applicable to medical services rendered in workers' compensation cases during the period from January 1, 2022, through December 31, 2023.

16VAC30-110-10. Definitions.

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

"Commission" means the Virginia Workers' Compensation Commission.

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

"Ground rules" means:

1. For medical services rendered during the period from January 1, 2018, through December 31, 2019, the 2018 Medical Fee Schedule Ground Rules adopted by the commission on June 13, 2017, and revised on November 14, 2017, incorporated by reference and available on the

commission's website at <http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules-ground-rules>.

2. For medical services rendered during the period from January 1, 2020, through December 31, 2021, the 2020 Medical Fee Schedule Ground Rules adopted by the commission on July 18, 2019, and revised on October 17, 2019, incorporated by reference and available on the commission's website at <http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules-ground-rules>.

3. For medical services rendered during the period from January 1, 2022, through December 31, 2023, the 2022 Medical Fee Schedule Ground Rules adopted by the commission on June 29, 2021, incorporated by reference and available on the commission's website at <http://websiteqa/documents/2022-medical-fee-schedules-ground-rules>.

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

"Virginia fee schedules" means:

1. For medical services rendered during the period from January 1, 2018, through December 31, 2019, the 2018 Medical Fee Schedules adopted by the commission on June 13, 2017, and revised on November 14, 2017, incorporated by reference and available on the commission's website at <http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules>.

2. For medical services rendered during the period from January 1, 2020, through December 31, 2021, the 2020 Medical Fee Schedules adopted by the commission on July 18, 2019, and revised on October 17, 2019, incorporated by reference and available on the commission's website at <http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules>.

3. For medical services rendered during the period from January 1, 2021, through December 31, 2022, the 2022 Medical Fee Schedules adopted by the commission on June 29, 2021, incorporated by reference and available on the commission's website at <http://websiteqa/content/2022-virginia-medical-fee-schedules>.

DOCUMENTS INCORPORATED BY REFERENCE (16VAC30-110)

[Virginia Workers' Compensation Medical Fee Schedules Ground Rules, adopted June 13, 2017, revised November 14, 2017, Virginia Workers' Compensation Commission](#)

[Virginia Workers' Compensation Medical Fee Schedules Ground Rules, adopted July 18, 2019, revised on October 17, 2019, Virginia Workers' Compensation Commission](#)

[Virginia Workers' Compensation Medical Fee Schedules Ground Rules, adopted June 29, 2021, Virginia Workers' Compensation Commission](#)

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

[2020 Virginia Workers' Compensation Medical Fee Schedules adopted July 18, 2019, and revised on October 17, 2019, Virginia Workers' Compensation Commission, http://www.workcomp.virginia.gov/content/virginia-medical-fee-schedules](#)

[2022 Medical Fee Schedules adopted June 29, 2021, Virginia Workers' Compensation Commission, http://websiteqa/content/2022-virginia-medical-fee-schedules](#)

VA.R. Doc. No. R22-6933; Filed August 25, 2021, 9:45 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Board 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-30, 18VAC135-20-60, 18VAC135-20-260).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: November 1, 2021.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Pursuant to Chapters 550 and 551 of the 2021 Acts of Assembly, Special Session I, which limits dissemination of

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criminal history record information and clarifies that convictions for certain misdemeanor marijuana offenses are not to be disclosed to the agency, the amendments update provisions concerning qualifications for licensure and standards of conduct to conform the regulation to statute.

18VAC135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.
3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.
4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:
 - a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within five years of the date of the application; and
 - b. All felony convictions during his lifetime.Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.
5. The applicant shall be at least 18 years old.
6. The applicant shall have a high school diploma or its equivalent.
7. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a

written examination provided by the board or by a testing service acting on behalf of the board.

8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board.

18VAC135-20-60. Qualifications for licensure by reciprocity.

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

1. The applicant shall be at least 18 years of age.
2. The applicant shall have a high school diploma or its equivalent.
3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.
4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.
5. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.
6. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.
7. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.
8. At the time of application for a salesperson's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have met educational requirements that are substantially

equivalent to those required in Virginia, and the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. The broker applicant's experience must be verified by an individual who has direct knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia. These requirements may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

9. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

10. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within five years of the date of the application; and
- b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

11. Applicants for licensure who do not meet the requirements set forth in subdivisions 7 and 10 of this section may be approved for licensure following consideration by the board.

18VAC135-20-260. Prohibited acts.

The following are prohibited acts:

1. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Signing an experience verification form without direct supervision or actual knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia or unreasonably refusing to sign an experience verification form;
6. Having been convicted or found guilty regardless of the manner of adjudication in any jurisdiction of the United

States of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision;

7. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 6 of this section;

8. Having had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction;

9. Failing to inform the board in writing within 30 days of a disciplinary action as stated in subdivision 8 of this section;

10. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States, including without limitation Title VIII of the Civil Rights Act of 1968 (82 Stat. 73), or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal therefrom or the time for appeal having elapsed;

11. Actions constituting failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, including but not limited to the following:

- a. A principal broker or supervising broker failing to ensure proper supervision and accountability over the firm's day-to-day financial dealings, escrow account or accounts, and daily operations;
- b. A broker failing to disburse funds from an escrow account according to the regulations or failing to properly retain documents relating to the basis for disbursement;
- c. A broker failing to ensure the licensees for whom the broker has oversight responsibility hold active licenses while practicing real estate;
- d. A broker failing to provide accurate and timely reports to the board about a licensee's compliance with the board's laws and regulations;
- e. A broker failing to have signatory authority on all accounts;
- f. A broker failing to account for or remit any moneys coming into a licensee's possession that belong to another;
- g. A licensee failing to submit to the broker in a timely manner, all earnest money deposits, contracts, listing agreements, deeds of lease, or any other documents for which the broker has oversight responsibility;
- h. A licensee negotiating leases for a third party through an unlicensed firm or without a principal broker;

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- i. A licensee operating an unlicensed firm or acting as a principal broker;
 - j. A licensee practicing real estate with an inactive or expired license;
 - k. A licensee knowingly providing the broker with an earnest money deposit check from an account with insufficient funds;
 - l. A licensee allowing unsupervised access to a home without the owner's authorization;
 - m. A licensee failing to inform the broker of a transaction; and
 - n. A licensee submitting unauthorized altered copies of a contract or contracts to the broker; and
12. Actions constituting engaging in improper, fraudulent, or dishonest conduct, including but not limited to the following:
- a. A licensee attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction;
 - b. A licensee fabricating or altering any document with the intent to mislead;
 - c. A licensee signing any documents on a client's behalf without first obtaining a client's proper written permission or authorization to sign said documents on his behalf;
 - d. A licensee making an earnest money deposit payable to himself or negotiating the check without written authority;
 - e. A licensee misrepresenting ownership of a property;
 - f. A licensee submitting copies of the same earnest money deposit check for inclusion with multiple offers;
 - g. A licensee entering into agreements to be compensated for real estate services while his license is inactive;
 - h. A licensee representing in offers he received the earnest money deposit when he has not or he knows the check is worthless; and
 - i. A licensee misrepresenting who is holding the earnest money deposit.

VA.R. Doc. No. R22-6921; Filed August 16, 2021, 3:55 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Board 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-180).

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: November 1, 2021.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Pursuant to Chapter 426 of the 2021 Acts of Assembly Special Session I, which enumerates conditions for real estate licensees handling rental agreements in the event that a dwelling unit used as a single-family residence is foreclosed upon and there is a tenant in such dwelling unit on the date of the foreclosure sale, the amendments conform provisions concerning the maintenance and management of escrow accounts in the regulation to statute.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55.1-1200 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by the broker or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks, and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account

contains money that may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

4. Lease transactions: application deposits. Any application deposit as defined by § 55.1-1200 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or his associates shall be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed upon principal as provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section; or (iv) the broker releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the earnest money deposit. At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (i) hand delivery; (ii) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a

certificate of service prepared by the sender confirming such mailing; (iii) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies with this section shall be immune from liability to any of the parties to the contract.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker, ~~or supervising broker, or an agent of such licensee~~ is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker ~~or supervising broker, or agent~~ shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia and otherwise comply with the provisions of § 54.1-2108.1 of the Code of Virginia.

~~If there is in effect at the date of the foreclosure sale a single family residential dwelling unit is foreclosed upon, and at the date of the foreclosure sale there is a real estate purchase contract to buy the property foreclosed upon such property and the real estate purchase such contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker, or supervising broker, or agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from or notice to the principals.~~

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not

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be removed from an escrow account required by the lease without the written consent of the tenant. If ~~there is in effect at the date of the foreclosure sale a tenant in a single-family residential dwelling unit~~ is foreclosed upon and there is a tenant in the dwelling unit on the date of the foreclosure sale and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, regardless of when received, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be

removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If ~~there is in effect at the date of the foreclosure sale a single-family residential dwelling unit~~ is foreclosed upon, and at the date of the foreclosure sale there is a written property management agreement between ~~the~~ a licensee and ~~the~~ a landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing as principal broker to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

VA.R. Doc. No. R22-6903; Filed August 16, 2021, 3:55 p.m.



TITLE 22. SOCIAL SERVICES
STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-540).**

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Effective Date: October 13, 2021.

Agency Contact: Sharon Lindsay, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7167, FAX (804) 726-7132, or email sharon.lindsay@dss.virginia.gov.

Summary:

Pursuant to Chapter 525 of the 2021 Acts of Assembly, Special Session I, the amendments add that, during a declared public health emergency related to a communicable disease of public health threat, assisted living facilities establish a protocol to receive visits from a rabbi, priest, minister, or clergyman of any religious denomination or sect consistent with guidance from state and federal health agencies and to protect the health and safety of the person, residents, and staff of the assisted living facility.

22VAC40-73-540. Visiting in the facility.

- A. Daily visits to residents in the facility shall be permitted.
- B. Visiting hours shall not be restricted, except by a resident when it is the resident's choice.
- C. The facility may establish a policy or guidelines so that visiting is not disruptive to other residents and facility security is not compromised. However, daily visits and visiting hours shall not be restricted as provided in subsections A and B of this section.
- D. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.
- E. During a declared public health emergency related to a communicable disease of public health threat, each assisted living facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any

religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and subject to compliance with any executive order, order of public health, department guidance, or any other applicable federal or state guidance having the effect of limiting visitation. The protocol may restrict the frequency and duration of visits, may require visits to be conducted virtually using interactive audio or video technology, and any such protocol may require the person visiting a resident to comply with all reasonable requirements of the assisted living facility adopted to protect the health and safety of the person, residents, and staff of the assisted living facility.

VA.R. Doc. No. R22-6802; Filed August 20, 2021, 10:43 a.m.

Action Withdrawn

Title of Regulation: **22VAC40-111. Standards for Licensed Family Day Homes (amending 22VAC40-111-10, 22VAC40-111-30, 22VAC40-111-50, 22VAC40-111-60, 22VAC40-111-90, 22VAC40-111-100, 22VAC40-111-130, 22VAC40-111-140, 22VAC40-111-150, 22VAC40-111-200, 22VAC40-111-210, 22VAC40-111-230, 22VAC40-111-650, 22VAC40-111-760, 22VAC40-111-780, 22VAC40-111-800, 22VAC40-111-810, 22VAC40-111-820, 22VAC40-111-830, 22VAC40-111-850, 22VAC40-111-870, 22VAC40-111-990).**

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

The State Board of Social Services has WITHDRAWN the regulatory action for **22VAC40-111, Standards for Licensed Family Day Homes**, which was published as a proposed regulation in [33:9 VA.R. 960-972 December 26, 2016](#). This action is being withdrawn because the State Board of Social Services no longer has authority to promulgate this regulation due to transfer of the regulations to the State Board of Education pursuant to Chapters 860 and 861 of the 2020 Acts of Assembly.

