



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 40 ISS. 24

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

July 15, 2024

### TABLE OF CONTENTS

<b>Register Information Page</b> .....	1917
<b>Publication Schedule and Deadlines</b> .....	1918
<b>Petitions for Rulemaking</b> .....	1919
<b>Periodic Reviews and Small Business Impact Reviews</b> .....	1922
<b>Notices of Intended Regulatory Action</b> .....	1924
<b>Regulations</b> .....	1925
1VAC20-90. Campaign Finance and Political Advertisements (Emergency) .....	1925
1VAC20-90. Campaign Finance and Political Advertisements (Proposed).....	1925
1VAC30-41. Regulation for the Certification of Laboratories Analyzing Drinking Water (Final) .....	1929
2VAC5-280. Virginia Grade Standards for Slaughter and Feeder Lambs (Fast-Track) .....	1929
2VAC5-290. Breeder Sheep Grade Standards (Fast-Track) .....	1931
4VAC20-140. Pertaining to Identification of Crab Pots, Peeler Pots, Eel Pots, and Fish Pots (Final) .....	1932
4VAC20-270. Pertaining to Blue Crab Fishery (Final).....	1933
4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (Final).....	1935
4VAC20-1270. Pertaining to Atlantic Menhaden (Final) .....	1936
9VAC25-260. Water Quality Standards (Notice of Effective Date) .....	1937
9VAC25-875. Virginia Erosion and Stormwater Management Regulation (Forms) .....	1937
9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (Forms).....	1937
18VAC65-20. Regulations Governing the Practice of Funeral Services (Forms).....	1938
18VAC85-15. Regulations Governing Delegation to an Agency Subordinate (Fast-Track) .....	1939
18VAC125-20. Regulations Governing the Practice of Psychology (Fast-Track).....	1940
19VAC30-165. Regulations Relating to Standards and Specifications for Purple Warning Lights Used by Vehicles Leading or Escorting Funeral Processions (Final) .....	1945
22VAC40-61. Standards and Regulations for Licensed Adult Day Care Centers (Final).....	1946
22VAC40-73. Standards for Licensed Assisted Living Facilities (Final).....	1946
22VAC40-80. General Procedures and Information for Licensure (Final).....	1946
22VAC40-90. Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (Final).....	1946
22VAC40-675. Personnel Policies for Local Departments of Social Services (Forms) .....	1966
23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (Fast-Track) .....	1967
23VAC10-110. Individual Income Tax (Fast-Track).....	1967
23VAC10-115. Fiduciary Income Tax (Fast-Track).....	1967
23VAC10-120. Corporation Income Tax (Fast-Track).....	1967
23VAC10-210. Retail Sales and Use Tax (Fast-Track) .....	1967
<b>Guidance Documents</b> .....	1987
<b>General Notices</b> .....	1988
<b>Errata</b> .....	1990

Virginia Code Commission

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



---

# 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](http://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: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the Virginia Register: **Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Managing Editor; Erin Comerford, Regulations Analyst.**

---

# PUBLICATION SCHEDULE AND DEADLINES

---

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

---

## July 2024 through August 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 26, 2024 ( <b>Tuesday</b> )	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 ( <b>Monday</b> )	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# PETITIONS FOR RULEMAKING

---

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Agency Decision

Title of Regulation: **9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations.**

Statutory Authority: §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Name of Petitioner: David W. Schnare.

Nature of Petitioner's Request: On March 11, 2024, the Department of Environmental Quality received David W. Schnare's petition to the State Water Control Board. The petitioner requested the board establish by policy or rule a position on:

"1. Whether an Exception Review Committee established under the Chesapeake Bay Preservation Act must only recognize a Resource Protection Area buffer measured from a nontidal wetland in which the geographic extents of the nontidal wetland was determined independent of federal jurisdictional determinations made under the Federal Clean Water Act, or studies intended to support such jurisdictional determinations, and addresses all elements identified in 9VAC25-830-40 and relevant local ordinances; and

2. Whether an applicant for an exception under Fairfax County Ordinance § 118-6-1 can rely on the Atlantic and Gulf Coastal Plain Manual methodologies in order to determine the existence of a nontidal wetland as defined under 33 CFR 328.3 Fairfax County Ordinance § 118-1-6(q), to wit, the presence or absence of a prevalence of vegetation typically adapted for life in saturated soil conditions under normal circumstances; and

3. Requested the board amend 9VAC25-830-40 to read:

"Nontidal wetlands" means those ~~wetlands lands~~ other than tidal wetlands ~~that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.~~ whose hydrophytic vegetation indicators, hydric soil indicators, and wetland hydrology indicators reveal the subject land is a wetland as described in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) or the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (ERDC/EL TR-10-20) or later versions thereof."

Agency Decision: Request denied.

Statement of Reason for Decision: At the State Water Control Board's June 25, 2024, meeting, the board unanimously voted to deny the petitioner's request for rulemaking. The board's decision was based on the following:

Regarding requests 1 and 2 in the petition, this request is not of a nature for action by the board pursuant to § 2.2-4007 of the Code of Virginia and 9VAC25-11-60 as the request does not relate to establishing or amending a regulation. This request is best addressed through guidance and technical assistance as provided by the Department of Environmental Quality (DEQ).

Regarding request 3 in the petition, this request is of a nature for consideration by the board. However, the requested amended definition of nontidal wetlands in 9VAC25-830-40 would create an improper, inconsistent, and unnecessary revision to the definition.

The proposed definition would be inconsistent with the definition of wetlands under State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). The Code of Virginia provides a specific narrative definition of wetlands that is consistent with the definition provided for in Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

Additionally, the proposed definition would be inconsistent with the mirroring narrative definition of nontidal wetlands under Virginia Water Protection Permit Program Regulation (9VAC25-210). Ensuring continuity between these definitions is essential given the interplay of these programs, particularly as 9VAC25-830 and the Bay Act program defer to the 9VAC25-210 requirements, including the technical framework and guidance, for a wetland delineation. Thus, any proper consideration of a revision to definition of nontidal wetlands should not occur within 9VAC25-830.

The United States Supreme Court's Sackett v. Environmental Protection Agency decision did not involve or change Virginia law and under the Clean Water Act did not change the definition of wetlands. In its post-Sackett rulemaking, the Environmental Protection Agency did not change the definition of wetlands. The definition has remained unchanged since the original promulgation in 1986. Thus, Sackett does not compel a regulatory amendment or change the way wetlands are delineated within the Commonwealth including under 9VAC25-830.

Also, while practically, the proposed definition in the petition does include technical considerations for delineating wetlands, such language would potentially create an inappropriate narrowing of the definition of wetlands and such definition includes language and references that are best identified in guidance and technical manuals. The 1987 Manual and accompanying Regional Supplements do provide additional technical guidance for delineation and should be utilized in making such delineation but are not a proper source for determining the legal definition of a nontidal wetland.

---

# Petitions for Rulemaking

---

Agency Contact: Justin Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1125, or email [justin.williams@deq.virginia.gov](mailto:justin.williams@deq.virginia.gov).

VA.R. Doc. No. PFR24-38; Filed March 19, 2024, 1:24 p.m.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

#### Agency Decision

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations.**

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

Name of Petitioner: Patrick Jeffers.

Nature of Petitioner's Request: The petitioner requests the Department of Professional and Occupational Regulation and the Board for Contractors amend subdivision 11 of 18VAC50-30-190, which provides for prohibited acts.

18VAC50-30-190 states, in part:

"Any of the following are cause for disciplinary action:

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;"

The petitioner requests that the term "sexual offense" in the prohibited act be stricken.

The petitioner contends that subdivision 11 of 18VAC50-30-190 invites the board to apply § 54.1-204 B of the Code of Virginia in a manner that exceeds the board's police power under §§ 54.1-100 and 54.1-201 A 5 of the Code of Virginia by allowing the board to divest tradesman applicants with certain criminal convictions of their fundamental right to pursue and practice their occupations of choice absent the board's legitimate protective need to prevent them from perpetrating deceptive or misleading trade practices or to ensure their continuing trade competency in contravention of

the Constitution of the United States, the Constitution of Virginia, and federal and state statutory and common law.

The petition provides additional legal argument regarding the bases upon which the prohibited act exceeds the board's police power.

A copy of the petition is available from the agency.

Agency Decision: Request denied.

Statement of Reason for Decision: The regulation cited in the petition, 18VAC50-30-190, provides for a prohibited act that applies to regulants who have been convicted of any felony or of certain misdemeanors after receiving a license. Based on a review of the petition, it appears the intention of the petitioner was to address the board's requirement that, pursuant to 18VAC50-30-30, individuals must disclose any felony convictions and any non-marijuana misdemeanor convictions at the time application is made. It further appears the petition addresses the board's legal authority to refuse issuance of a license to applicants for licensure rather than the board's authority to discipline a licensee.

Section 54.1-204 of the Code of Virginia provides that a person shall not be refused a license to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the conviction directly relates to the occupation or profession for which the license is sought.

This section of the Code of Virginia also sets forth criteria the board must consider when determining whether a criminal conviction directly relates to an occupation or profession. These include the nature and seriousness of the crime; the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the occupation; and the extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type.

The statutes and regulations of the board provide for the protection of the health, safety, and welfare of the public. Removing the provision in the regulation that requires an applicant to disclose any felony convictions and non-marijuana misdemeanor convictions, including sexual offense convictions, does not fulfill the board's obligation to provide these protections. Considering this, along with public comments received in response to the petition, the board denies the petitioner's request.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, or email [cameron.parris@dpor.virginia.gov](mailto:cameron.parris@dpor.virginia.gov).

VA.R. Doc. No. PFR24-37; Filed March 26, 2024, 8:09 a.m.