Agency Contact: Sharon Stroble, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7037, FAX (804) 726-7132, or email sharon.stroble@dss.virginia.gov.

VA.R. Doc. No. R16-4604; Filed August 20, 2021, 10:47 a.m.

Action Withdrawn

Titles of Regulations: **22VAC40-180. Voluntary Registration of Family Day Homes - Requirements for Providers.**

22VAC40-181. Voluntary Registration of Family Day Homes - Requirements for Providers.

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

The State Board of Social Services has WITHDRAWN the regulatory action for **22VAC40-180, Voluntary Registration**

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of Family Day Homes - Requirements for Providers, and 22VAC40-181, Voluntary Registration of Family Day Homes - Requirements for Providers, which was published as a Notice of Intended Regulatory Action in [37:14 V.A.R. 1466 March 1, 2021](#). This action is being withdrawn because the State Board of Social Services no longer has authority to promulgate this regulation due to transfer of the regulations to the State Board of Education pursuant to Chapters 860 and 861 of the 2020 Acts of Assembly.

Agency Contact: Cynthia Carneal Heflin, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7140, or email cynthia.carneal@dss.virginia.gov.

V.A.R. Doc. No. R21-6698; Filed August 20, 2021, 10:48 a.m.

Action Withdrawn

Titles of Regulations: **22VAC40-185. Standards for Licensed Child Day Centers.**

22VAC40-186. Standards for Licensed Child Day Centers.

Statutory Authority: § 63.2-1733 of the Code of Virginia.

The State Board of Social Services has WITHDRAWN the regulatory action for **22VAC40-185, Standards for Licensed Child Day Centers**, and **22VAC40-186, Standards for Licensed Child Day Centers**, which was published as a Notice of Intended Regulatory Action in [32:9 V.A.R. 1338 December 14, 2015](#). This action is being withdrawn because the State Board of Social Services no longer has authority to promulgate this regulation due to transfer of the regulations to the State Board of Education pursuant to Chapters 860 and 861 of the 2020 Acts of Assembly.

Agency Contact: Tatanishia Armstrong, Licensing Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, or email tatanishia.armstrng@dss.virginia.gov.

V.A.R. Doc. No. R16-3376; Filed August 20, 2021, 10:49 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **22VAC40-80. General Procedures and Information for Licensure (amending 22VAC40-80-10, 22VAC40-80-30, 22VAC40-80-40, 22VAC40-80-50, 22VAC40-80-70, 22VAC40-80-90, 22VAC40-80-100, 22VAC40-80-120, 22VAC40-80-160, 22VAC40-80-240, 22VAC40-80-400, 22VAC40-80-430).**

22VAC40-160. Fee Requirements for Processing Applications (amending 22VAC40-160-10).

22VAC40-191. Background Checks for Child Welfare Agencies (amending 22VAC40-191-10 through 22VAC40-191-120, 22VAC40-191-140, 22VAC40-191-150).

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1733, and 63.2-1734 of the Code of Virginia.

Effective Date: October 13, 2021.

Agency Contact: Sharon Lindsay, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7167, FAX (804) 726-7132, or email sharon.lindsay@dss.virginia.gov.

Summary:

Chapters 860 and 861 of the 2020 Acts of Assembly transfer the authority to license and regulate child day programs from the State Board of Social Services to the State Board of Education effective July 1, 2021. Therefore, the amendments remove child day programs requirements from Department of Social Services regulations and make other technical amendments required to clarify existing requirements after removing provisions specific to child day programs.

22VAC40-80-10. Definitions.

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

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adult care facility" means a licensed assisted living facility or adult day care center.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for an assisted living facility, adult day care center or child welfare agency or imposes another administrative sanction pursuant to § 63.2-1709 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for an assisted living facility, adult day care center, or child welfare agency.

"Allowable variance" means permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.

"Applicant" means the person, corporation, partnership, association, limited liability company, or public agency that

has applied for a license to operate or maintain an assisted living facility, adult day care center, or child welfare agency. For a child welfare agency, the "person who operates or maintains a child welfare agency" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Board" means the State Board of Social Services.

"Child welfare agency" means a ~~child day center~~, child-placing agency, children's residential facility, child-caring institution, ~~family day home~~, ~~family day system~~, or independent foster home.

"Commissioner" means the Commissioner of the Department of Social Services.

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Conditional license" means a license that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

~~"Council" means the Child Day Care Council.~~

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an initial or renewal application.

"Department" means the Department of Social Services.

"Early compliance" means that the licensee has demonstrated full compliance with requirements, allowing the department to replace a provisional or conditional license with a regular license.

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children or adults. Relatives by blood or marriage and persons who are not

knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Hearing coordinator" means the person designated by the Department of Social Services to perform certain administrative functions involved in setting up and carrying out the hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency, as set out herein.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency.

"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and ~~2.2-3024~~ 2.2-4021 of the Code of Virginia.

"Licensee" means the person, corporation, partnership, association, limited liability company, or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the operation or maintenance of the assisted living facility, adult day care center, or child welfare agency. For a child welfare agency, the "person who operates or maintains a child welfare agency" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency.

"Probationary status" means placing a licensee on notice that the facility or agency is substantially out of compliance with the terms of its license and the health, safety, and well-being of persons in care are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license that may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the law and regulations.

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"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.

"Regular license" means a license that is issued for 12 months or more as provided in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 63.2 of the Code of Virginia by the commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

22VAC40-80-30. Responsibility of the department.

Through the administration of the licensing program, the Department of Social Services assumes responsibility to ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with regulations prescribed by the State Board of Social Services ~~and Child Day Care Council~~. The department also has the responsibility to investigate allegations of illegal operations and to initiate action to suppress illegal operations. The Virginia Code requires the State Board of Social Services to adopt regulations for the licensure of the following categories of facilities and agencies:

1. Adult day-care centers;
2. Assisted living facilities;
3. Private child placing agencies;
4. Child caring institutions; and
5. Independent foster homes;
- ~~6. Family day homes; and~~
- ~~7. Family day systems.~~

~~The Code of Virginia requires the Child Day Care Council to adopt regulations for the licensure of child day centers.~~

22VAC40-80-40. Adoption of regulations.

The State Board of Social Services ~~or the Child Day Care Council~~ has adopted regulations for each category listed above. The definition of each category and requirements for licensure are contained in each regulation.

22VAC40-80-50. Regulation ~~development/revision~~ development or revision process.

A. In developing or revising regulations for licensed facilities or agencies, the Department of Social Services, acting as agent for the State Board of Social Services ~~and Child Day Care Council~~, adheres to the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the public participation process.

B. Input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers, and the general public is solicited in the development or revision of licensing regulations through informal and formal comment periods and public hearings.

C. Periodic reviews are conducted and, when necessary, comprehensive revisions of each regulation to assure that its standards continue to protect children and adults in out-of-home care while considering the interests of both providers and consumers of care.

22VAC40-80-70. Nontransferability of license.

A license is not transferable when there is a change in the ownership or location of the facility or agency to which the license has been issued.

~~EXCEPTION:~~ Licenses issued for private child placing agencies ~~and family day systems~~ are transferable when agencies change location.

22VAC40-80-90. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by regulations adopted by the State Board of Social Services ~~or the Child Day Care Council~~ and any additional requirements that may be specified by the Code of Virginia.

22VAC40-80-100. Duration of licensure.

Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.

A three-year license may be issued when a facility's activities, services, and management routinely substantially exceed the minimum standards.

A two-year license may be issued when a facility's services and management routinely meet and maintain compliance with

minimum standards and may exceed on a sustained basis in some areas.

An annual license may be issued when a facility's activities, services, and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.

~~EXCEPTION: A license, other than a conditional or provisional license, issued to a child day center shall have a duration of two years from the date of issuance.~~

22VAC40-80-120. Terms of the license.

A. A facility or agency shall operate within the terms of its license, which are:

1. The operating name of the facility or agency;
2. The name of the individual, partnership, association, corporation, limited liability company, or public entity sponsoring the facility or agency;
3. The physical location of the facility or agency;
4. The maximum number of children or adults who may be in care at any time;
5. The period of time for which the license is effective;
6. For ~~child care facilities~~ or welfare agencies, the age range of children for whom care may be provided; and
7. Any other limitations that the department may prescribe within the context of the regulations for any facility or agency.

B. The provisional license cites the standards with which the licensee is not in compliance.

C. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

D. Prior to changes in operation that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 22VAC40-80-190.)

E. Certain documents related to the terms of the license are required to be posted on the premises of each facility. These are:

1. The most recently issued license. Any provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;
2. The findings of the most recent inspection of the facility;

3. Notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.

4. A copy of any final order of summary suspension of all or part of a license for an assisted living facility, a child welfare agency, and an assisted living facility operated by an agency of the Commonwealth, or child welfare agency operated by an agency of the Commonwealth shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed.

5. Notice of the commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 of § 63.2-1709.2 of the Code of Virginia. Such notice will be provided by the department, and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.

6. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations.

7. Any other documents required by the commissioner.

22VAC40-80-160. Investigation.

A. Upon receipt of the application the commissioner shall:

1. Cause an investigation to be made of the activities, services, and facilities of the applicant, and of his character and reputation;
2. If the applicant is an association, partnership, limited liability company, or corporation, cause an investigation of the character and reputation of its officers and agents; and
3. Upon receipt of the initial application, cause an investigation of the applicant's financial responsibility.

B. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

~~EXCEPTION: This subsection does not apply to child placing agencies or family day systems.~~

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy

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indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

C. The department's representative will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

NOTE: See 22VAC40-90, ~~22VAC40-190~~, or 22VAC15-50, or 22VAC40-191, as applicable.

D. The applicant or licensee shall at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books, and records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

At the time of the initial application, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.

E. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision. Interviews with residents, participants, and any person under the facility's or agency's custody, control, direction, or supervision shall be:

1. Authorized by the person to be interviewed or his legally authorized representative; and
2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations for licensure of the facility or agency.

F. After the on-site inspection the licensing representative will discuss the findings of the investigation with the

administrator, licensee or designee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

G. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (22VAC40-80-230 et seq.) of this chapter Allowable Variances.)

22VAC40-80-240. Process.

A. The licensee or applicant shall make a written request for consideration of an allowable variance. The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.

1. The licensee or applicant shall describe the special hardship ~~or hardship~~ to the existing program or to a planned innovative or pilot program that will be caused by the enforcement of the requirement or requirements.
2. The licensee or applicant shall propose alternatives to meet the purpose of the requirement that will ensure the protection and well-being of persons in care.
3. The licensee or applicant shall obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.
4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.

B. The department's licensing representative will notify the petitioning applicant or licensee of the department's decision.

C. Approval.

1. The department may attach conditions to the granting of the allowable variance in order to protect persons in care.
2. Allowable variances are conditional upon there being no change in the circumstances that were the basis for the approval. Any allowable variance may be rescinded or modified if needs or conditions change; additional information becomes known that alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.
3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility or agency.

~~EXCEPTION:~~ Allowable variances issued to private child placing agencies ~~and family day systems~~ are transferable when agencies change location.

4. The department's licensing representative will review each allowable variance at least annually. At minimum, this review shall address the impact of the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.

D. Denial.

1. When the decision is to deny a request for an allowable variance, the reason ~~or reasons~~ will be provided in writing to the applicant or licensee.

2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information within 30 days of denial.

NOTE: After the 30-day period, the applicant or licensee may submit a new allowable variance request describing changed conditions.