## BOARD OF LONG-TERM CARE ADMINISTRATORS

### Agency Decision

**Title of Regulation:** 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

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

**Name of Petitioner:** Sandy Rosenblatt.

**Nature of Petitioner's Request:** The petitioner requests that the Board of Long-Term Care Administrators amend 18VAC95-30-170 B to allow assisted living providers with multiple locations within a 30-minute average one-way distance with a combined capacity of 20 residents to be an eligible training facility for an assisted living facility administrator-in-training program or for an internship.

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** The Board of Long-Term Care Administrators discussed the petition in detail at the June 18, 2024, meeting and decided to take no action on the petition. The board is currently engaging stakeholders through a workgroup on assisted living facilities administrators-in-training training programs and plans to introduce the topic of bed capacity restrictions on training locations at the board's next meeting.

**Agency Contact:** Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4595, or email [corie.wolf@dhp.virginia.gov](mailto:corie.wolf@dhp.virginia.gov).

VA.R. Doc. No. PFR24-36; Filed February 20, 2024, 11:25 a.m.

## BOARD OF COUNSELING

### Initial Agency Notice

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

**Statutory Authority:** §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

**Name of Petitioner:** Tamara Peterson.

**Nature of Petitioner's Request:** The petitioner requests that the Board of Counseling amend 18VAC115-20-52 D to require supervisors to report the total hours of residency and evaluate an applicant's competency within a set timeframe.

**Agency Plan for Disposition of Request:** The petition for rulemaking will be published in the Virginia Register of Regulations on July 15, 2024. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens July 15, 2024, and closes August 14, 2024. The Board of Counseling will consider the petition and all comments in support or opposition at the next meeting after the close of

public comment. That meeting is currently scheduled for October 4, 2024. The petitioner will be notified of the board's decision after that meeting.

**Public Comment Deadline:** August 14, 2024.

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

VA.R. Doc. No. PFR24-35; Filed June 18, 2024, 9:54 a.m.

---

# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

---

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **8VAC20-310, Rules Governing Instructions Concerning Drugs and Substance Abuse; 8VAC20-320, Regulations Governing Physical and Health Education; 8VAC20-360, Regulations Governing General Educational Development Certificates; 8VAC20-530, Regulations Governing Criteria to Identify Toxic Art Materials; Labeling; Use in Elementary Grades Prohibited; and 8VAC20-565, Regulations for the Protection of Students As Participants in Human Research.** The review of these regulations will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic 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 July 15, 2024, and ends August 5, 2024.

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: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov).

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of

Virginia, the Board of Dentistry conducted a periodic review and a small business impact review of **18VAC60-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated June 21, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation sets forth procedures for participation of the public in the development of board regulations. Additionally, this regulation is required by statute, and the board has no discretion not to maintain this regulation. The board has reviewed this regulation and determined that it is clearly written and understandable.

This regulation is based on model regulations provided by the Department of Planning and Budget. The Department of Planning and Budget has not updated these model regulations; therefore, the board has not adopted any changes to the regulation.

The board is required to maintain this regulation. There have been no complaints received related to this regulation, which is not complex. The regulation does not overlap with any other law. This regulation has not changed since approximately 2017. The board will alter this regulation if and when the Department of Planning and Budget recommends changes to the model regulations.

Contact Information: Jamie Sacksteder, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4581, FAX (804) 698-4266, or email [jamie.sacksteder@dhp.virginia.gov](mailto:jamie.sacksteder@dhp.virginia.gov).

---

## 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 **22VAC40-90, Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers**, and determined that this regulation should be amended. The board is publishing its report of findings dated June 21, 2024, to support this decision.

The regulation establishes the minimum requirements for background checks for assisted living facilities (ALF) and adult day centers (ADC) staff, which enables residents, participants, relatives and legal representatives, licensing inspectors, and other citizens of the Commonwealth to be knowledgeable of these requirements. The regulation, which is clearly written and easily understandable, is necessary to



---

## Periodic Reviews and Small Business Impact Reviews

---

interpret the law and protect the health, safety, and welfare of ALF residents and ADC participants.

The board recommends amending the regulation for technical and clarification purposes and to reduce regulatory burdens.

No comments were received during the public comment period. The regulation is not complex and does not duplicate or conflict with any federal or state law or regulation. The regulation will be amended in August 2024 to reflect revisions to the Code of Virginia. The regulation now needs to be amended in order to be updated for technical and clarification purposes and to reduce regulatory burdens. The amendments should have no economic impact on small businesses, as background checks are already required in the Code of Virginia.

Contact Information: Samantha Fogt, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 845-0308, or email [samantha.fogt@dss.virginia.gov](mailto:samantha.fogt@dss.virginia.gov).

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### FAIR HOUSING BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Fair Housing Board intends to consider amending **18VAC62-20, Fair Housing Certification Regulations**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022). The regulation provides for the education-based certification of persons subject to the Virginia Fair Housing Law (§ 36-96.1 of the Code of Virginia) who are in the business of selling or renting dwellings, except for those individuals who are licensed by the Real Estate Board. The regulation also provides for the approval of proprietary schools and fair housing courses. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) ensuring the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with any other changes determined to be necessary and appropriate.

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

Statutory Authority: § 54.1-2344 of the Code of Virginia.

Public Comment Deadline: August 14, 2024.

Agency Contact: Anika Coleman, Executive Director, Fair Housing Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email [fairhousing@dpor.virginia.gov](mailto:fairhousing@dpor.virginia.gov).

VA.R. Doc. No. R24-7820; Filed June 26, 2024, 11:28 a.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 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Emergency Regulation

**Title of Regulation:** 1VAC20-90. Campaign Finance and Political Advertisements (adding 1VAC20-90-40).

**Statutory Authority:** §§ 24.2-103 and 24.2-956 of the Code of Virginia.

**Effective Dates:** June 28, 2024, through December 27, 2025.

**Agency Contact:** Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email [ashley.coles@elections.virginia.gov](mailto:ashley.coles@elections.virginia.gov).

#### Preamble:

*Pursuant to § 2.2-4011 A of the Code of Virginia, the State Board of Elections determined that these changes are necessitated by an emergency situation, consulted with the Attorney General, and received approval from the Governor to promulgate emergency regulations to address the emergency.*

*The purpose of the action is to, pursuant to Chapter 557 of the 2020 Acts of Assembly, guarantee that disclosure statements on certain political print media advertisements are displayed in a conspicuous manner and are proportionate to the size of the advertisement. The mandating statute allows a delayed effective date for the requirements of July 1, 2024, which requires emergency action in order to meet. The board is providing a further delayed enforcement of the new advertising standards until January 1, 2025. The requirements in the action are consistent with federal print media advertisement requirements established by the Federal Election Commission under 11 CFR § 110.11.*

*The action requires a disclosure statement on a political advertisement to (i) be a sufficient font size to be clearly readable by the recipient of the communication; (ii) be contained in a printed box set apart from the other contents of the communication; and (iii) have a reasonable degree of color contrast with the advertisement background.*

**1VAC20-90-40. Disclosure statement requirements; print media advertisements.**

A. The following standards apply to print media

advertisements under §§ 24.2-956 and 24.2-956.1 of the Code of Virginia.

B. Any disclosure statement required under either § 24.2-956 or 24.2-956.1 of the Code of Virginia must be presented in a clear and conspicuous manner to give the reader notice of the candidate, candidate campaign committee, person, or political committee who paid for and, where required, who authorized the communication. A disclosure statement is not clear and conspicuous if it is difficult to read or if the placement is easily overlooked.

C. The disclosure statement must be of sufficient type size to be clearly readable by the recipient of the communication. A disclosure statement in 12-point type size satisfies the requirements of this subsection when it is used for signs, posters, flyers, newspapers, magazines, or other printed materials that measure no more than 24 inches by 36 inches.

D. The disclosure statement must be contained in a printed box set apart from the other contents of the communication.

E. The disclosure statement must be printed with a reasonable degree of color contrast between the background and the disclosure statement. A disclosure statement satisfies the color contrast requirement of this subsection if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclosure statement is no less than the color contrast between the background and the largest text used in the communication.

F. The disclosure statement need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

G. A communication that would require a disclosure statement, if distributed separately, that is included in a package of materials, must contain the required disclosure statement.

VA.R. Doc. No. R21-6850; Filed June 18, 2024, 6:35 a.m.

#### Proposed Regulation

**Title of Regulation:** 1VAC20-90. Campaign Finance and Political Advertisements (adding 1VAC20-90-40).

**Statutory Authority:** § 24.2-103 of the Code of Virginia.

#### Public Hearing Information:

August 20, 2024 - 1 p.m. - General Assembly Building, 201 North Ninth Street, Third Floor, Senate Room A, Richmond, VA 23219.

---

# Regulations

---

Public Comment Deadline: September 13, 2024.

Agency Contact: Ashley Coles, Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email [ashley.coles@elections.virginia.gov](mailto:ashley.coles@elections.virginia.gov).

Basis: Section 24.2-103 of the Code of Virginia authorizes the State Board of Elections to make rules and regulations and issue instructions to promote the proper administration of election law. Section 24.2-956 of the Code of Virginia provides requirements for print media advertisements sponsored by a candidate campaign committee.

Purpose: This regulation sets standards for the disclosure statements on print advertisements sponsored by a candidate campaign committee or by a person or political committee other than the candidate campaign committee. Print advertisements from these parties must have disclosure statements that are clear and conspicuous.

Substance: This regulatory action seeks to establish requirements for disclosure statements to ensure they are clear and conspicuous. These requirements include that (i) a disclaimer must be a sufficient font size to be clearly readable by the recipient of the communication. For an advertisement that is 24 x 36 inches or smaller, 12-point font size meets this requirement; (ii) a disclosure statement must be contained in a printed box set apart from the other contents of the communication; and (iii) a disclosure statement must have a reasonable degree of color contrast with the advertisement's background. Parties can meet this requirement by placing black print on a white background or if the degree of contrast between a disclosure statement and an advertisement's background is no less than the contrast between the background and the largest text on the advertisement.