3. The department will reconsider the new request and the additional information and will notify the applicant or licensee of the decision within 30 days of receipt of the second request. This decision will be considered final and is not appealable.

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant or licensee may at any time withdraw a request for an allowable variance.

22VAC40-80-400. Statutory basis for appeal process.

The Department of Social Services is mandated by statute to enforce the standards adopted by the State Board of Social Services ~~or the Child Day Care Council~~ pursuant to ~~§ 63.2-1734 §§ 63.2-1732, 63.2-1733, and 63.2-1734~~ of the Code of Virginia, regarding facilities required to be licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia. As part of this enforcement duty, §§ 63.2-1709 D and 63.2-1710 of the Code of Virginia require that the procedures under the Administrative Process Act (§ 2.2-4000 et seq., of the Code of Virginia) shall apply whenever the department takes adverse action.

22VAC40-80-430. Consent agreements.

A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference.

B. An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;

2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;

3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, ~~including~~ including the methods the licensee has in place to prevent violations and to monitor results;

4. A stipulation by the licensee to the validity of the violations enumerated in the specified correspondence and waiver of right to hearing under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) solely with respect to those violations.

5. The duration of the consent agreement, including the information that the period begins when the division director signs;

6. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and

7. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.

C. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.

22VAC40-160-10. Fees.

By act of the General Assembly and effective February 1, 1984, the Department of Social Services is authorized to charge fees for processing applications for licenses (§ 63.2-1700 of the Code of Virginia).

Such fees are to be used for the development and delivery of training for operators and staff of facilities or agencies for adults or children subject to licensure solely by the Department of Social Services.

Each license and renewal of it may be issued for a period of up to three successive years. The required fee for each licensed facility or agency will be based upon its licensed capacity and the length of the total licensure period. However, the fee will be collected annually and licensees will be billed each year by the Department of Social Services for the appropriate portion of the fee. (Example: A facility with a capacity of 55 participants is issued a license for a period of 24 months. The fee for that facility for the two-year period would be \$210. The

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facility will be charged \$105 at the beginning of the licensure period and billed again for \$105 at the beginning of the second year of licensure.) No fee will be charged directly following the issuance of a conditional license.

~~Some programs such as, but not limited to, parks and recreation programs and summer camps, which operate for less than four months in a 12-month period, will pay a reduced fee as indicated in the fee schedule below (short-term programs).~~

Applicants shall use the following schedule of fees to determine the correct fee to pay for processing all applications.

Schedule of Fees

| Capacity | 1 year | 2 years | 3 years |
|------------------------------------|--------|---------|---------|
| 1–12 | \$14 | \$28 | \$42 |
| 13–25 | \$35 | \$70 | \$105 |
| 26–50 | \$70 | \$140 | \$210 |
| 51–75 | \$105 | \$210 | \$315 |
| 76–200 | \$140 | \$280 | \$420 |
| 201 & up | \$200 | \$400 | \$600 |
| Short-term Programs | | | |
| 1–50 | \$25 | \$50 | \$75 |
| 51 & up | \$50 | \$110 | \$150 |
| Flat Fees | | | |
| Family Day Care Systems | \$70 | \$140 | \$210 |
| Child Placing Agencies | \$70 | \$140 | \$210 |

The fee shall be paid by personal check, money order, or certified check, made payable to "Treasurer of Virginia."

A fee that is incorrect in amount or is made payable other than to the Treasurer of Virginia will be returned to the applicant. Otherwise, no fee will be returned or refunded for any reason.

Failure to submit the appropriate fee within the timeframe specified by the Department of Social Services may result in negative action against a facility's or agency's license.

A fee will be charged for checks that must be returned to the applicant because of insufficient funds.

22VAC40-191-10. Defining words and phrases.

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

"Agent" means a person who is empowered to act on behalf of the applicant that is an association, partnership, limited liability company, business trust, public agency, or corporation in matters relating to a child welfare agency.

"Applicant" means the person ~~or persons~~ applying for approval ~~or licensure~~ as a (i) ~~licensed family day home;~~ (ii) ~~licensed family day system;~~ (iii) licensed child-placing agency; (iv) ~~(ii)~~ licensed independent foster home; (v) ~~voluntarily registered family day home;~~ (vi) family day home approved by a licensed family day system; (vii) ~~or (iii)~~ foster and adoptive home approved by a licensed child-placing agency; (viii) ~~religious exempt child day center or~~ (ix) licensed child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, association, or business trust, the applicants are officers. If the applicant is a limited liability company, the applicants are the members or managers. If the applicant is a public agency, the applicant is the person responsible for the overall operation of the public agency.

"Approved" means having obtained the status of approval through the process required in ~~Minimum Standards for Licensed Family Day Care Systems (22VAC40-120) or Standards for Licensed Child-Placing Agencies (22VAC40-131). Approved facilities are family day homes approved by licensed family day systems.~~ Approved foster and adoptive parents include resource, foster, adoptive, treatment foster, and short-term foster parents and families approved by child-placing agencies.

"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

"Barrier crime" means a conviction identified at ~~§ 63.2-1719 § 19.2-392.02~~ in the Code of Virginia. ~~The convictions, and Code of Virginia references, are: a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, failure to secure medical attention for an injured child as set out in § 18.2-314, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set~~

out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state.

"Board" means State Board of Social Services.

"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.

"Central Criminal Records Exchange" or "CCRE" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

~~"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well being of a child under the age of 13 for less than a 24 hour period.~~

"Child-placing agency" means (i) any person or agency licensed to place that places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia; (ii) or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia; or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of its authority as such, who serve as or maintain a child-placing agency, ~~are~~ shall not be required to be licensed.

"Child welfare agency" means a ~~child day center, child-placing agency, children's residential facility, family day home, family day system,~~ or independent foster home. For purposes of this chapter, the requirements for child welfare agencies also apply to foster or adoptive homes requesting approval or with approval by child-placing agencies and family day homes requesting approval or with approval by family day systems.

"Commissioner" means the Commissioner of the Department of Social Services or his designee.

"Contract agency" means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.

"Contract employee" means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.

~~"Contracting organization" means an agency that has been designated by the Department of Social Services to administer the voluntary registration program for family day homes.~~

"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

"Department" means the State Department of Social Services.

"Department representative" means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions. ~~Licensed family day systems have authority to approve family day homes.~~ Licensed child-placing agencies have authority to approve foster and adoptive parents.

"Disqualifying background" means having an offense, as defined in § 63.2-1719 of the Code of Virginia. For the purpose of this chapter, having been the subject of a founded abuse or neglect complaint as described in "offense" includes records that have been purged from the child abuse and neglect central registry. However, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

"Employee" means a person hired by a facility or with whom the facility has an employment agreement. ~~A provider assistant in a family day home is considered an employee in this chapter.~~

"Facility" means (i) ~~a licensed family day home;~~ (ii) ~~a licensed family day system;~~ (iii) a licensed child-placing agency; (iv) (ii) a licensed independent foster home; (v) ~~a voluntarily registered family day home;~~ (vi) a family day home approved by a licensed family day system; (vii) a licensed child

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day center; (viii) a religious exempt child day center; and (ix) (iii) an applicant seeking a waiver in order to establish one of the above listed entities.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 years, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home must disclose to the parents or guardians of children in his care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, must be licensed. No family day home shall care for more than four children under the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage is not required to be licensed.

"Family day system" means any person that approves family day homes as members of its system; that refers children to available family day homes in that system; and that, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Good character and reputation" means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed there in that home independently of a child-placing agency except (i) a home that receives in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and; (ii) a home that receives in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8 of the Code of Virginia; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et. seq.) of Title 20 of the Code of Virginia.

"Involved in the day-to-day operations" means:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;
2. Counted by the facility for purposes of staff-to-children ratios;
3. Providing casework services for a child-placing agency;
4. ~~Employed by a licensed family day system as a home visitor; or~~
5. 4. Having access to child-related and client-related records or to facility personnel records.

"Licensed" means having met the requirements of and obtained licensure as a ~~licensed family day care system~~, licensed independent foster home, or licensed private child-placing agency, ~~or licensed family day home.~~

"Living in" means to reside in a place for an extended or permanent period of time.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"National criminal background check" means criminal history record information from the Federal Bureau of Investigation.

"Offense" means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, (iii) founded complaint of child abuse or neglect within or outside the Commonwealth, or (iv) a conviction of an offense set forth in § 9.1-902 of the Code of Virginia or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901 of the Code of Virginia, or any similar registry in any other state. Convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.

"Parent-volunteer" means someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.2-1720 ~~or 63.2-1724~~ of the Code of Virginia.

"Registered" means ~~having obtained the status of registration through the process required in Voluntary Registration of~~

~~Family Day Homes—Requirements for Providers (22VAC40-180).~~

~~"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes and obtained a certificate of registration from the commissioner.~~

~~"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the commissioner a satisfactory annual statement of intent to operate a child day center and other information as specified in § 63.2-1716 of the Code of Virginia and has a letter of exemption from the commissioner.~~

"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.

"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. ~~Additionally for family day homes, the provider affirms if he, or any person known to the provider who resides in the home, has a sex offense conviction or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.~~ Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

"22VAC" means Title 22 of the Virginia Administrative Code. This is the social services title.

~~"Visit" means a stay or sojourn as a guest for no longer than 30 calendar days.~~

"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.

22VAC40-191-20. Describing background checks.

A. The background checks covered by this regulation are:

1. Sworn statement or affirmation;
2. Criminal history record check;
3. National criminal background check; and
4. Central registry search.

B. The provisions for background checks are in §§ ~~63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727~~ 63.2-1723 of the Code of Virginia.

C. Provisions for enforcement of background check regulations and other licensing, ~~registration,~~ and approval

standards are in Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.

D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.

1. ~~For the purposes of this regulation, conviction~~ Conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.

2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.

3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.

The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.

E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:

1. A barrier crime, as defined in § ~~63.2-1719~~ 19.2-392.02 of the Code of Virginia; ~~and/or or~~
2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.

The criminal history record report shows all convictions.

F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.

G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.

1. The person must submit to fingerprinting and provide personal descriptive information.
2. The person must use the process of the ~~Central Criminal Records Exchange~~ department's Office of Background Investigations (OBI) to request and receive a national criminal background check.

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H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.

I. The person must use the form and process of the ~~department's Office of Background Investigations (OBI)~~ OBI. The department provides the central registry request form on its website. Requesters are permitted to submit copies of this form. OBI verifies child protective services central registry check findings.

~~The department and registering and approval agencies provide copies of all forms in application packets.~~

22VAC40-191-30. Identifying the facilities that are not covered by this regulation.

~~A. Certified preschools or nursery schools operated by accredited private schools that are accredited in accordance with § 63.2-1717 of the Code of Virginia; children's residential facilities; and family day homes that are not required to be licensed, registered, or approved are not covered by this regulation.~~

~~B. Background check requirements for certified preschool or nursery school programs operated by accredited private schools are at § 63.2-1717 of the Code of Virginia.~~

~~C. B.~~ Background check requirements for children's residential facilities, including child-caring institutions, are in § 63.2-1726 of the Code of Virginia.

~~D. Background check requirements for child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state or local child care funds are at § 63.2-1725 of the Code of Virginia.~~

22VAC40-191-40. Identifying who is covered by this regulation.

A. This regulation applies to:

- ~~1. Licensed family day homes;~~
- ~~2. Licensed family day systems;~~
- ~~3. Family day homes approved by family day systems;~~
4. 1. Licensed child-placing agencies;
5. 2. Licensed independent foster homes; and
6. 3. Foster and adoptive homes approved by child-placing agencies;
7. Voluntarily registered family day homes;
8. Religious exempt child day centers; and
9. Licensed child day centers.