Issues: An advantage of the regulation to the public is that disclosure statements on printed campaign materials will be more visible and will allow voters to see more clearly who has paid for the material. This regulation provides a clearer standard for the public from which to make a complaint. A disadvantage of the regulation for candidates for public offices, who are also members of the public, is that disclosure statements will need to be updated on printed campaign materials, which may be a financial burden to candidates and campaigns as older printed campaign materials will either need to be altered or discarded. The promulgation of this regulation will give more guardrails and instructions to candidates and their campaigns regarding the requirements for printed campaign material disclosure statements.

An advantage of the regulation for general registrars and local electoral boards, representatives of the Commonwealth, is that local election officials will have a clearer rule for disclosure statements on printed campaign materials. When a candidate or voter comes to the general registrar's office to ask about disclosure statements, general registrars will have a clear answer and be able to direct that person to a specific regulation with specific rules. An advantage of the regulation for the

Department of Elections is that the department will have a clearer standard for print media disclosure statements when deciding whether a candidate or campaign has violated the requirements of Stand By Your Ad. A potential disadvantage of the regulation for the department is that it may increase the number of complaints received from the public.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 557 of the 2020 Acts of Assembly,<sup>2</sup> the State Board of Elections (board) proposes to establish disclosure standards for political campaign advertisements for statewide and local offices that are proportionate to the size of the print media.

Background. This regulation governs election campaign finances and political advertisements for the General Assembly as well as local and constitutional offices. In 2020, Chapter 557 repealed the requirement that print media disclosures be displayed in a minimum font size of seven-point and tasked the board with establishing new standards that such disclosures be displayed instead in a font size proportionate to the size of the advertisement. According to § 24.2-955.1 of the Code of Virginia, "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, websites, electronic mail, nonvideo or nonaudio messages placed or promoted for a fee on an online platform, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. Also, the print media subject to the proposed standards include advertisements sponsored by a candidate, a candidate campaign committee, a person, or a political committee. The legislative mandate requires such standards to be promulgated no later than July 1, 2021, with enforcement delayed until January 1, 2024. However, print media advertisements paid for or distributed prior to July 1, 2024, will not be subject to the standards established by this action as per the mandate.

Estimated Benefits and Costs. Generally, the proposed language requires that the disclaimer must be a sufficient font size to be clearly readable by the recipient of the communication. For an advertisement that is 24 x 36 inches or smaller, the board proposes that 12-point font size meets this requirement; that the disclosure statement must be contained in a printed box set apart from the other contents of the communication; and that the disclosure statement must have a reasonable degree of color contrast with the advertisement's

background. According to the board, these proposed standards are consistent with federal print media advertisement requirements established under 11 CFR § 110.11.

The primary benefit of the proposal is that disclosure statements would be more visible and allow voters to see more clearly who has paid for the material, thereby improving the accessibility of the information. The standards should also be helpful for the Department of Elections staff and local election officials to inform candidates about what is expected and where that information can be found. In addition, the standards should help when determining whether a candidate or a campaign has violated the requirements.

On the other hand, since the proposed size of the disclosure statement would be proportional to the size of the advertisement, and previously the Code of Virginia specified a minimum font size of seven-point, it is more than likely some of the printed materials that exist now would be out of compliance with the proposed standards. In order to accommodate campaigns with such existing materials, the legislation allows the use of printed media paid or distributed before July 1, 2024, providing a six-month grace period given the delayed enforcement date of January 1, 2024. However, the proposed standards are unlikely to be finalized before that time and some campaigns may not have enough time to adjust their print materials to bring them into compliance. To address that possibility, the board states it will consider extending the exemption period until the effective date of the regulation to ensure due process for individuals obtaining materials after July 1, 2024, but before the requirements are promulgated and published, provided there is a record of when the materials were produced to ensure that there is evidence that print materials were, in fact, paid for or distributed before the deadline. Thus, depending on the board's discretion, it appears the campaigns may be expected to comply with the proposed standards when they become final, if that time is after July 1, 2024. It is worth noting that even if the board delays the exemption period to the publication date of the final regulation, campaigns would lose the six-month grace period the legislation provided.

It is common for printed materials to be used from campaign to campaign, especially in the case of incumbents or primary election winners who go on to run in the general election. Thus, there is the possibility that some print materials that could have been used previously would require a design adjustment if they have not yet been printed, and some existing materials already printed may have to be discarded if the campaign cannot produce evidence for a compliant payment or distribution date acceptable to the board. If the board provides an extension until the proposed action becomes final, the print materials paid for or distributed after July 1, 2024, but before the regulation becomes final, could be used and that flexibility would allow campaigns to avoid otherwise potential costs. However, without the six-month grace period envisioned by the legislation, some campaigns may continue to pay for or distribute some non-compliant print materials beyond the

publication of the final standards due to shorter notice. To the extent this happens, such campaigns may have to dispose, reprint, or fix such materials, to make them compliant if possible.

For example, if a mistake is found on smaller materials such as signs or pamphlets, campaigns would often make stickers to be placed on the printed material to correct the mistake. This approach could be used to add a compliant disclosure statement to some of the existing non-compliant print materials. In such cases, the compliance cost would be relatively smaller. According to the board, 500 sheets of white sticker labels, with 10 labels per sheet or 5,000 labels total, costs on average \$60. In other cases, an easy fix may not be feasible, and costs vary based on the type, quality, and amount of materials. For instance, one corrugated plastic 18 x 24 sign costs on average \$25. Poly bag campaign signs of the same size are cheaper and are easier to buy in bulk. Doorhangers cost on average \$200 for a bulk order of 500. A large billboard can cost several thousand dollars per billboard and the cost would increase based on the amount of time the billboard remains.

In addition to possible re-printing costs, violation of the disclosure standards is subject to a \$100 fine for first-time violations and a \$300 fine thereafter for statewide and General Assembly offices; and a \$50 fine for first-time violations and \$100 fine thereafter for local or constitutional offices. According to the board, a total of \$3,175 in fees were collected in 2022 from such violations. While there is no data to assess if the proposed changes would add to the violations or reduce them, the loss of a six-month grace period would increase the likelihood of a campaign facing such a fine.

In summary, provided the board extends the exemption period beyond July 1, 2024, until the proposed standards become final so that campaigns are not found out of compliance as of that date, and thus have some time to bring their print materials in compliance with the regulation, some of the potential compliance costs resulting from the destruction of otherwise usable print materials would be avoided. However, if the board does not extend the exemption period for an additional six months as intended by the General Assembly, the materials that may have to be destroyed during the six months after the final regulation becomes effective would represent a cost to the campaigns that results from this regulatory action rather than the legislation.

**Businesses and Other Entities Affected.** The board reports that the proposed disclosure standards would currently affect 3,200 committees. However, the number of committees can increase to about 5,000 during heavy years such as in 2023 when both houses of the General Assembly were on the ballot as well as many local offices. No entity appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits

---

# Regulations

---

exceed the costs for all entities combined.<sup>4</sup> As noted, the cost of any print material that would have to be destroyed during the six months after the final regulation becomes effective would represent a cost to the campaigns on account of this regulatory action, which would be an adverse impact on campaigns. However, currently it is not known whether the board would or would not allow such a grace period.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendments do not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> According to the board, the likely impact on localities is that general registrars and local electoral boards would be able to quickly cite a regulation for print media to candidates and voters who have questions about disclosure statements. Thus, the proposal does not introduce costs for local governments, nor does it disproportionately affect them.

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

Effects on the Use and Value of Private Property. No effects on the use and value of private property nor on real estate development costs are expected.

---

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?201%2Bful%2BCHAP0557>.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>5</sup> Pursuant to § 2.2-4007.04, 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."

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may

have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "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.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*The proposed amendments require a disclosure statement on a political advertisement to (i) be a sufficient font size to be clearly readable by the recipient of the communication; (ii) be contained in a printed box set apart from the other contents of the communication; and (iii) have a reasonable degree of color contrast with the advertisement background.*

**1VAC20-90-40. Disclosure statement requirements; print media advertisements.**

A. The following standards apply to print media advertisements under §§ 24.2-956 and 24.2-956.1 of the Code of Virginia.

B. Any disclosure statement required under either § 24.2-956 or 24.2-956.1 of the Code of Virginia must be presented in a clear and conspicuous manner to give the reader notice of the candidate, candidate campaign committee, person, or political committee who paid for and, where required, who authorized the communication. A disclosure statement is not clear and conspicuous if it is difficult to read or if the placement is easily overlooked.

C. The disclosure statement must be of sufficient type size to be clearly readable by the recipient of the communication. A disclosure statement in 12-point type size satisfies the requirements of this subsection when it is used for signs, posters, flyers, newspapers, magazines, or other printed materials that measure no more than 24 inches by 36 inches.

D. The disclosure statement must be contained in a printed box set apart from the other contents of the communication.

E. The disclosure statement must be printed with a reasonable degree of color contrast between the background and the disclosure statement. A disclosure statement satisfies the color contrast requirement of this subsection if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclosure statement is no less than the color contrast between the background and the largest text used in the communication.

F. The disclosure statement need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

G. A communication that would require a disclosure statement, if distributed separately, that is included in a package of materials, must contain the required disclosure statement.

VA.R. Doc. No. R21-6850; Filed June 24, 2024, 11:25 a.m.

## DEPARTMENT OF GENERAL SERVICES

## Final Regulation

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

**Title of Regulation:** 1VAC30-41. Regulation for the Certification of Laboratories Analyzing Drinking Water (amending 1VAC30-41-55).

**Statutory Authority:** §§ 2.2-1102 and 2.2-1105 of the Code of Virginia; 42 USC § 300f et seq.

**Effective Date:** August 14, 2024.

**Agency Contact:** Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

**Summary:**

*The amendments (i) update to July 1, 2023, the incorporation by reference of 40 CFR Part 141 and 40 CFR Part 143; and (ii) incorporate by reference alternative test methods as published in 89 FR 5780 through 5794 on January 30, 2024, and corrected in 89 FR 7624 through 7625 on February 5, 2024.*

**1VAC30-41-55. Incorporation by reference - ~~Code of Federal Regulations~~ federal regulations.**

A. The sampling, analytical methodology, and laboratory certification requirements of 40 CFR 141 and 40 CFR 143 in effect as of July 1, ~~2018~~ 2023, are incorporated by reference into this chapter.

B. The alternative test methods published at 89 FR 5780 through 5794 on January 30, 2024, and the corrections to those alternative test methods published at 89 FR 7624 through 7625 on February 5, 2024, are incorporated by reference into this chapter.

C. The specific sampling, analytical methodology, and laboratory certification requirements incorporated by reference are listed as follows by category for information purposes:

1. Inorganic chemistry: 40 CFR 141.23, 40 CFR 141.89, and 40 CFR 141.131.
2. Organic chemistry: 40 CFR 141.24 and 40 CFR 141.131.

3. Microbiology: 40 CFR 141.21, 40 CFR 141.74, 40 CFR 141.174, 40 CFR 141.402(c)(2), 40 CFR 141.704, 40 CFR 141.705, and 40 CFR 141.852. 40 CFR 136.3(a) for E. coli requirements under 40 CFR 141.704.

4. Radiochemistry: 40 CFR 141.25.

5. Alternative testing methods: 40 CFR Part 141, Subpart C, Appendix A.

6. Test methods specified for secondary maximum contaminant levels: 40 CFR 143.4.

~~C.~~ D. The exceptions to the requirements for laboratory certification in 40 CFR 141.28, 40 CFR 141.74(a), 40 CFR 141.89(a)(1), 40 CFR 141.131(b)(3), and 40 CFR 141.131(c)(3) are incorporated by reference into this chapter.

VA.R. Doc. No. R24-7825; Filed June 21, 2024, 2:15 p.m.

## TITLE 2. AGRICULTURE

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

## Fast-Track Regulation

**Title of Regulation:** 2VAC5-280. Virginia Grade Standards for Slaughter and Feeder Lambs (repealing 2VAC5-280-10, 2VAC5-280-20).

**Statutory Authority:** § 3.2-4302 of the Code of Virginia

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** August 14, 2024.

**Effective Date:** August 29, 2024.

**Agency Contact:** Tracy Fitzsimmons, Program Manager, Livestock Marketing Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (540) 209-9143, FAX (540) 432-1357, TDD (800) 828-1120, or email [tracy.fitzsimmons@vdacs.virginia.gov](mailto:tracy.fitzsimmons@vdacs.virginia.gov).

**Basis:** Section 3.2-4302 of the Code of Virginia authorizes the Commissioner of Agriculture and Consumer Services to adopt regulations governing the voluntary use of grades for agricultural products that will indicate quality, condition, and other characteristics.

**Purpose:** When the Virginia Department of Agriculture and Consumer Services (VDACS) receives a request from industry to evaluate lamb, the agency uses the United States Department of Agriculture's (USDA's) grading standards to do so. As such, the department has determined that the regulation is no longer needed.

**Rationale for Using Fast-Track Rulemaking Process:** No mandate prompted the repeal of this regulation. The regulation establishes criteria by which to evaluate lambs; however,

---

# Regulations

---

VDACS now uses standards adopted by USDA to evaluate lambs. As such, the department has determined that this regulation is no longer needed. The repeal of this regulation is expected to be noncontroversial. When the department contacted industry stakeholders during the summer of 2023 to inquire into whether the industry would have concerns with the repeal of this regulation, industry stakeholders did not present any concerns to the department.

**Substance:** This regulatory action will repeal Virginia Grade Standards for Slaughter and Feeder Lambs, which establishes criteria by which to evaluate the quality of slaughter and feeder lambs.

**Issues:** As the industry no longer relies on this regulation, the repeal of this regulation does not advantage or disadvantage the public. There is an advantage to VDACS to repeal this regulation, as the department will no longer need to maintain or review this unused regulatory text. The repeal of this regulation does not disadvantage the department.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Commissioner of the Department of Agriculture and Consumer Services proposes to repeal Virginia Grade Standards for Slaughter and Feeder Lambs (2VAC5-280) in its entirety.

Background. The Virginia Grade Standards for Slaughter and Feeder Lambs contain criteria by which the Virginia Department of Agriculture and Consumer Services (VDACS) formally used to evaluate lambs. However, VDACS now uses standards adopted by the U.S. Department of Agriculture (USDA) to evaluate lambs.<sup>2</sup> The evaluation of lambs is an optional service provided by the agency. The agency has determined that it is not necessary for these voluntary standards to have the force of law, and thus now proposes their repeal. Links to the USDA standards are available on the VDACS website.<sup>3</sup>

VDACS grades sheep and lambs monthly at one market and seasonally at two other markets. Additionally, the agency receives requests to grade sheep or lambs at special events, including established days on which producers may bring lambs to sell at a buying station as well as Future Farmers of America or 4-H Market Animal Shows. VDACS receives approximately 15 of these types of requests a year.

Estimated Benefits and Costs. VDACS contacted industry stakeholders during the summer of 2023 to inquire into whether the industry would have concerns with the repeal of this regulation. The stakeholders did not present any concerns

to the agency. Additionally, repealing the regulation would not affect what occurs in practice. Thus, the repeal of this regulation would not likely have a substantive impact beyond reducing the likelihood that the public may be misled concerning the standards in use.

**Businesses and Other Entities Affected.** As described, the repeal of the regulation would not likely have a substantive impact. If anyone would be affected, it would be sheep farmers and livestock markets.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>5</sup> As described, the repeal of the regulation would not likely increase cost or reduce benefit for any entity. Thus, no adverse impact is indicated.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>** The proposed repeal of the regulation does not appear to adversely affect small businesses.

**Localities<sup>8</sup> Affected.<sup>9</sup>** The Counties of Augusta, Rockingham, Washington, and Highland are among the areas of the Commonwealth with the largest inventory of sheep and lambs. Nevertheless, as described, the repeal of the regulation would not likely have substantive impact.

**Projected Impact on Employment.** The proposed repeal of the regulation does not appear to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of the regulation does not appear to affect the use and value of private property or real estate development costs.

---

<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://www.ams.usda.gov/grades-standards/slaughter-lambs-yearlings-and-sheep-grades-and-standards>.

<sup>3</sup> See <https://www.vdacs.virginia.gov/markets-and-finance-market-news-livestock-grading.shtml>.

<sup>4</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.



<sup>6</sup> Pursuant to § 2.2-4007.04, 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."

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "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.

<sup>9</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Agriculture and Consumer Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The amendments repeal Virginia Grade Standards for Slaughter and Feeder Lambs (2VAC5-280) as the regulation has been determined to be unnecessary because the agency relies on federal lamb grading standards.*

VA.R. Doc. No. R24-7705; Filed June 18, 2024, 12:03 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 2VAC5-290. Breeder Sheep Grade Standards (repealing 2VAC5-290-10 through 2VAC5-290-50).

**Statutory Authority:** § 3.2-4302 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** August 14, 2024.

**Effective Date:** August 29, 2024.

**Agency Contact:** Tracy Fitzsimmons, Program Manager, Livestock Marketing Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (540) 209-9143, FAX (540) 432-1357, TDD (800) 828-1120, or email [tracy.fitzsimmons@vdacs.virginia.gov](mailto:tracy.fitzsimmons@vdacs.virginia.gov).

**Basis:** Section 3.2-4302 of the Code of Virginia authorizes the Commissioner of Agriculture and Consumer Services to adopt regulations governing the voluntary use of grades for agricultural products that will indicate quality, condition, and other characteristics.

**Purpose:** As the Virginia Department of Agriculture and Consumer Services (VDACS) has not received a request from industry to evaluate breeder sheep in recent years, VDACS has determined that this regulation is no longer needed.

**Rationale for Using Fast-Track Rulemaking Process:** No mandate prompted the repeal of this regulation. The regulation establishes criteria by which to appraise breeding stock's suitability for breeding purposes and the desirability of their progeny; however, VDACS has not received a request from industry to evaluate breeder sheep in recent years. As such, the department has determined that this regulation is no longer needed. The repeal of this regulation is expected to be noncontroversial. When the department contacted sheep industry stakeholders during the summer of 2023 to inquire into whether the industry would have concerns with the repeal of this regulation, sheep industry stakeholders did not present any concerns to the department.

**Substance:** This regulatory action will repeal Breeder Sheep Grade Standards, which establishes criteria by which to appraise breeding stock's suitability for breeding purposes and the desirability of their progeny.

**Issues:** As the industry no longer relies on this regulation, the repeal of this regulation does not advantage or disadvantage the public. There is an advantage to VDACS to repeal this regulation, as the department will no longer need to maintain or review this unused regulatory text. The repeal of this regulation does not disadvantage the department.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Commissioner of the Department of Agriculture and Consumer Services proposes to repeal Breeder Sheep Grade Standards (2VAC5-290) in its entirety.

Background. The Breeder Sheep Grade Standards establish criteria by which the Virginia Department of Agriculture and Consumer Services (VDACS) is to appraise breeding stock's suitability for breeding purposes and the desirability of their progeny. The appraisal service is not required. VDACS has not received a request from industry to evaluate breeder sheep in recent years. As such, the agency has determined that the regulation is no longer needed.

Estimated Benefits and Costs. VDACS contacted sheep industry stakeholders during the summer of 2023 to inquire into whether the industry would have concerns with the repeal of this regulation. Sheep industry stakeholders did not present any concerns to the agency. Thus, the repeal of this regulation would not likely have a substantive impact.