B. Except as provided in 22VAC40-191-50 A, no person with a disqualifying background who has not been granted a waiver according to 22VAC40-191-90 may operate or volunteer or work at a facility governed by this chapter.

C. Background checks are required at the time of initial application. ~~4.~~ These background checks are required at the time of initial application for licensure, ~~registration,~~ or approval:

| Who | What | When |
|---|---|---|
| a. Any applicant | Sworn statement or affirmation, search of central registry, and criminal history record check | Upon application for licensure or registration as a child welfare agency |
| b. Any agent <u>1. An agent or applicant</u> at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children | <u>Same Sworn statement or affirmation, search of central registry, and criminal history record check</u> | <u>Same Upon application for licensure as a child welfare agency</u> |
| e. Any other adult living in the home of an applicant for licensure or registration as a family day home, or any <u>2. An existing employee or volunteer</u> | Same | Upon application for licensure or registration as a family day home |
| 4. <u>3.</u> Prospective foster or adoptive parent | Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check | Prior to approval by child-placing agency |

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| <p>e. 4. Birth parent of a child in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 of the Code of Virginia, or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia)</p> | <p>Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check</p> | <p>Prior to placement of a child with birth parent</p> |
| <p>f. 5. Other adults living in a prospective foster or adoptive home</p> | <p>Sworn statement or affirmation, search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check</p> | <p>Prior to approval by child-placing agency</p> |
| <p>g. Operator of family day home requesting approval by family day system</p> | <p>Sworn statement or affirmation, search of central registry, and criminal history record check</p> | <p>Upon request for approval by family day system</p> |
| <p>h. Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home</p> | <p>Same</p> | <p>Upon request by operator for approval by family day system</p> |

2. These background checks are required at the time of initial application for religious exemption status:

| Who | What | When |
|--|--|--|
| <p>Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this regulation, or a parent or guardian who may be left alone with his or her own child</p> | <p>Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check</p> | <p>With the written request for religious exemption status</p> |

D. Background checks are required after the initial licensure, registration, or approval, or receipt of religious exemption status.

1. These background checks are required after initial licensure, registration, or approval:

| Who | What | When |
|---|---|--|
| <p>a. New person designated as applicant, licensee, registrant, family day home operator approved by a family day system, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children</p> | <p>Sworn statement or affirmation</p> | <p>Whenever an applicant, licensee, approved family day home operator, or registrant agent changes</p> |
| | <p>Search of central registry and criminal history record check</p> | <p>Before the end of 30 days after the change</p> |
| <p>b. Any An employee of a licensed, registered, and or approved facility who is involved in the day-to-day operations or</p> | <p>Sworn statement or affirmation</p> | <p>Prior to first day of employment at the facility</p> |

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| who is alone with, in control of, or supervising one or more children | | |
| | Search of central registry and criminal history record check | Before 30 days of employment at the facility ends |
| c. Any An applicant, licensee, family day home operator approved by a family day system, agent, employee, or volunteer, and person living in the family day home who is required to have background checks | Sworn statement or affirmation, search of central registry and criminal history record check | Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report |
| d. Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home | Sworn statement or affirmation, search of central registry and criminal history record check | 90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.) |
| e. d. Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program | Sworn statement or affirmation | Prior to first day of service at the facility |

| | | |
|---|--|--|
| | Search of central registry and criminal history record check | Before 30 days of service at the facility elapses |
| f. e. Foster parent approved by a licensed child-placing agency, in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final | Sworn statement or affirmation, search of central registry, and criminal history record check | Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report or national criminal background check |
| g. f. All adult household members residing in the home of the foster parent approved by a licensed child-placing agency, foster parent in an independent foster home, or an adoptive parent approved by a licensed child-placing agency, until the adoption is final | Sworn statement or affirmation, search of central registry, and criminal history record check | Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report or national criminal background check |

~~2. These background checks are required after receipt of the initial religious exemption status letter.~~

~~Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:~~

| Who | What | When |
|--|---|---|
| Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone | Sworn statement or affirmation | Before employment or commencement of service at the facility |

| | | |
|---------------------------|--|---|
| with his or her own child | | |
| | Search of central registry and criminal history record check, as requested by the individual | Within 30 days of employment or commencement of service |

3. 2. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed, ~~registered~~, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:

- a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;
- b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;
- c. Make copies, and keep them at the licensed, ~~registered~~, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and
- d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

4. 3. A person 18 years of age and older must have background checks:

| Who | What | When |
|---|--|---|
| a. Person living in: The home of an applicant ² or The home of a licensed or registered family day home provider | Sworn statement or affirmation | When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old |
| | Search of central registry and criminal history record check, as requested by the individual | Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home |

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| | | becoming 18 years old |
| b. Person living in the home of (i) a prospective foster or adoptive parent, (ii) a foster parent approved by a licensed child-placing agency, (iii) (iii) a foster parent in an independent foster home, or (iii) (iv) until the adoption is final, an adoptive parent approved by a licensed child-placing agency | Sworn statement or affirmation | When a person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old |
| | Search of central registry, search of child abuse and neglect registry maintained by any other state in which the individual has resided in the last five years, and national criminal background check | Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home becoming 18 years old |
| *Note: This does not apply to applicants for family day systems, licensed child-placing agencies, child day centers, or to religious exempt child day centers. | | |

5. 4. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

| Who | What | When |
|--|--|---|
| a. Person living in: An applicant's home, Home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, | Child protective services central registry check | Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old |

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| <p>An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final</p> | | |
| <p>b. Exception: A person 14 years of age up to 18 years of age who is placed in an approved foster or adoptive home by a child-placing agency is not required to have a search of the central registry.</p> | | |

~~6. 5.~~ A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, ~~registrant,~~ or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home, or approving a ~~family day home~~ or foster or adoptive home.

~~7. Exception:~~ See provisions 6. Provisions for contracting agencies are described in subdivision ~~3~~ 2 of this subsection.

~~8. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.~~

~~9. 7.~~ The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.

22VAC40-191-50. Explaining requirements for satisfactory background checks.

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in ~~family day homes~~ and foster and adoptive homes as specified in 22VAC40-191-40.

1. A satisfactory sworn statement or affirmation is:
 - a. A fully completed original statement that states that the person does not have an offense; and
 - b. There is no other knowledge that the individual has ~~an unsatisfactory~~ a disqualifying background check.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also

include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:
 - a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect; and
 - b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.
3. A satisfactory criminal history record check report is one in which:
 - a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
 - (1) No convictions indicated; or
 - (2) Convictions indicated, but no barrier crimes, offenses, or other felony convictions in the last five years;
 - b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and
 - c. There is no other knowledge that the individual has an offense in Virginia or elsewhere.

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 22VAC40-191-90.)

4. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect or moral turpitude, or a minor, provided 10 years have elapsed following the conviction.
5. A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.
6. A child-placing agency must consider the results of background checks on a birth parent prior to placing the child of the birth parent with the birth parent, when the child is in a foster care placement (unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 of the Code of Virginia or a local board or the birth parent revokes a placement agreement with legal custody remaining with the parent, parents, or guardians pursuant to § 63.2-900 of the Code of Virginia).

7. No petition for adoption shall be granted if an adoptive parent has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902 of the Code of Virginia.

8. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction pursuant to § 63.2-1721 G of the Code of Virginia.

9. A child-placing agency may approve as a kinship foster care parent an applicant convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction and the local board or child-placing agency makes a specific finding that approving the kinship foster care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, but not including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an equivalent offense in another state.

~~10. A licensed child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense as defined in § 18.2-57 of the Code of Virginia if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.~~

B. Background checks results are not open ended.

~~1. When a minor living in a family day home turns 18 years of age, the operator is responsible for making sure that the 18 year old complies with all background check requirements for adults pursuant to 22VAC40-191-40 D 4.~~

~~2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, background checks are required every three years for all other persons required to have background checks pursuant to 22VAC40-191-40 D.~~

~~3. 1.~~ If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

4. ~~2.~~ Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that facility;

- b. Was terminated from employment at that facility; or
- c. Was transferred to a center owned and operated by the same employer or entity.

~~5. 3.~~ The facility, department, ~~or registering~~ or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has an offense in Virginia or elsewhere.

~~6. 4.~~ When the facility, department, ~~or registering~~ or approving authority chooses to require a new background check:

- a. The facility, department, ~~or registering~~ or approving authority may allow the person to continue the same relationship with the child welfare agency until the ~~child care provider or~~ licensing, ~~registering,~~ or approval authority receives the new Virginia background check information or equivalent documentation from another state; or
- b. If there is reason to suspect that a person has an offense, the facility, department, ~~or registering~~ or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

C. Waivers of some criminal convictions are possible. Refer to 22VAC40-191-90 through 22VAC40-191-130 for an explanation of the waiver.

22VAC40-191-60. Explaining consequences of unsatisfactory disqualifying background checks results.

A. Applicants are denied licensure, ~~registration~~ or approval when there are unsatisfactory disqualifying background checks results for:

- 1. Applicants as a child welfare agency;
- 2. Agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children;
- ~~3. Any other adult, or any child aged 14 or older, living in the home of an applicant for licensure or registration as a family day home with an unsatisfactory central registry finding;~~
- 4. ~~3.~~ Any other adult, or any child aged 14 or older, living in a foster home, or in the home of adoptive parents, until the adoption is final ~~with an unsatisfactory central registry finding; and~~
- ~~5. 4.~~ Prospective foster or adoptive parents approved by child-placing agencies; ~~and~~
- ~~6. Prospective family day home operators and family members seeking approval by family day systems.~~

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B. An employee or volunteer of a licensed ~~or registered~~ child welfare agency ~~or of a family day home approved by a family day system~~ must not be employed or provide volunteer service until the agency ~~or home~~ has the person's completed sworn statement or affirmation.

C. An employee or volunteer of a licensed ~~or registered~~ child welfare agency, ~~or of a family day home approved by a family day system~~, must be denied continued employment or volunteer service if:

1. The licensed ~~or registered~~ child welfare agency ~~or family day system~~ does not have an original criminal history record report within 30 days of employment or volunteer service; or
2. The licensed ~~or registered~~ child welfare agency ~~or family day system~~ does not have a central registry finding within 30 days of employment or volunteer service.

D. No violation will occur and an employee may continue to work, or provide service, ~~or live in a licensed, registered, or approved family day home facility~~ if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.

1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:
 - a. The Central Criminal Records Exchange of the Department of State Police; or
 - b. The department's Office of Background Investigations.
2. If the request was not received, the requestor must submit another request within five working days after the contact.
3. ~~This provision also applies to someone beginning to live in a family day home after licensure, registration or approval is given or a child who becomes 18 years of age. It also This provision applies to a child protective services central registry check for a person who becomes 14 years of age.~~

E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to facilities that are covered by this regulation. Those facilities must not further disseminate this information.

~~This provision also applies to a new adult beginning to live in a family day home or a child living in a family day home who becomes 18 years of age after licensure, registration or approval is given. It also This provision applies to a child protective services central registry clearance for a person who becomes 14 years of age.~~

F. Licensed, ~~registered~~, or approved facilities must inform compensated employees and volunteers that the facilities are

requesting child protective services registry checks and criminal history record reports for them.

G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.

1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.
2. The department, ~~family day system~~, and child-placing agency will accept a national criminal background check result of "qualified" from the Department of State Police.
3. If the screening result is "disqualified," the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:
 - a. The facility wishes to employ the person or approve the person as a volunteer;
 - b. The entity wishes the department to issue a license ~~or registration~~; or
 - c. The facility wishes a ~~family day system~~ or child-placing agency to issue an approval.

H. The facility may also require a background check from another state per the provisions in subdivision B § 3 of 22VAC40-191-50.

I. A facility that does not comply with this regulation may have its licensure, ~~registration, or approval, or religious exempt~~ status revoked or denied.