Businesses and Other Entities Affected. As described, the repeal of the regulation would not likely have a substantive impact. If anyone would be affected, it would be sheep farmers.<sup>2</sup>

# Regulations

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As described, the repeal of the regulation would not likely increase cost or reduce benefit for any entity. Thus, no adverse impact is indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed repeal of the regulation does not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The Counties of Augusta, Rockingham, Washington, and Highland are among the areas of the Commonwealth with the largest inventory of sheep. Nevertheless, as described, the repeal of the regulation would not likely have substantive impact.

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

Effects on the Use and Value of Private Property. The proposed repeal of the regulation does not appear to affect the use and value of private property or real estate development costs.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>The number of sheep farmers was not provided by the agency.

<sup>3</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup>Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>5</sup>Pursuant to § 2.2-4007.04, 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."

<sup>6</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup>"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.

<sup>8</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

## Summary:

*The amendments repeal Breeder Sheep Grade Standards (2VAC5-290) because the department has not received a request from industry to evaluate breeder sheep in recent years.*

V.A.R. Doc. No. R24-7706; Filed June 18, 2024, 12:23 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-140. **Pertaining to Identification of Crab Pots, Peeler Pots, Eel Pots, and Fish Pots (amending 4VAC20-140-15, 4VAC20-140-25).**

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

**Effective Date:** July 5, 2024.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

## Summary:

*The amendments clarify the height required for identifying information on crab and eel pot buoys.*

### 4VAC20-140-15. Identification of eel pots.

Any person owning or using an eel pot, for which a commercial license is prescribed by law, shall display ~~his~~ that person's Marine Resources Commission identification number preceded by the letter "E" on each floating buoy or stake attached to each such eel pot; in a legible and visible manner and in figures of not smaller than one inch in height.

**4VAC20-140-25. Identification of crab pots and peeler pots.**

A. Any person placing, setting, or fishing crab pots in Virginia waters, for which a commercial license is prescribed by law, shall display ~~his~~ that person's Marine Resources Commission identification number, preceded by the letter "C," on each floating buoy or stake attached to each such crab pot, in a legible and visible manner and in figures of not smaller than one inch in height.

B. Any person placing, setting, or fishing peeler pots in Virginia waters, for which a commercial license is prescribed by law, shall display ~~his~~ that person's Marine Resources Commission identification number, preceded by the letter "P," on each floating buoy or stake attached to each such peeler pot, in a legible and visible manner and in figures of not smaller than one inch in height.

C. Except as provided in subsection D of this section, it shall be unlawful for any person to place numbers or letters on any crab pot or peeler pot buoy or stake that is in addition to the identification requirement described in subsection A or B of this section.

D. Any person who is legally licensed to crab pot or peeler pot in North Carolina or Maryland waters may also display identification required by those jurisdictions on the buoys or stakes attached to those crab pots or peeler pots while that person is placing, setting, or fishing those crab pots or peeler pots in Virginia waters.

E. Any identification shall be legally assigned or registered to that person, as described in subsection D of this section.

V.A.R. Doc. No. R24-7937; Filed June 25, 2024, 2:15 p.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: **4VAC20-270. Pertaining to Blue Crab Fishery (amending 4VAC20-270-20, 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-51, 4VAC20-270-55).**

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

Effective Date: July 5, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

Summary:

*The amendments (i) establish management measures, including season and bushel limits, for the 2024-2025 commercial crab fisheries and (ii) adjust the daily time limits for commercial harvest.*

**4VAC20-270-20. Sunday prohibition and limited exception for possession of male hard crabs.**

It shall be unlawful to take or ~~catch~~ harvest crabs for commercial purposes on Sunday. This section shall not apply to the baiting and setting of any hard crab pot or peeler pot, the harvest of peeler crabs by crab traps or peeler pots, or to the working of floats, pens, or onshore facilities for soft crab shedding operations. Any person licensed to harvest peeler crabs by peeler pot may harvest one bushel of male crabs from his peeler pots on Sunday strictly for the purpose of baiting ~~his~~ that person's peeler pots, and such crabs may not be sold.

**4VAC20-270-30. Daily time limits for commercial harvest.**

A. It shall be unlawful for any person licensed to catch and sell crabs taken by hard crab pot or peeler pot to take and harvest crabs from any hard crab pot or peeler pot, or to retrieve, bait, or set any hard crab pot or peeler pot, ~~except during the lawful daily time periods described in subsections A, B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 6 a.m. to 2 p.m. during the lawful seasons, as described in 4VAC20-270-40 A, except as described in subsections B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 5 a.m. to 1 p.m. during the months of May, June, July, and August, as described in 4VAC20-270-40 A, except as specified in subsections B, C, and D of this section. Hard crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in subsections A, B, and C of this section, may be set immediately following the end of lawful daily time period to one hour after the lawful daily time period ends except between 3 a.m. to 5 p.m. during the lawful season as described in 4VAC20-270-40 A.~~

~~B. Any licensed hard crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his hard crab pot or peeler pot, or to retrieve, bait, or set his hard crab pot or peeler pot during an alternate eight hour daily time limit. That alternative eight hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.~~

~~Nothing in this regulation shall prohibit any licensed hard crab pot or peeler pot fisherman, who has been granted an exception to the eight hour work schedule, on a medical basis, from using another licensed hard crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the hard crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further,~~

---

# Regulations

---

~~it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed hard crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any hard crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.~~

~~C. Any licensed hard crab pot or peeler pot fisherman who requests and obtains an alternate eight hour daily time limit permit shall be authorized to take and harvest crabs from his hard crab pot or peeler pot or to retrieve, bait, or set his hard crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, and November, the lawful daily time period described in subsection A of this section applies to any hard crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Licensed hard crab pot or peeler pot fishermen must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.~~

~~1. It shall be unlawful for two or more licensed hard crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight hour daily time limits are not identical.~~

~~2. Requests for an alternate eight hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.~~

~~3. Once any legal hard crab pot or peeler pot licensee obtains an alternate eight hour daily time limit permit, that permittee shall be legally bound by the alternate eight hour daily time limit as described in this subsection.~~

~~D. B.~~ The lawful daily time periods for the commercial harvest of crabs by hard crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when the commissioner determines that a pending weather event is sufficient cause for the removal of hard crab pots from the tidal waters of the Commonwealth.

## **4VAC20-270-40. Season limits.**

A. In ~~2023~~ 2024, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through December 16. In ~~2024~~ 2025, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be April 15 through October 15.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season as described in subsection A of this section.

C. It shall be unlawful for any person ~~knowingly~~ to knowingly place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December 17, ~~2023~~ 2024, through March 16, ~~2024~~ 2025. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4VAC20-460-25, in any tidal waters of Virginia from October 16, ~~2023~~ 2024, through April 14, ~~2024~~ 2025.

D. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

## **4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.**

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than three bushels of crabs.

B. From July 5, ~~2023~~ 2024, through October 31, ~~2023~~ 2024, and May 16, ~~2024~~ 2025, through July 4, ~~2024~~ 2025, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following hard crab pot license categories:

1. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 85 crab pots.

2. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 127 crab pots.

3. 18 bushels, or six barrels, of crabs if licensed for up to 170 crab pots.

4. 29 bushels, or nine barrels and two bushels, of crabs if licensed for up to 255 crab pots.

5. 47 bushels, or 15 barrels and two bushels, of crabs if licensed for up to 425 crab pots.

C. From November 1, ~~2023~~ 2024, through December 16, ~~2023~~ 2024, and March 17, ~~2024~~ 2025, through May 15, ~~2024~~ 2025, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. Eight bushels, or two barrels and two bushels, of crabs if licensed for up to 85 crab pots.

2. 11 bushels, or three barrels and two bushels, of crabs if licensed for up to 127 crab pots.

3. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 170 crab pots.

4. 22 bushels, or seven barrels and one bushel, of crabs if licensed for up to 255 crab pots.

5. 36 bushels, or 12 barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot ~~licensees~~ licensee or a bill of lading indicating each crab pot licensee's name, address, commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee who ~~possess~~ possesses that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyer's boat license and buy any crabs on any day.

**4VAC20-270-55. Minimum size limits.**

A. From ~~March 17~~ the beginning of the season as described in 4VAC20-270-40 through July 15, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler

crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through ~~November 30~~ the end of the season as described in 4VAC20-270-40, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through ~~November 30~~ the end of the season as described in 4VAC20-270-40, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton Counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of ~~his~~ the officer's choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R24-7938; Filed June 25, 2024, 2:16 p.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:** 4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (repealing 4VAC20-1140-10, 4VAC20-1140-20, 4VAC20-1140-30).

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

**Effective Date:** July 1, 2024.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

**Summary:**

*The amendments repeal Prohibition of Crab Dredging in Virginia Waters (4VAC20-1140) to allow the harvest of blue crabs from the winter commercial crab dredge fishing season in accordance with the provisions of § 28.2-707 of the Code of Virginia.*

VA.R. Doc. No. R24-7936; Filed June 25, 2024, 2:14 p.m.

---

# Regulations

---

## 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:** **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-40, 4VAC20-1270-60).**

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

**Effective Date:** June 30, 2024.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

**Summary:**

*Pursuant to Item 391 D of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the amendments establish a quota and license transfer system for the menhaden purse seine bait sector.*

**4VAC20-1270-40. Purse seine menhaden bait sector; limited entry criteria; individual transferable quota system; and season.**

A. To qualify for limited entry to the purse seine menhaden bait sector, the person or entity shall fulfill one of the following requirements:

1. Have held a purse seine license in 2011 and landed menhaden in Virginia in 2009, 2010, and 2011, while using purse seine gear to harvest menhaden in one of those three years; ~~and~~
2. ~~Provide~~ Have provided the Marine Resources Commission (commission) receipts and landings reports or other requested reports as proof of landings and gear usage to demonstrate that the criteria described in subdivision 1 of this subsection have been met; or
3. Have received a valid transfer of purse seine menhaden bait sector quota pursuant to subsection C of this section.