J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22VAC40-191-50 A, and the facility refuses to separate the person from employment, service, or residence in a ~~family day~~ home, then licensure, ~~registration~~, or approval must be revoked or denied.

22VAC40-191-70. Keeping background check records.

A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.

1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.
2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:
 - a. Documentation of the place where original background check records are kept; and

b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.

~~B. Contracting organizations and voluntarily registered family day homes certified eligible for registration by contracting organizations must keep background check records.~~

- ~~1. The contracting organization must keep:

 - a. The original criminal history record report and sworn statement or affirmation for the voluntarily registered provider;
 - b. The original or a copy of the central registry findings; and
 - c. A copy of the criminal history record report and central registry findings for all provider assistants, substitute providers, and central registry findings for persons aged 14 and older residing in the home.~~
- ~~2. The voluntarily registered family day home provider must keep:

 - a. The original criminal history record report and sworn statement of affirmation for any provider assistant, substitute provider, and any adult residing in the home; and
 - b. The original or a copy of the central registry finding for any provider assistant, substitute provider or any person aged 14 and older residing in the home; and
 - c. Copies of the provider's own background check records.~~

~~C. Family day systems and family day homes approved by family day systems must keep background check records. The requestor identified on the form must keep the original criminal history record check result and the original or copy of the child protective services central registry finding, and the other party keeps copies. The family day system must keep the original sworn disclosure statement or affirmation.~~

~~D. A voluntarily registered family day home must keep all background check information for two years after a person required to provide background check terminates his duties with a facility or no longer resides in the home. All other facilities~~ B. Licensed child-placing agencies and licensed independent foster homes must keep all background check information for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.

~~E. C.~~ The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.

~~F. D.~~ Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.

~~G. E.~~ If a person is denied licensure, ~~registration~~, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both shall be provided to the person.

~~H. F.~~ A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.

~~I. G.~~ Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 22VAC40-191-60 E.)

22VAC40-191-80. Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's eaneeling waiving the consequences of an unsatisfactory a disqualifying criminal history record check only for specific convictions.

22VAC40-191-90. Identifying who may apply for a waiver.

A. Any person who wants to operate or to volunteer or work at a facility covered by this regulation, but who is disqualified because of a criminal conviction, ~~or a criminal conviction in the background check of any other adult living in a family day home governed by this regulation,~~ pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia may apply in writing to the commissioner of the department for a waiver.

B. The commissioner may grant a waiver if:

1. A nonbarrier crime felony conviction occurred less than five years previously ~~and the commissioner determines that the person is of good moral character and reputation and the waiver would not adversely affect the safety and well-being of the children in the person's care;~~ or;
2. ~~Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member as set out in §§ 18.2-57 and 18.2-57.2 of the Code of Virginia, provided five years have elapsed following the conviction and the department has conducted a home study that includes, but is not limited to:~~
 - a. ~~An assessment of the safety of the children placed in the home and~~

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~~b. A determination that the offender is now a person of good moral character and reputation.~~

~~The other adult must not be an assistant or substitute provider. The commissioner determines that the person is of good moral character and reputation; and~~

~~3. The waiver would not adversely affect the safety and well-being of the children in the person's care.~~

22VAC40-191-100. Explaining waiver application requirements.

A. The person requests a waiver application package from the licensing office that serves the area where the person with the disqualifying background check ~~lives or~~ wants to operate or volunteer or work at a facility covered by this regulation. The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the licensing office. The commissioner establishes the fee. It is identified in the application package.

~~B. Exception: A person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Division of Licensing Programs of the department. The person sends the completed application and application fee to the voluntary registration consultant in the Division of Licensing Programs.~~

~~C. B.~~ The commissioner acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.

22VAC40-191-110. Describing the contents of a waiver application.

A. The waiver application is a personally prepared application.

B. The waiver application must be submitted in typewritten form or neatly printed and ~~must~~ include:

1. A statement that the request was solely and personally prepared by the requester, ~~or other adult living in a family day home, as applicable~~, and has not been edited or changed by anyone else. ~~Exception: the~~ The document may be typed by another person;

2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;

3. A statement that the requester understands that information in the waiver application package will be made available by the commissioner to any person upon request if the waiver is granted;

4. Personal and employment information;

~~5. If the request is for a family day home, all members of the household and their relationship to the requester;~~

~~6. 5.~~ A factual account of the crime of the person with the disqualifying conviction;

~~7. 6.~~ The current status and history with justice systems of the person with the disqualifying conviction;

~~8. 7.~~ Other information the person with the disqualifying background wants the commissioner to consider in evaluating the waiver request;

~~9. 8.~~ An explanation of why the waiver should be granted; and

~~10. 9.~~ Seven attachments:

a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;

b. For the person with the disqualifying conviction:

(1) A "Current Employment and Employment History Form";

(2) A copy of the current sworn statement or affirmation;

(3) A copy of the current criminal history record report;

(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;

(5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;

(6) The Sponsoring Agency Statement; and

(7) A notarized signature page.

~~C. If the waiver application is for another adult living in a family day home, the department conducts a home study to:~~

~~1. Assess the safety of children placed in the home; and~~

~~2. Determine that the offender is now a person of good moral character and reputation.~~

22VAC40-191-120. Describing the waiver evaluation criteria.

A. The commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.

B. The final decision is based on the following:

1. The content of the waiver application package;

2. The nature of the conviction or convictions and relevance to decision criteria; and

3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred; ~~and~~

~~4. In the case of prospective foster parents for a licensed child placing agency, a review of the criminal record requirements of the Safe Families and Adoption Act of 1997 (42 USC § 1305) to determine if this federal law would permit a waiver.~~

C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.

D. The commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.

E. The commissioner may grant a waiver if the commissioner determines that:

1. The person is now of good moral character and reputation; and
2. The waiver would not adversely affect the safety and well-being of children in the person's care.

F. The commissioner will consider a waiver application abandoned, and close the file, when:

1. More than 60 days have passed since the commissioner advised the requester and the sponsoring agency that the waiver application was incomplete, or since the commissioner requested additional information that was reasonably necessary to evaluate the application; and
2. The commissioner informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.

G. Waiver decisions are not appealable.

22VAC40-191-140. Modifying, revoking, and terminating waivers.

A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.

B. The commissioner may revoke a waiver if, after investigation, he determines that:

1. The waiver application contained false, deceptive, or misleading information;
2. The terms, conditions, or stipulations of a waiver have been violated; or
3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.

C. If a waiver is revoked, the commissioner informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.

D. A waiver automatically expires when:

1. The person terminates the approved arrangement with the sponsoring facility; or
2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted; ~~or~~
- ~~3. The other adult living in a family day home was the reason for the waiver and the other adult no longer lives in the home.~~

22VAC40-191-150. Explaining the waiver public notification requirements.

A. Notification about waivers is conducted in accordance with agency policy.

B. The facility must post in a conspicuous place on the premises any waiver granted by the department.

C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, or volunteers; ~~or adult family members living in the home. This notification includes parents and guardians whose child is placed with a foster parent or whose child is to be placed with an adoptive family. This notification also includes parents and guardians who, in the future, enroll children.~~

FORMS (22VAC40-191)

~~Criminal History/Sex Offender and Crimes Against Minors Registry Search Form, SP-230 (rev. 12/2012)~~

~~Sworn Statement or Affirmation for Child Placing Agencies, 032-05-0974-04 eng (eff. 7/2014)~~

~~Central Registry Release of Information Form, 032-02-0151-12 eng (eff. 8/2015)~~

~~Sworn Statement or Affirmation for Child Day Programs, 032-05-0160-09 eng (eff. 7/2014)~~

~~Sworn Statement or Affirmation for Foster and Adoptive Parents, Adult Household Members, 032-05-0973-04 eng (eff. 7/2014)~~

VA.R. Doc. No. R22-6816; Filed August 20, 2021, 10:44 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulations

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10, 22VAC40-201-110; adding 22VAC40-201-210).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: October 13, 2021.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

Summary:

Pursuant to Chapters 254 and 535 of the 2021 Acts of Assembly, Special Session I, the amendments establish in regulation the State-Funded Kinship Guardianship Assistance program (State-Funded Kinship Subsidy), which provides an additional permanency option for youth in foster care who are ineligible for the existing Kinship Guardianship Assistance Program (KinGAP); the program includes a requirement that the child's relatives and fictive kin to be involved in the development of the child's foster care plan for children 12 years of age and older.

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age or, for the purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia, under 21 years of age and meeting the eligibility criteria set forth in § 63.2-919 of the Code of Virginia.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the

scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in § 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

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"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Kinship foster parent" means a relative or fictive kin who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Kinship guardian" means the adult relative of a child who has been awarded custody of the child in accordance with a kinship guardianship, as established in § 63.2-1305 of the Code of Virginia, or a kinship subsidy, as established in § 63.2-1306 of the Code of Virginia.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 of the Code of Virginia between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining, as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child."

"Kinship Guardianship Assistance Program" means a program consistent with 42 USC § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305 of the Code of Virginia, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 USC §§ 671 and 675) when making decisions regarding extracurricular, enrichment, and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a

legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Reasonable and prudent parent standard," in accordance with 42 USC § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Sibling" means each of two or more children having one or more parents in common.

"SSI" means Supplemental Security Income.

"State-Funded Kinship Subsidy" or "State-Funded Kinship Guardianship Assistance Program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a State-Funded Kinship Subsidy agreement developed in accordance with § 63.2-1306 of the Code of Virginia.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Virginia Birth Father Registry" means the established confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services, or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 14 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care service plan and foster care service plan review to ensure participation and consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, relatives and fictive kin who are interested in the child's welfare, and any other interested individuals, who may include service providers, in the development of the service plan and service plan review. All youth ~~44~~ 12 years of age and older shall be given the opportunity to choose up to two people to attend the meeting who are not the foster

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parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with the requirements for the type of hearing.

3. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

4. Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. Document the appropriateness of the placement, including the continued appropriateness of an out-of-state placement if applicable.

6. Ensure the child or youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The child or youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court. A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

D. The local department shall invite the child; the child's birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate, relatives, and service providers to participate in the administrative panel reviews.

E. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

F. A supervisory review is required every six months for youth ages 18 to 21 years who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures program participants unless a court review is held.

H. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

I. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

J. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care 15 out of the last 22 months, the local department shall file a petition to terminate the parental rights.

22VAC40-201-210. State-Funded Kinship Subsidy.

A. The purpose of the State-Funded Kinship Subsidy, also known as the State-Funded Kinship Guardianship Assistance Program, is to facilitate placements with relatives and ensure permanency for children who are ineligible for the Kinship Guardianship Assistance Program, as outlined in § 63.2-1305 of the Code of Virginia.

B. A child is eligible for the State-Funded Kinship Subsidy if:

1. The child has been removed from the child's home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;

2. The child has been in the custody of the local department for at least 90 days;

3. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child;

4. The child has been consulted regarding the kinship subsidy if the child is 14 years of age or older;

5. The requirements for a transfer of custody of the child to the prospective kinship guardian for the purpose of establishing eligibility for the State-Funded Kinship Subsidy have been met; and

6. The child is not eligible for the Kinship Guardianship Assistance Program, as outlined in § 63.2-1305 of the Code of Virginia.

C. If a child does not meet the eligibility criteria set forth in subsection B of this section but has a sibling who meets such criteria, the child may be placed in the same State-Funded Kinship Subsidy arrangement as the child's eligible sibling if the local department and kinship guardian agree that such placement is appropriate. In such cases, the kinship subsidy may be paid on behalf of each sibling so placed.

D. A prospective kinship guardian is eligible for the State Funded Kinship Subsidy if the kinship guardian:

1. Completes a relative foster home approval; or
2. Completes a home study and background check, is found to have no convictions for any barrier crime as outlined in 42 USC § 671(a)(20), and qualifies for at least one of the following exemptions from the kinship foster home approval process:
 - a. The kinship guardian lives in another state and is unable to meet non-safety related approval requirements imposed by their state;
 - b. The kinship guardian has made attempts to satisfy the training requirements for foster home approval but is unable to complete all training requirements; or
 - c. The kinship guardian's home is unable to meet the foster parent approval standards and establishing permanency with the kinship guardian through a State-Funded Kinship Subsidy is in the child's best interest, as determined by the department.

E. Once the State-Funded Kinship Subsidy agreement becomes effective in accordance with subsection K of this section, foster care payments will cease and kinship subsidy payments will begin. The State-Funded Kinship Subsidy provides state-funded basic maintenance only. The basic maintenance payment will increase only when (i) the child reaches an age at which the foster care maintenance rate would increase or (ii) statewide increases are approved for foster care maintenance rates.

F. The local department shall inform the prospective kinship guardian of the Medicaid application process to support continuation of benefits after custody transfer.

G. The kinship guardian shall be required under the State-Funded Kinship Subsidy agreement to keep the local department informed of the circumstances that would make them ineligible for a maintenance payment or eligible for a different amount of maintenance payment than that specified in the State-Funded Kinship Subsidy agreement.

H. Children with a State-Funded Kinship Subsidy agreement are eligible for foster care services under § 63.2-905 of the Code of Virginia, including a full range of casework, treatment, and community services. The kinship guardian may

request services through the family assessment and planning team (FAPT) in accordance with state and local policies and procedures.

I. A representative of the department shall approve all State-Funded Kinship Subsidy agreements, including all exemptions from the foster home approval process as outlined in subdivision D 2 of this section.

J. A State-Funded Kinship Subsidy agreement shall be entered into by the local board and the kinship guardian for a child who has been approved by the department for State-Funded Kinship Subsidy payments. Local departments shall use the State-Funded Kinship Subsidy agreement form provided by the department.

K. The State-Funded Kinship Subsidy agreement shall:

1. Be signed prior to legal custody transfer of the child to the kinship guardian;
2. Specify the monthly amount to be provided;
3. Become effective on the date that the judge signs the court order transferring legal custody of the child to the kinship guardian; and
4. Absent modification or revocation of the kinship guardianship, remain in effect and governed by the laws of the Commonwealth of Virginia regardless of the state to which the kinship guardian may relocate.

L. The kinship guardian shall:

1. Annually submit a signed State-Funded Kinship Subsidy affidavit to the local department by the date that the State-Funded Kinship Subsidy agreement was effective; and
2. Report changes in circumstances to the local department as outlined in the State-Funded Kinship Subsidy agreement.

M. The local department is responsible for the following:

1. Maintaining payments identified in the State-Funded Kinship Subsidy agreement, regardless of where the family resides;
2. Notifying kinship guardians who are receiving State-Funded Kinship Subsidy payments that the annual affidavit is due;
3. Assisting the kinship guardian in coordinating services to meet the child's needs upon request; and
4. Notifying the kinship guardians of a suspension or termination in payments or foster care services.

N. The State-Funded Kinship Subsidy agreement shall be terminated when the child reaches the age of 18 years.

O. The State-Funded Kinship Subsidy agreement shall not be terminated before the child's 18th birthday without the consent of the kinship guardian unless:

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1. The kinship guardian adopts the child subsequent to the State-Funded Kinship Subsidy agreement and transfer of legal custody. The kinship guardian and a representative of the department shall negotiate adoption assistance payments independently from any negotiated terms of the State-Funded Kinship Subsidy agreement.

2. The kinship guardian requests in writing that the agreement ends.

3. The kinship guardian fails to comply with the annual review process.

4. The kinship guardian is no longer legally responsible for the care of the child.

5. The kinship guardian is not providing any financial support for the child.

6. The kinship guardian dies or becomes incapacitated.

7. The kinship guardian and the local department agree in writing to terminate the agreement.

P. Local boards of social services are responsible for informing kinship guardians in writing of their right to appeal decisions relating to the child's eligibility for the State-Funded Kinship Subsidy and decisions relating to payments within 30 days of receiving written notice of such decisions. In accordance with § 63.2-915 of the Code of Virginia, applicants for and recipients of the State-Funded Kinship Subsidy shall have the right to appeal these decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing State-Funded Kinship Subsidy payments.

Q. Approval of the State-Funded Kinship Subsidy for a child is dependent on allotted funding from the General Assembly. Based on the funding allotted on an annual basis, priority will be given to the arrangements that would be least likely to achieve permanency with the Kinship Guardianship Assistance Program, as outlined in § 63.2-1305 of the Code of Virginia, including kinship guardians who meet an exemption from the foster home approval process, as outlined in subdivision D 2 of this section.

VA.R. Doc. No. R22-6763; Filed August 20, 2021, 10:44 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC40-705. Child Protective Services (amending 22VAC40-705-160).

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

Effective Date: October 13, 2021.

Agency Contact: Mary Walter, Child Protective Services Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, or email mary.walter@dss.virginia.gov.

Summary:

Pursuant to Chapter 305 of the 2021 Acts of Assembly, Special Session I, the amendments require local departments of social services, when conducting investigations or family assessments, to disclose to the child's parent or guardian, upon request, the location of the child, provided that (i) the investigation or family assessment has not been completed and a report has not been transmitted; (ii) the parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect; (iii) the parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department of social services any records or other information necessary to verify such custody; (iv) the local department is not aware of any court order and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and (v) disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

22VAC40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.
2. Report to the regional medical examiner's office pursuant to § 63.2-1503 E of the Code of Virginia.
3. Any individual, including an individual against whom allegations of child abuse or neglect were made, may exercise his rights under the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) to access personal information related to himself that is contained in the case record including, with the individual's notarized consent, a search of the Central Registry.

4. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

5. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

6. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

7. An individual's right to access information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 63.2-1526 C of the Code of Virginia.

8. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22VAC40-705-140.

9. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

10. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 A of the Code of Virginia.

11. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to § 16.1-266 G of the Code of Virginia.

12. In any case properly before a court having jurisdiction, if the court orders the local department to disclose information from a child abuse or neglect case record, the local department must either comply with the order if permitted under federal and state law or appeal the order if such disclosure is contrary to federal and state law.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and ongoing services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.2-105 of the Code of Virginia.

C. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.2-105 of the Code of Virginia, the local department must consider the factors described in subdivisions 1, 2, and 3 of this subsection as some of the factors necessary to determine whether a person has a

legitimate interest and the disclosure of information is in the best interest of the child:

1. The information will be used only for the purpose for which it is made available;
2. Such purpose shall be related to the goal of child protective or rehabilitative services; and
3. The confidential character of the information will be preserved to the greatest extent possible.

D. In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person the following information: (i) the name of the person reporting incidents of child abuse or neglect; (ii) any information that may endanger the well-being of a child if such information or records are disclosed or released; (iii) information that pertains to the identity of a collateral witness or any other person if such disclosure may endanger life or safety; or (iv) information that is otherwise prohibited from being disclosed or released by state or federal law or regulation.

E. In all complaints or reports that are being investigated jointly with law enforcement, the local department shall release child protective services information in accordance with the following:

1. Pursuant to § 63.2-1516.1 B of the Code of Virginia, no information in the possession of the local department from such joint investigation shall be released by the local department prior to the conclusion of the criminal investigation except as authorized by the investigating law-enforcement officer, the law-enforcement officer's supervisor, or the local attorney for the Commonwealth.
2. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall provide the attorney for the Commonwealth and the local law-enforcement agency with the information and records of the local department related to the investigation of the complaint, including records related to any complaints of abuse or neglect involving the victim or the alleged abuser or neglecter, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect.

F. Pursuant to §§ 63.2-1505 B and 63.2-1506 B of the Code of Virginia, the local department, upon request, must disclose to the child's parent or guardian the location of the child, provided that:

1. The investigation or family assessment has not been completed;

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2. The parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect;

3. The parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody;

4. The local department is not aware of any court order and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and

5. Disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

VA.R. Doc. No. R22-6765; Filed August 20, 2021, 10:45 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Title of Regulation: **24VAC30-130. Rules Governing Prequalification and Classification (repealing 24VAC30-130-10).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: The Commonwealth Transportation Board (CTB) adopted this regulation based on § 33.2-209 of the Code of Virginia, which authorizes the CTB to let all contracts administered by the Department of Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways in excess of \$5 million

and contracts for the construction of transportation projects be awarded on a design-build basis pursuant to objective criteria previously adopted by the CTB regarding the use of design-build. Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes. The CTB has adopted a written policy on what criteria it will consider for the prequalification of contractors, which prospective contractors can follow, making the regulation, which incorporates the policy by reference, unnecessary.

Summary:

The amendments repeal Rules Governing Prequalification and Classification (24VAC30-130).

VA.R. Doc. No. R21-6881; Filed August 23, 2021, 7:50 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications, or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-210. Policy on Placing Utilities Underground (repealing 24VAC30-210-10).**

Statutory Authority: §§ 33.2-210 and 33.2-348 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: Jo Anne Maxwell, Governance and Legislative Affairs Division Administrator, Department of Transportation, 1401 East Broad Street, Richmond, VA 23235, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

Background: The Commonwealth Transportation Board (CTB) adopted this regulation based on authority in § 33.2-348 of the Code of Virginia, which related to the CTB's authority to fund construction and improvement projects for the urban system of state highways and specifically provided limited funding for four localities relating to undergrounding utilities. The regulation consists of a description of the Underground Utility Policy, describing it as a policy that establishes the conditions under which transportation funds shall be used to reimburse a portion of the additional cost involved to place overhead utility facilities underground in connection with new transportation improvement construction and states that the policy applies to projects for the urban system of highways that are created and constructed in accordance with § 33.2-348 of the Code of Virginia. However, § 33.2-348 was repealed, effective July 1, 2016, and the specific statutorily authorized program for funding the relocation of aerial utilities underground was also repealed, effective July 1, 2016. Currently, the Virginia Department of Transportation (VDOT) Utility Manual addresses undergrounding of aerial facilities and provides that additional costs attributable to

undergrounding must be borne by the requesting localities. Since statutory authority has been repealed, the regulation is also being repealed.

Summary:

The amendments repeal Policy on Placing Utilities Underground (24VAC30-210).

VA.R. Doc. No. R21-6882; Filed August 12, 2021, 9:08 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities, and in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **24VAC30-271. Economic Development Access Fund Policy (repealing 24VAC30-271-10, 24VAC30-271-20).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Pursuant to § 33.2-1509 of the Code of Virginia, the Commonwealth Transportation Board (CTB) is authorized to make decisions on expending funds for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed. This regulation sets forth the policy by which the CTB makes those funding decisions. The CTB recently completed a periodic review in which it determined that the regulation was not necessary to protect the health, safety, and welfare of the public, because the functions performed by the regulation are those that are adequately performed by a guidance document on the topic that has been adopted by the CTB. The CTB expends funds by voting on a resolution, which specifies the criteria and conditions for the use of such funds on each project, and the terms of the resolution are used to enforce the funding conditions on the locality receiving the funds. The regulation merely provides guidance to the localities to use in preparing a request for funding. The CTB has adopted a guidance document that specifies, in more detail, all the criteria

and conditions that it will consider in making funding decisions for economic development access funds. The regulation is not necessary

Summary:

The amendments repeal Economic Development Access Fund Policy (24VAC30-271).