B. The commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee who meets the limited entry requirements in subsection A of this section. The quota for this sector will be allocated according to each qualified licensee's ~~rounded ITQ holder's individual~~ individual percentage share of the ~~average of the 2007 through 2011 menhaden landings~~ 2023 purse seine menhaden bait sector quota.

~~C. Each licensee qualified under the ITQ system may transfer quota to another licensee's ITQ upon approval of the commissioner.~~ Any person or entity with an individual percentage share of the purse seine menhaden bait sector quota, as provided in subsection B of this section, may transfer purse

seine menhaden bait sector quota to any person or entity. The transfer of purse seine menhaden bait sector quota by permanent percentage shareholders may be temporarily, within the same year only, or permanently transferred and shall be documented on a form provided by the commission, notarized by a lawful notary public, and approved by the Commissioner of Marine Resources (commissioner) or the commissioner's designee. Temporary percentage shareholders are not eligible to transfer purse seine menhaden bait sector quota to another entity or person except back to the original permanent shareholder the quota was received from.

D. Any person or entity with an individual percentage share of the purse seine menhaden bait sector quota, temporary or permanent, shall purchase a current Purse Seine Menhaden Bait Sector License before harvesting any purse seine menhaden bait sector quota. Only a person or entity with an individual percentage share of purse seine menhaden bait sector quota may purchase a Purse Seine Menhaden Bait Sector License.

E. It shall be unlawful for any person or entity without an individual share of the purse seine menhaden bait sector quota and a current Purse Seine Menhaden Bait Sector License to harvest any menhaden by purse seine for bait. It shall be unlawful for any Purse Seine Menhaden Bait Sector Licensee to harvest any menhaden from the purse seine menhaden bait sector once that licensee no longer possesses any unused purse seine menhaden bait sector quota for that year.

F. The season for vessels with a gross weight of less than 70 tons that use purse seine nets to take or catch menhaden for purposes other than use as fish meal or oil shall be from the first Monday in March up to, but not including, the first Monday in May.

**4VAC20-1270-60. Reporting requirements by menhaden fishery sector.**

A. Each licensee of any purse seine vessel who harvests menhaden shall complete a Captain's Daily Fishing Report on each non-weekend or non-holiday day that either purse seine sector is open for harvest. The Captain's Daily Fishing Report is produced by the National Marine Fisheries Service and provides preliminary estimates of harvest. Pursuant to § 28.2-204 of the Code of Virginia, those same licensees shall submit to the Marine Resources Commission (commission) the Captain's Daily Fishing Reports in addition to summarized weekly harvest reports that include vessel name and exact weight of menhaden landed, in pounds, by Wednesday of the following week.

1. Any menhaden landed by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports, shall be attributed to the purse seine menhaden reduction sector quota.

2. Once 97% of either purse seine sector's quota is projected and announced to have been taken, each licensee of that purse seine sector shall provide daily harvest totals to the commission's Interactive Voice Recording System.

B. The non-purse seine menhaden bait sector shall submit daily reports according to the schedule and reporting requirements established by 4VAC20-610.

VA.R. Doc. No. R24-7923; Filed June 25, 2024, 2:17 p.m.

**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Notice of Effective Date**

**Title of Regulation:** 9VAC25-260. Water Quality Standards (amending 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-470, 9VAC25-260-500.

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

On August 25, 2022, the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-470, and 9VAC25-260-500. These revisions relate to water quality criteria, use designations, antidegradation, and other policies related to water quality. The amendments were published in final form on [December 19, 2022, Volume 39, Issue 9 of the Virginia Register](#) to be effective upon filing notice of U.S. Environmental Protection Agency (EPA) approval with the Registrar of Regulations. The State Water Control Board has previously received a letter from Catherine A. Libertz, EPA Region III Water Division Director, dated April 14, 2023, approving all of the amendments except for an amendment to 9VAC25-260-140 B for freshwater aluminum criteria for the protection of aquatic life. These specific amendments, excluding the amendments relating to freshwater aluminum criteria, became effective on April 18, 2023.

By letter dated June 24, 2024, EPA has notified the State Water Control Board that it has completed its obligations under § 7 of the Endangered Species Act (16 USC § 1536) with respect to the freshwater aluminum criteria. EPA has approved the amendment in 9VAC25-260-140 B for freshwater aluminum. Notification of EPA's approval has been provided to the Registrar of Regulations, and the effective date for the amendments to 9VAC25-260-140 B for freshwater aluminum is June 26, 2024.

Copies are available online at <https://www.deq.virginia.gov/our-programs/water/water-quality/standards>, by calling 804-774-9180, or by written request or email request to the agency contact.

**Effective Date:** June 26, 2024.

**Agency Contact:** David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, FAX (804) 698-4178, or email [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).

VA.R. Doc. No. R21-6555; Filed June 26, 2024, 11:00 a.m.

**Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

**Title of Regulation:** 9VAC25-875. Virginia Erosion and Stormwater Management Regulation.

**Agency Contact:** Rebecca Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email [rebecca.rochet@deq.virginia.gov](mailto:rebecca.rochet@deq.virginia.gov).

FORMS (9VAC25-875)

[EPA Application Form 1 General Information NPDES Permitting Program \(rev. 3/2019\)](#)

~~[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Registration Statement 2019](#)~~

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Registration Statement 2024 \(rev. 3/2024\)](#)

VA.R. Doc. No. R24-7930; Filed June 21, 2024, 10:44 a.m.

**Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

**Title of Regulation:** 9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities.

---

# Regulations

---

Agency Contact: Rebecca Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email [rebecca.rochet@deq.virginia.gov](mailto:rebecca.rochet@deq.virginia.gov).

FORMS (9VAC25-880)

~~Annual Standards & Specification (AS&S) Entity Information Sheet (rev. 4/2019)~~

~~Construction Activity Operator Permit Fee Form 2019 (rev. 4/2019)~~

~~Notice of Termination 2019 (rev. 4/2019)~~

~~Registration Statement 2019 (rev. 11/2020)~~

~~Transfer of Ownership Agreement 2019 (rev. 4/2019)~~

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Notice of Termination 2024 \(rev. 5/2024\)](#)

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Permit Fee Form 2024 \(rev. 5/2024\)](#)

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Registration Statement 2024 \(rev. 3/2024\)](#)

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Transfer of Ownership Agreement 2024 \(Rev 5/2024\)](#)

[Virginia Department of Environmental Quality Standards and Specification \(S&S\) Entity Information Sheet \(rev. 5/2024\)](#)

VA.R. Doc. No. R24-7981; Filed June 24, 2024, 12:57 p.m.

---

◆ ————— ◆

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

## Title of Regulation: **18VAC65-20. Regulations Governing the Practice of Funeral Services.**

Agency Contact: Matt Novak, Policy and Economic Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 914-0907, or email [matthew.novak@dhp.virginia.gov](mailto:matthew.novak@dhp.virginia.gov).

FORMS (18VAC65-20)

[Checklist, Instructions, and Application for a Funeral License by Examination or Endorsement \(rev. 4/2024\)](#)

~~[Funeral Service Licensee Reinstatement Application \(rev. 3/2023\)](#)~~

[Funeral Service Reinstatement Application \(rev. 6/2024\)](#)

[Application for Reactivation \(Inactive to Active\) of Funeral Service, Funeral Director, or Embalmer License \(rev. 1/2024\)](#)

[Request for Verification of a Virginia Funeral License \(rev. 11/2019\)](#)

[Checklist and Instructions for Courtesy Card Application \(rev. 3/2023\)](#)

[Checklist and Instructions for Surface Transportation and Removal Service Registration Application \(rev. 3/2023\)](#)

[Crematory Registration Application \(rev. 8/2023\)](#)

[Checklist and Instructions for Continuing Education Providers \(rev. 3/2021\)](#)

[Instructions for Completing the Continuing Education Summary Form for the Virginia Board of Funeral Directors and Embalmers \(rev. 8/2016\)](#)

[Instructions for Continuing Education Providers Adding Additional Courses \(rev. 3/2021\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 7/2020\)](#)

[Continued Competency Activity and Assessment Form \(rev. 7/2012\)](#)

[Funeral Service New Establishment Application \(rev. 3/2023\)](#)

[Funeral Service Establishment/Branch Application \(rev. 3/2023\)](#)

[Funeral Service Branch Establishment Application \(rev. 3/2023\)](#)

[Funeral Service Establishment/Branch Change Application \(rev. 3/2023\)](#)

[Funeral Establishment or Branch Change of Manager Application \(rev. 3/2023\)](#)

[Request for Reinspection due to Structural Change to Preparation Room \(rev. 7/2020\)](#)

[Waiver of Full-Time Manager \(rev. 3/2023\)](#)



[Funeral Service Establishment Reinstatement Application \(rev. 3/2023\)](#)

[Courtesy Card Reinstatement Application \(rev. 3/2023\)](#)

[Surface Transportation and Removal Services Reinstatement Application \(rev. 3/2023\)](#)

[Presentation Request Form \(rev. 7/2020\)](#)

[Name/Address Change Form \(rev. 2/2016\)](#)

[Appendix I. General Price List \(rev. 10/2019\)](#)

[Appendix II. Casket Price List, Outer Burial Container Price List \(rev. 10/2019\)](#)

[Appendix III. Itemized Statement of Funeral Goods and Services Selected \(rev. 10/2019\)](#)

VA.R. Doc. No. R24-7979; Filed June 18, 2024, 2:15 p.m.

**BOARD OF MEDICINE**

**Fast-Track Regulation**

**Title of Regulation:** **18VAC85-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC85-15-20).**

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

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** August 14, 2024.