VA.R. Doc. No. R21-6883; Filed August 23, 2021, 7:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Title of Regulation: **24VAC30-340. Debarment or Suspension of Contractors (repealing 24VAC30-340-10).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: The Commonwealth Transportation Board (CTB) adopted a policy describing the procedures and criteria it uses in considering the debarment of contractors in 1981. That policy, as revised in 1983, is incorporated by reference as the current regulation. However, in 1982, the General Assembly enacted the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia), which provides that a state agency designated by the Governor may adopt procedures for the debarment of contractors. In 2001, the Department of General Services (DGS) was directed by Governor's executive order to adopt procedures for the debarment of contractors to be used by state agencies, which DGS has since adopted. Section 2.2-4321 of the Code of Virginia authorizes the debarment of contractors pursuant to procedures established in writing by DGS. The CTB believes it can achieve the same purpose of the regulation through adoption of its policy as a guidance document or by following the DGS procedures for debarment, making the regulation redundant and unnecessary.

Summary:

The amendments repeal Debarment or Suspension of Contractors (24VAC30-340).

VA.R. Doc. No. R21-6612; Filed August 23, 2021, 8:00 a.m.

Regulations

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-390. Virginia Scenic Highways and Byways (repealing 24VAC30-390-10).**

Statutory Authority: § 33.2-405 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Section 33.2-405 of the Code of Virginia states that the Commonwealth Transportation Board (CTB) is authorized to designate any highway as a scenic highway or as a Virginia byway and further requires that the designation be made in cooperation with the Director of the Department of Conservation and Recreation (DCR). DCR and the Virginia Department of Transportation executed a Memorandum of Agreement (MOA) dated July 6, 1995, outlining the general responsibilities and obligations of each party in recommending Scenic Highways and Virginia Byways to the CTB. When the MOA was updated in 2018 to provide clarity to the recommendation process, the CTB adopted a set of written goals and policies to guide it in making future decisions on designating Scenic Highways and Byways. The regulation provides guidance to the CTB when it makes decisions on designating Scenic Highways and Byways, and therefore is redundant and not necessary as the purpose of the regulation can be accomplished through the written goals and policies adopted by the CTB via the MOA with the DCR.

Summary:

The amendments repeal Virginia Scenic Highways and Byways (24VAC30-390).

VA.R. Doc. No. R21-6613; Filed August 23, 2021, 8:34 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-420. Operation and Maintenance of Roads in Incorporated Towns Less Than 3,500 (repealing 24VAC30-420-10).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Sections 33.2-339 and 33.2-340 of the Code of Virginia authorize the Commissioner of Highways, subject to the approval of the Commonwealth Transportation Board (CTB), to may maintain, improve, construct, and reconstruct streets in any town with a population of less than 3,500 from allocations available from secondary highway funds not to exceed two miles of streets or highways in such towns included in the secondary state highway system. The regulation specifies the CTB's policy on approving requests for maintenance of roads under §§ 33.2-339 and 33.2-340 and guides the CTB in its decisions on funding of maintenance of highways in towns, which may be accomplished through a similar guidance document or a CTB policy, making the regulation unnecessary.

Summary:

The amendments repeal Operation and Maintenance of Roads in Incorporated Towns Less Than 3,500 (24VAC30-420).

VA.R. Doc. No. R21-6884; Filed August 23, 2021, 8:34 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Title of Regulation: **24VAC30-430. Maintenance of Roads Crossing the Interstate System (repealing 24VAC30-430-10).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Section 33.2-319 of the Code of Virginia authorizes the Commissioner of Highways, subject to the approval of the Commonwealth Transportation Board (CTB), to make payments for maintenance, construction, or reconstruction of highways to all cities and towns eligible for funds, that is have roads crossing over or under the interstate highways, if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Department of Transportation (VDOT). The

regulation describes the policy of the CTB in determining which maintenance activities on roads crossing over or under the interstate highways are eligible for funding by the CTB. The regulation specifies the expected responsibilities of various types of localities (cities and towns with populations over 3500 persons, counties, and counties that have withdrawn from the state highway system) and VDOT's responsibilities in the maintenance of various types of highways that cross over or under interstate highways. The CTB believes this purpose is accomplished through a written CTB policy or a VDOT guidance document and is not necessary as a regulation.

Summary:

The amendments repeal Maintenance of Roads Crossing the Interstate System (24VAC30-430).

VA.R. Doc. No. R21-6885; Filed August 23, 2021, 8:54 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-490. Roads in the Grounds of State Institutions (repealing 24VAC30-490-10).**

Statutory Authority: §§ 33.2-210 and 33.2-313 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Section 33.2-313 of the Code of Virginia states that the Commissioner of Highways may, when requested by the governing body of a state institution, assume the maintenance of any highway within the grounds of such state institution that has been established and constructed by such institution to standards acceptable to the Commissioner of Highways. The Commonwealth Transportation Board (CTB) adopted a policy in 1956 which specified several standards that the Department of Transportation (VDOT) should consider before accepting roads on the grounds of state institutions into the primary state highway system. The CTB has the authority to set policy for VDOT pursuant to § 33.2-215 of the Code of Virginia. Consistent with that policy, the Commissioner of Highways issued a Departmental Memorandum that instructs VDOT staff to ensure that those standards are met prior to accepting roads on the grounds of state institutions into the primary state highway system. The current regulation, which incorporates by reference the Departmental Memorandum filed by description, is redundant because the purpose of the

regulation is met by the CTB Policy and Departmental Memorandum.

Summary:

The amendments repeal Roads in the Grounds of State Institutions (24VAC30-490).

VA.R. Doc. No. R21-6614; Filed August 23, 2021, 8:10 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-500. Roads in the Grounds of State Parks (repealing 24VAC30-500-10).**

Statutory Authority: §§ 33.2-210 and 33.2-311 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Background: Section 33.2-311 of the Code of Virginia states that all highways in state parks that provide connections between highways outside such parks shall continue to be portions of the primary state highway system. Some highways in state parks do not provide connections between highways outside of the parks, and those highways would instead be part of the secondary system of state highways.

Section 33.2-312 of the Code of Virginia states that the Commissioner of Highways may maintain all highways within the boundaries of any state park established by and under the control of the Department of Conservation and Recreation (DCR) and may maintain those highways by expending funds under the commissioner's control and available for expenditure upon the maintenance of highways in the secondary state highway system in the county in which such state park is located. Where Department of Transportation (VDOT) maintenance of a secondary highway is no longer necessary, VDOT may discontinue maintenance of such highway pursuant to § 33.2-908 of the Code of Virginia. A discontinuance usually results in maintenance responsibility being assumed by the locality in which the highway is located. This regulation states that if the entity that controls the parks requests to be allowed to maintain the secondary highways, and the Board of Supervisors of that locality approves, the maintenance responsibility may be transferred to the entity that controls the park, which then falls, pursuant to § 10.1-200 of the Code of Virginia, to DCR, but the regulation gives discretionary guidance to the Commonwealth Transportation Board (CTB) and Commissioner of Highways. Since the

Regulations

content of the regulation is discretionary, the purpose of the regulation can be accomplished through an existing VDOT guidance document, current CTB policy, and the Commissioner of Highways Department Memorandum on the subject, making the regulation redundant and unnecessary.

Summary:

The amendments repeal Roads in the Grounds of State Parks (24VAC30-500).

VA.R. Doc. No. R21-6615; Filed August 23, 2021, 8:35 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 24VAC30-620. Rules, Regulations, and Rates Concerning Toll and Bridge Facilities (amending 24VAC30-620-10, 24VAC30-620-20, 24VAC30-620-30).

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: October 14, 2021.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Summary:

The amendments (i) specify the toll rates for certain department-owned and department-operated toll facilities, (ii) delegate authority for the suspension of tolls at those facilities from the Commissioner of Highways to the commissioner's designee, (iii) specify the general conditions and criteria under which the suspension of tolls can occur, and (iv) address additional toll facilities covered by the regulation and the change in procedures and criteria to be considered for the suspension of tolls.

24VAC30-620-10. Applicability and effective dates.

This chapter applies to ~~the following facilities: the Dulles Toll Road, located in the Northern Virginia District; the Powhite Parkway Extension Toll Road, located in the Richmond District; and the George P. Coleman Bridge, located in the Hampton Roads District, all administered by the Innovative Finance and Revenue Operations Division~~ all Virginia Department of Transportation (VDOT)-owned and VDOT-operated toll facilities, unless and until, by agreement or law, authority to operate and set tolls is provided to another public or private entity.

24VAC30-620-20. General conditions and criteria concerning suspension of toll collection.

A. Tolls may be temporarily suspended on any toll facility subject to this chapter, under the following conditions:

1. The Commissioner of Highways or his designee has investigated or assessed a threat to public safety on or in the vicinity of the toll facility; and
2. As a result of the investigation or assessment, the Commissioner of Highways or his designee believes that a temporary suspension of toll collection will alleviate an actual or potential threat or risk to the public's safety, or facilitate the flow of traffic on or within the vicinity of the toll facility.

B. Incidents which may justify the temporary suspension of toll collection operations include, but are not limited to, the following: natural disasters, such as hurricanes, tornadoes, fires, and floods; accidental releases of hazardous materials, such as chemical spills; major traffic accidents, such as multi-vehicle collisions; and any other incidents deemed to present a risk to public safety.

C. Any mandatory evacuation during a state of emergency as defined in § 44-146.16 of the Code of Virginia shall require the temporary suspension of toll collection operations in affected evacuation zones on routes designated as mass evacuation routes. The Commissioner of Highways or the commissioner's designee shall reinstate toll collection when the mandatory evacuation period ends.

D. The suspension of tolls and reinstatement of tolls shall be conducted in accordance with internal agency procedures established by the Commissioner of Highways. The Commissioner of Highways may delegate in writing the authority to suspend and reinstate toll collection operations, as a result of the conditions and criteria outlined in this section. This delegation of authority includes following the policies and procedures established by the Commissioner of Highways and specific to each toll facility, governing the investigation and decision-making processes associated with the possible suspension and reinstatement of toll collections.

E. Judicial proceedings arising from any incident resulting in the suspension of toll collection will be conducted as provided for by § 33.2-613 of the Code of Virginia.