**Effective Date:** August 29, 2024.

**Agency Contact:** Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 915-0382, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

**Basis:** Regulations of the Board of Medicine are promulgated under § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

**Purpose:** The board does not discipline practitioners for defaulting on federal-guaranteed or state-guaranteed educational loans or work-conditional scholarship or grants. Therefore, this provision is not needed to protect the health, safety, and welfare of citizens.

**Rationale for Using Fast-Track Rulemaking Process:** This action is expected to be noncontroversial and is appropriate for the fast-track rulemaking process because the amendment eliminates an unused portion of the regulation.

**Substance:** The regulatory action removes the ability of the board to delegate cases to an agency subordinate related to default on a federal-guaranteed or state-guaranteed educational loan or on a work-conditional scholarship or grant.

**Issues:** There are no primary advantages or disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board of Medicine (board) proposes to remove defaulting on an educational loan as a type of case for which it may delegate to an agency subordinate the authority to conduct an informal fact-finding proceeding.

Background. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia,<sup>2</sup> the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action. The current regulation states that the following six types of cases may be delegated to an agency subordinate:

1. The practitioner profile system;
2. Continuing competency;
3. Advertising;
4. Compliance with board orders;
5. Default on a federal or state-guaranteed educational loan or on a work-conditional scholarship or grant for the cost of a health professional education; or
6. Failure to provide medical records.

The board proposes to remove subdivision 5. This change is in response to a 2022 periodic review<sup>3</sup> and the provisions of Chapter 170 of the 2018 Acts of Assembly, which limited the ability of certain agencies to take action regarding a practitioner's license solely on the basis of such a default.<sup>4</sup> According to the Department of Health Professions (DHP), current agency staff (including those who have been there more than 20 years) are not aware of the board having ever taken disciplinary action for loan default in practice.

Estimated Benefits and Costs. As described, the board does not in practice discipline practitioners for defaulting on loans of any kind. Therefore, removing the provision on defaulting would have no impact in practice. It may be moderately beneficial in that readers of the regulation would not be misled into thinking that the board did discipline practitioners for defaulting on loans.

Businesses and Other Entities Affected. The proposed amendment affects readers of the regulation and DHP staff. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost

---

# Regulations

---

or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As the proposal does not increase cost or reduce revenue, no adverse impact is indicated.

Small Businesses<sup>6</sup> Affected.<sup>7</sup> The proposed amendment does not adversely affect small businesses.

Localities<sup>8</sup> Affected.<sup>9</sup> The proposed amendment does not disproportionately affect any locality or affect costs for local governments.

Projected Impact on Employment. The proposed amendment does not affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property or real estate development costs.

---

<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://law.lis.virginia.gov/vacode/54.1-2400/>.

<sup>3</sup> See <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2146>.

<sup>4</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=ch170>.

<sup>5</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>6</sup> Pursuant to § 2.2-4007.04, 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."

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "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.

<sup>9</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

*The amendment removes the ability of the board to delegate a case to an agency subordinate that is related to default on a federal-guaranteed or state-guaranteed educational loan or work-conditional scholarship or grant for the cost of a health professional education.*

**18VAC85-15-20. Criteria for delegation.**

Cases that may be delegated to an agency subordinate shall be limited to those involving:

1. The practitioner profile system;
2. Continuing competency;
3. Advertising;
4. Compliance with board orders; or
5. ~~Default on a federal or state-guaranteed educational loan or on a work-conditional scholarship or grant for the cost of a health professional education; or~~
6. Failure to provide medical records.

VA.R. Doc. No. R24-7376; Filed June 25, 2024, 3:57 p.m.

## BOARD OF PSYCHOLOGY

### Fast-Track Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-54, 18VAC125-20-65).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 14, 2024.

Effective Date: August 29, 2024.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

Basis: Regulations of the Board of Psychology are promulgated under § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: The impetus for this action is the board's desire to ensure more individuals can apply for licensure as a clinical psychologist in Virginia. This increases the number of available psychologists in the Commonwealth, which protects the public health, safety, and welfare.

Rationale for Using Fast-Track Rulemaking Process: This action should be noncontroversial because it reduces barriers to licensure.

Substance: These amendments allow school psychologists who have obtained a doctorate to obtain a license in clinical psychology in Virginia. Additionally, the changes allow a resident studying school psychology to be supervised by a clinical psychologist.

Issues: The primary advantage to the public is a potentially increased workforce of clinical psychologists. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board of Psychology (board) proposes to make two discretionary amendments that would reduce barriers to licensure as a clinical psychologist or school psychologist in Virginia.

Background. A 2022 report by the Virginia Health Care Foundation highlighted the ways in which the COVID-19 pandemic exacerbated the shortage of behavioral health services in the Commonwealth.<sup>2</sup> The Department of Health Professions (DHP) reports that this Board (like other behavioral health boards) is trying to reduce barriers to licensure while ensuring that licensed professionals are adequately trained for the level of services they provide. At its September 2022 meeting, the board's Regulatory Committee recommended amending the regulations to allow a doctoral-level school psychologist to be licensed as a clinical psychologist to reduce barriers to licensure for that profession.<sup>3</sup> In addition, the board discussed the need to change the regulations to allow for individuals seeking licensure as a school psychologist to be supervised by a clinical psychologist.

The regulation provides for three licensure categories (clinical, applied, and school psychologists) and each category has different requirements. Currently, the regulation requires clinical psychologists to hold a doctorate in clinical or counseling psychology, and school psychologists to hold either a master's degree in school psychology or a master's degree from a psychology program that meets certain criteria listed in section 56 of 18VAC125-20. DHP reports that some school psychologists obtain a doctorate in school psychology, and that the doctoral-level programs in clinical, counseling, and school psychology provide very similar training. Accordingly, the board seeks to allow individuals with a doctorate in school psychology to become licensed as clinical psychologists. Specifically, the board proposes to amend section 54

(Education requirements for clinical psychologists) to include school psychology under the requirement that an applicant shall "hold a doctorate in clinical or counseling psychology from a professional psychology program" that meets the accreditation requirements specified in that section.<sup>4</sup> The proposed amendments would also include school psychology in the educational programs specified in subsection D of that section.

Further, the board proposes to amend 18VAC125-20-65 (Residency) so that a resident seeking licensure as a school psychologist may be supervised by a clinical psychologist. This would partially relax the current requirement that supervisors be licensed to practice in the same licensure category in which the resident is seeking licensure, and increase flexibility for candidates seeking a school psychologist license.

Estimated Benefits and Costs. Starting June 23, 2028, the proposed changes would also benefit individuals with doctorates in school psychology by allowing them to become licensed as clinical psychologists. In the interim, this proposed change would benefit individuals for whom obtaining a doctorate in school psychology would be easier than obtaining a doctorate in clinical or counseling psychology (which may vary depending on their master's degree and the programs available to them) by providing them with a pathway to licensure as a clinical psychologist once they complete their doctorate. The proposed changes would also benefit individuals currently seeking licensure as school psychologists by providing more flexibility in finding acceptable supervisors to meet their residency requirement. Lastly, employers of licensed clinical and school psychologists as well as the patients they serve would benefit to the extent that the proposed changes increase the supply of licensed professionals. Educational institutions that meet the accreditation requirements of this regulation and provide doctoral programs in school psychology may also benefit to the extent that the proposed changes result in an increase in enrollment. The proposed amendments would not create any new net costs.

Businesses and Other Entities Affected. The proposed amendments would directly benefit both licensed school psychologists with doctorates and residents seeking licensure in school psychology. As of June 30, 2023, there were 103 licensed school psychologists and 27 residents in school psychology.<sup>5</sup> VDH does not collect data on the number of licensed school psychologists with doctorates in their field. A 2022 DHP report shows that 50% of licensed clinical psychologists primarily engage in private practice, and that the other 50% are employed by various health care and behavioral health care facilities.<sup>6</sup> These facilities would benefit to the extent that new licensees with doctorates in school psychology and new residents in those programs seek employment.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>7</sup> An

---

# Regulations

---

adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As described, the proposed changes would not create any new net costs. Thus, an adverse impact is not indicated.

Small Businesses<sup>8</sup> Affected.<sup>9</sup> The proposed amendments are not expected to adversely affect small businesses.

Localities<sup>10</sup> Affected.<sup>11</sup> The proposed amendments neither appear to disproportionately affect any particular localities nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments are not likely to have a substantive impact on total employment; however, the number of licensed clinical and school psychologists and their employment would likely increase.

Effects on the Use and Value of Private Property. By reducing the barriers to becoming a clinical psychologist, the proposed regulation may increase the supply of clinical psychologists, which could lower hiring costs for private firms that employ them. Thus, the value of some such firms may moderately increase. The proposed amendments do not affect real estate development costs.

<sup>9</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>10</sup> "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.

<sup>11</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Psychology concurs with the economic impact analysis prepared by the Department of Planning and Budget. The board would like to clarify, however, that the three types of psychology licenses in the Commonwealth are dictated by § 54.1-3606 of the Code of Virginia. The regulation mirrors statute, producing the three required license types.

## Summary:

*The amendments allow (i) school psychologists who have obtained a doctorate to obtain a license in clinical psychology in Virginia and (ii) a resident studying school psychology to be supervised by a clinical psychologist.*

## **18VAC125-20-54. Education requirements for clinical psychologists.**

A. Beginning June 23, 2028, an applicant shall hold a doctorate in clinical ~~or~~ counseling, or school psychology from a professional psychology program in a regionally accredited university that was accredited at the time the applicant graduated from the program by the APA, CPA, or an accrediting body acceptable to the board. Graduates of programs that are not within the United States or Canada shall provide documentation from an acceptable credential evaluation service that provides information verifying that the program is substantially equivalent to an APA-accredited program.