24VAC30-620-30. Rates and ~~delegation of authority to suspend toll collection.~~

~~A. The Commissioner of Highways delegates the authority to suspend toll collection operations on the Dulles Toll Road to the Dulles Toll Road's Toll Facilities Administrative Director, subject to consultation with the Northern Virginia District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Dulles Toll Road's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization.~~

This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

~~B.~~ The following are the toll rate schedules for the Dulles Toll Road.

| DULLES TOLL ROAD RATE STRUCTURE | | |
|--|------------|-----------|
| VEHICLE CLASS | MAIN PLAZA | ALL RAMPS |
| Two axles ¹ | \$0.75 | \$0.50 |
| Three axles ² | \$1.00 | \$0.75 |
| Four axles | \$1.25 | \$1.00 |
| Five axles | \$1.50 | \$1.25 |
| Six axles or more | \$1.75 | \$1.50 |
| ¹ Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires). | | |
| ² Includes trucks, buses, and passenger cars with trailers. | | |

~~C.~~ The Commissioner of Highways delegates the authority to suspend toll collection operations on the Powhite Parkway Extension Toll Road to the Richmond Toll Facilities' Toll Facilities Administrative Director, subject to consultation with the Richmond District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Richmond Toll Facilities' Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

~~D.~~ A. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

| POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE | | | | |
|---|-----------------|------------------------------------|-----------------|------------------------|
| VEHICLE CLASS | MAIN LINE PLAZA | MAIN LINE PLAZA - EAST & WEST RAMP | RAMP - ROUTE 60 | RAMP - COURTHOUSE ROAD |
| Two axle vehicles ¹ | \$0.75 | \$0.25 | \$0.25 | \$0.50 |
| Three axle vehicles | \$1.00 | \$0.35 | \$0.35 | \$0.60 |
| Four axle vehicles | \$1.25 | \$0.45 | \$0.45 | \$0.70 |

| | | | | |
|--------------------|--------|--------|--------|--------|
| Five axle vehicles | \$1.50 | \$0.55 | \$0.55 | \$0.80 |
| Six axle vehicles | \$1.50 | \$0.55 | \$0.55 | \$0.80 |

¹Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

~~E.~~ The Commissioner of Highways delegates the authority to suspend toll collection operations on the George P. Coleman Bridge to the George P. Coleman Bridge Facility's Toll Facilities Administrative Director, subject to consultation with the Hampton Roads District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the George P. Coleman Bridge Facility's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

~~F.~~ B. The following are the toll rate schedules for the George P. Coleman Bridge.

| GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE | |
|--|--------------|
| VEHICLE CLASS ¹ | ONE-WAY RATE |
| Motorcycles, pedestrians and bicyclists ² | \$0.85 |
| Commuter ETC cars, vans, pick-ups | \$0.85 |
| Commuter ETC two-axle commercial vans/trucks | \$0.85 |
| Cars, vans, pick-ups | \$2.00 |
| Two-axle, six-tire trucks and buses | \$2.00 |
| Three-axle vehicles and buses | \$3.00 |
| Four or more-axle vehicles | \$4.00 |
| ¹ Commuter toll rates will be available only via the Smart Tag/E-Pass E-ZPass electronic toll collection (ETC) system to two-axle vehicles making three round trip northbound crossings within a 90-day period on the George P. Coleman Bridge. | |
| ² Includes motorcycles equipped with a sidecar, towing a trailer, or equipped with a sidecar and towing a trailer. Motorcyclists requesting this rate must use the manual toll collection lanes because the Automatic Vehicle Identification system cannot accommodate the \$0.85 rate. | |

C. For all designated high-occupancy toll facilities, the toll rates shall vary as necessary to manage the demand to use the facility in accordance with 23 USC § 166.

VA.R. Doc. No. R20-6422; Filed August 23, 2021, 9:25 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER EIGHTY (2021)

Commission to Examine Racial and Economic Inequity in Virginia Law

Importance of the Initiative

On June 4, 2019, Executive Order 32 established the Commission to Examine Racial Inequity in Virginia Law. Its purpose, inspired by the leadership of Senator Lionell Spruill and Delegate Marcia Price, was to review the Acts of Assembly, the Code of Virginia, and Virginia's administrative regulations to identify and make recommendations to address laws that either were intended to or could have the effect of promoting or enabling racial discrimination or inequity. The Commission's work focused on researching historic law to identify remainders of racially discriminatory language in order to right the wrongs of history. On December 5, 2019, the Commission issued a report to the Governor reflecting the Commission's findings and recommendations. Relying upon those recommendations, the General Assembly repealed 91 discriminatory Acts of Assembly in its 2020 Regular Session.

In response to the racial justice demonstrations during the summer of 2020, Amended Executive Order 32 (June 4, 2020) extended the Commission for another year. Under the Amended Order, the Commission's work shifted to identify laws and policies that needed to be amended, repealed, or enacted to address underlying and persistent racial inequities. On August 6, 2020, the Commission issued a memorandum on criminal justice, followed by its second report issued on November 15, 2020. Throughout its existence, the Commission has brought to light racially discriminatory laws and offered policy proposals to address that discrimination.

While the increased focus on racial reckoning magnified the critical need for criminal justice reform, the COVID-19 pandemic exposed economic inequities in the Commonwealth, particularly for Virginians of color. Now citizens and advocates are calling for more equitable economic opportunities as we rebuild Virginia's post-pandemic economy.

Therefore, it is time to establish a new commission to examine the intersection between institutional racism and economic inequality. This new commission will identify racially discriminatory laws and the inequitable economic policies that shadow them. A core initiative of my Administration is to build a Virginia that works for everyone, no matter who you are or where you come from. This new commission will strive to make that vision a reality.

Establishment of the Commission to Examine Racial and Economic Inequity in Virginia Law

Accordingly, by virtue of the authority vested in me as Governor, under Article V of the Constitution of Virginia and §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to

my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Commission to Examine Racial and Economic Inequity in Virginia Law (Commission). The Commission will identify laws and policies in Virginia that have the effect or could have the effect of enabling or promoting racial or economic inequity or inequality.

Composition and Support of the Commission

The Governor will appoint the Commission's members and its chair(s). The Governor will appoint experts, scholars, and community leaders with knowledge of and/or experience in civil rights, race and equity, economics, and the law. The Governor may appoint other members to carry out the Commission's duties at any time. The Commission will have an advisory role, and the members will serve without compensation, in accordance with § 2.2- 2100 of the Code of Virginia. In carrying out its duties, the Commission may establish working groups as it deems appropriate and may solicit participation from relevant subject matter experts, practitioners, and historical analysts.

The Office of the Governor and any other agencies or offices as may be designated by the Governor will provide staff support for the Commission. An estimated 250 hours of staff time will be required to support the work of the Commission.

Duties of the Commission

The Commission will meet upon the call of the chair(s) and shall issue an interim report with any findings and recommendations to the Governor no later than September 30, 2021. The Commission shall issue any additional reports to the Governor as necessary or as requested by the Governor. The Commission's reports shall be made available to the public.

Finally, this new Commission will build upon the model of the Commission to Examine Racial Inequity in Virginia Law by continuing to engage advocates, community leaders, and special interest groups who serve and represent Virginia's diverse constituencies.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in force and effect for one year, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of July, 2021.

/s/ Ralph S. Northam, Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF COUNSELING

Title of Document: [Approved Degrees in Human Services and Related Fields for Qualified Mental Health Provider Registration.](#)

Public Comment Deadline: October 13, 2021.

Effective Date: October 14, 2021.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: [Guidelines for Reporting Federal Tax Adjustments.](#)

Public Comment Deadline: October 13, 2021.

Effective Date: October 14, 2021.

Agency Contact: James Savage, Senior Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261, telephone (804) 371-2301, or email james.savage@tax.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Title of Document: [Threat Assessment and Management in Virginia Public Schools - Model Policies, Procedures, and Guidelines.](#)

Public Comment Deadline: October 13, 2021.

Effective Date: October 14, 2021.

Agency Contact: Brad Stang, Threat Assessment Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3973, or email brad.stang@dcjs.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Coverage of Additional COVID Vaccine Dose for Certain Immunocompromised Individuals.](#)

Public Comment Deadline: October 13, 2021.

Effective Date: October 14, 2021.

Agency Contact: Emily McClellan, Director, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

GENERAL NOTICES

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice, 2021 Annual Report on the Agricultural Stewardship Act

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report on the Agricultural Stewardship Act for the program year April 1, 2020, through March 31, 2021. Copies of this report can be obtained by contacting Katherine Coates at telephone (804) 786-3538 or via email at katherine.coates@vdacs.virginia.gov. The report can also be obtained by accessing the Department of Agriculture and Consumer Services website at <http://www.vdacs.virginia.gov/conservation-and-environmental-agricultural-stewardship.shtml>. A written request may be sent to the address listed. Copies of the report are available without charge.

Contact Information: Katherine Coates, Office of Policy, Planning, and Research, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3583.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Screening for Long-Term Services and Supports Provider Manual

The draft Screening for LTSS Provider Manual Chapter IV is now available on the Department of Medical Assistance website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 23, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Supplemental Payments to Eastern Virginia Medical School

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act,

42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to emily.mcclellan@dmas.virginia.gov and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at <https://townhall.virginia.gov/L/generalnotice.cfm>.

DMAS will be making the following changes to Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

DMAS will be updating the state plan text related to supplemental payments made to physicians affiliated with Eastern Virginia Medical School. The first change is to remove old text dating back to 2012. The second change makes the language more general so that DMAS does not have to update the state plan every time the average commercial rate percentage changes.

This change is not expected to have any costs.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Arlington County Water Pollution Control Bureau

An enforcement action has been proposed for Arlington County Water Pollution Control Bureau for violations of the State Water Control Law and regulations at the Arlington County water pollution control plant (WPCP) located in Arlington, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Arlington County WPCP. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email benjamin.holland@deq.virginia.gov.

Proposed Enforcement Action for Central Virginia Home Improvement LLC and Time to Change Inc.

An enforcement action has been proposed for Central Virginia Home Improvement LLC and Time to Change Inc. for violations at 132 Cedar Ford Road, Henrico County, Virginia. The State Water Control Board proposes to issue a special order by consent to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The Department of Environmental Quality will accept comments from September 13, 2021, to October 13, 2021.

Contact Information: Carla Pool, Enforcement Adjudication Manager, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 698-4150, FAX (804) 698-4178, or email carla.pool@deq.virginia.gov.

Proposed Enforcement Action for Coal Fillers Inc.

An enforcement action has been proposed for Coal Fillers Inc. for violations of the State Water Control Law at 271 St. Clairs Crossing, Tazewell County, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person listed will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Consent Order for Henrico County, Virginia

The State Water Control Board proposes to issue a consent special order to the County of Henrico for alleged violation of the State Water Control Law at the Henrico County water reclamation facility located at 9101 WRVA Road, Henrico County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact listed will accept comments by email or postal mail from September 13, 2021, to October 13, 2021.

Contact Information: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email frank.lupini@deq.virginia.gov.

Proposed Enforcement Action for the Town of Lovettsville

An enforcement action has been proposed for the Town of Lovettsville for violations of the State Water Control Law and regulations. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Town of Lovettsville wastewater treatment plant. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Stephanie Bellotti, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email stephanie.bellotti@deq.virginia.gov.

Proposed Consent Order for Midlothian Community Partners LP

The State Water Control Board proposes to issue a consent special order to Midlothian Community Partners LP for alleged violation of the State Water Control Law at 4000 Midlothian Turnpike, Richmond, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact listed will accept comments by email or postal mail from September 14, 2021, to October 14, 2021.

Contact Information: Matt Richardson, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action Northern Virginia Baptist Center

An enforcement action has been proposed for Northern Virginia Baptist Center for violations of the State Water Control Law and regulations. The State Water Control Board proposes to issue a consent order to resolve violations associated with unpermitted impacts to state waters at the Northern Virginia Baptist Center located in Prince William County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

General Notices

Proposed Enforcement Action for Northern Virginia Regional Park Authority

An enforcement action has been proposed for Northern Virginia Regional Park Authority for violations of the State Water Control Law and regulations at the Great Waves Waterpark located in Alexandria, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Great Waves Waterpark. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact listed will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email benjamin.holland@deq.virginia.gov.

Proposed Enforcement Action for Shearer's Foods SA Inc.

An enforcement action has been proposed for Shearer's Foods SA Inc. for violations of the State Water Control Law at 225 Commonwealth Avenue Extension, City of Bristol, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person listed will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action Z and I 1 Inc.

An enforcement action has been proposed for Z and I 1 Inc. for violations of the State Water Control Law and regulations and applicable Virginia Pollutant Discharge Elimination System Permit at the Z and I 1 Inc. car washing machine located in Falls Church, Virginia. The State Water Control Board proposes to issue a consent order to resolve the subject violations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact listed will accept comments by email or postal mail from September 14, 2021, through October 14, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901

Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: **20VAC5-360. Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects.**

Publication: 37:24 VA.R. 3755-3759 July 19, 2021.

Correction to Final Regulation:

Page 3758, 20VAC5-360-10, definition of "Public right-of-way" line 2, after "interstate" change text to read "[~~freeway,~~]

VA.R. Doc. No. R21-6603; Filed August 31, 2021

Errata