B. Prior to June 23, 2028, an applicant shall either hold a doctorate from an accredited program, as specified in subsection A of this section, or shall hold a doctorate from a professional psychology program that documents that the program offers education and training that prepares individuals for the practice of clinical psychology as defined in § 54.1-3600 of the Code of Virginia and meets the following criteria:

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are

---

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See this 2022 report from the Virginia Health Care Foundation: <https://www.vhcf.org/2022/01/19/new-assessment-finds-alarming-shortage-of-virginia-licensed-behavioral-health-professionals-and-outlines-attainable-solutions/>.

<sup>3</sup> See [https://townhall.virginia.gov/l/GetFile.cfm?File=meeting\31\32900\Minutes\\_DHP\\_32900\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=meeting\31\32900\Minutes_DHP_32900_v2.pdf).

<sup>4</sup> This provision would have a delayed effective date of June 23, 2028, which was added to this section in a 2021 regulatory action. See <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=4897>.

<sup>5</sup> Source: [https://www.dhp.virginia.gov/about/stats/2023Q4/04CurrentLicenseCount\\_Q4FY2023.pdf](https://www.dhp.virginia.gov/about/stats/2023Q4/04CurrentLicenseCount_Q4FY2023.pdf).

<sup>6</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/behsci/0810CP2022.pdf>.

<sup>7</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>8</sup> Pursuant to § 2.2-4007.04, 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."

not within the United States or Canada must provide documentation from an acceptable credential evaluation service that provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

2. The program shall be recognizable as an organized entity within the institution.

3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills, and competencies consistent with the program's training goals.

4. The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.

5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas:

- a. Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).
- b. Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).
- c. Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).
- d. Psychological measurement.
- e. Research methodology.
- f. Techniques of data analysis.
- g. Professional standards and ethics.

6. The program shall include a minimum of ~~at least~~ three or more graduate semester credit hours or five or more graduate quarter hours in each of the following clinical psychology content areas:

- a. Individual differences in behavior (e.g., personality theory, cultural difference and diversity).
- b. Human development (e.g., child, adolescent, geriatric psychology).
- c. Dysfunctional behavior, abnormal behavior, or psychopathology.
- d. Theories and methods of intellectual assessment and diagnosis.

e. Theories and methods of personality assessment and diagnosis, including its practical application.

f. Effective interventions and evaluating the efficacy of interventions.

C. Applicants shall submit documentation of having successfully completed practicum experiences involving assessment, diagnosis, and psychological interventions. The practicum experiences shall include a minimum of nine graduate semester hours or 15 or more graduate quarter hours or equivalent in appropriate settings to ensure a wide range of supervised training and educational experiences.

D. An applicant shall graduate from an educational program in clinical, counseling, or school psychology that includes an appropriate emphasis on and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

E. Candidates for clinical psychologist licensure shall have successfully completed an internship in a program that is either accredited by APA or CPA, ~~or~~ is a member of APPIC, or the Association of State and Provincial Psychology Boards/National Register of Health Service Psychologists, or ~~one~~ that meets equivalent standards. If the internship was obtained in an educational program outside of the United States or Canada, a credentialing service approved by the board shall verify equivalency to an internship in an APA-accredited program.

F. An applicant for a clinical license may fulfill the residency requirement of 1,500 hours, or some part thereof, as required for licensure in 18VAC125-20-65, in the doctoral practicum supervised experience, which occurs prior to the internship, and that meets the following standards:

1. The supervised professional experience shall be part of an organized sequence of training within the applicant's doctoral program that meets the criteria specified in this section.

2. The supervised experience shall include face-to-face direct client services, service-related activities, and supporting activities.

a. "Face-to-face direct client services" means treatment or intervention, assessment, and interviewing of clients.

b. "Service-related activities" means scoring, reporting or treatment note writing, and consultation related to face-to-face direct services.

c. "Supporting activities" means time spent under supervision of face-to-face direct services and service-related activities provided ~~onsite~~ on site or in the trainee's academic department, as well as didactic experiences, such as laboratories or seminars, directly related to such services or activities.

3. In order for pre-doctoral practicum hours to fulfill all or part of the residency requirement, the following shall apply:

---

# Regulations

---

- a. Not less than one-quarter of the hours shall be spent in providing face-to-face direct client services;
  - b. Not less than one-half of the hours shall be in a combination of face-to-face direct service hours and hours spent in service-related activities; and
  - c. The remainder of the hours may be spent in a combination of face-to-face direct services, service-related activities, and supporting activities.
4. A minimum of one hour of individual face-to-face supervision shall be provided for every eight hours of supervised professional experience spent in direct client contact and service-related activities.
  5. Two hours of group supervision with up to five practicum students may be substituted for one hour of individual supervision. In no case shall the hours of individual supervision be less than one-half of the total hours of supervision.
  6. The hours of pre-doctoral supervised experience reported by an applicant shall be certified by the program's director of clinical training on a form provided by the board.
  7. If the supervised experience hours completed in a series of practicum experiences do not total 1,500 hours or if a candidate is deficient in any of the categories of hours, a candidate shall fulfill the remainder of the hours by meeting requirements specified in 18VAC125-20-65.

## **18VAC125-20-65. Residency.**

A. Candidates for clinical or school psychologist licensure shall have successfully completed a residency consisting of a minimum of 1,500 hours of supervised experience in the delivery of clinical or school psychology services acceptable to the board.

1. For clinical psychology candidates, the hours of supervised practicum experiences in a doctoral program may be counted toward the residency hours, as specified in 18VAC125-20-54. Hours acquired during the required internship shall not be counted toward the 1,500 residency hours. If the supervised experience hours completed in a practicum do not total 1,500 hours or if a candidate is deficient in any of the categories of hours, a candidate may fulfill the remainder of the hours by meeting requirements specified in subsection B of this section.
2. School psychologist candidates shall complete all the residency requirements after receipt of their final school psychology degree.

### **B. Residency requirements.**

1. Candidates for clinical or school psychologist licensure shall have successfully completed a residency consisting of a minimum of 1,500 hours in a period of not less than 12 months and not to exceed three years of supervised experience in the delivery of clinical or school psychology

services acceptable to the board, or the applicant may request approval to extend a residency if there were extenuating circumstances that precluded completion within three years.

2. Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18VAC125-20-54 or 18VAC125-20-56.

3. In order to have the residency accepted for licensure, an individual who proposes to obtain supervised post-degree experience in Virginia shall register with the board prior to the onset of such supervision by submission of:

- a. A supervisory contract along with the application package;
- b. The registration of supervision fee set forth in 18VAC125-20-30; and
- c. An official transcript documenting completion of educational requirements as set forth in 18VAC125-20-54 or 18VAC125-20-56 as applicable.

4. If board approval was required for supervised experience obtained in another United States jurisdiction or Canada in which residency hours were obtained, a candidate shall provide evidence of board approval from such jurisdiction.

5. There shall be a minimum of two hours of individual supervision per 40 hours of supervised experience. Group supervision of up to five residents may be substituted for one of the two hours on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per 40 hours.

6. Supervision shall be provided by a psychologist who holds a current, unrestricted license in the jurisdiction in which supervision is being provided and who is licensed to practice in the licensure category in which the resident is seeking licensure; however, a resident seeking licensure as a school psychologist may be supervised by a clinical psychologist.

7. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence nor for activities for which the applicant has not had appropriate education and training.

8. The supervising psychologist shall maintain records of supervision performed and shall regularly review and co-sign case notes written by the supervised resident during the residency period. At the end of the residency training period, the supervisor shall submit to the board a written evaluation of the applicant's performance.

9. The board may consider special requests in the event that the regulations create an undue burden in regard to

geography or disability that limits the resident's access to qualified supervisors.

C. Residents shall not refer to or identify themselves as clinical psychologists or school psychologists, independently solicit clients, bill directly for services, or in any way represent themselves as licensed psychologists. Notwithstanding, this does not preclude supervisors or employing institutions from billing for the services of an appropriately identified resident. During the residency period, residents shall use their names, the initials of their degree, and the title "Resident in Psychology" in the licensure category in which licensure is sought.

V.A.R. Doc. No. R24-7374; Filed June 25, 2024, 3:51 p.m.

**TITLE 19. PUBLIC SAFETY**

**DEPARTMENT OF STATE POLICE**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

**Title of Regulation:** 19VAC30-165. Regulations Relating to Standards and Specifications for Purple Warning Lights Used by Vehicles Leading or Escorting Funeral Processions (adding 19VAC30-165-15; repealing 19VAC30-165-20 through 19VAC30-165-60).

**Statutory Authority:** §§ 46.2-1005 and 46.2-1025 of the Code of Virginia.

**Effective Date:** August 14, 2024.

**Agency Contact:** Lieutenant Thomas Lambert, Director, Office of Legal Affairs, Department of State Police, Virginia State Police Headquarters, 7700 Midlothian Turnpike, Suite 1200, Chesterfield, VA 232358, telephone (804) 674-6722, FAX (804) 968-0322, or email [tom.lambert@vsp.virginia.gov](mailto:tom.lambert@vsp.virginia.gov).

**Summary:**

*The amendments (i) remove requirements that funeral directors determine the chromaticity boundaries for the color of purple warning lights used by vehicles leading or escorting funeral processions and (ii) add a requirement that purple warning lights be warranted, marked, or otherwise certified by the manufacturer, seller, or installer as being in compliance with the applicable Society of Automotive Engineers color specification standards.*

**19VAC30-165-15. Requirements.**

Purple warning lights as described in § 46.2-1025 C of the Code of Virginia must be warranted, marked, or otherwise certified by the manufacturer, seller, or installer as being in compliance with the applicable SAE color specification standards.

**19VAC30-165-20. Purpose. (Repealed.)**

~~The purpose of this standard is to establish specifications for warning lights used by vehicles escorting funeral processions and define the chromaticity boundaries for the color purple.~~

**19VAC30-165-30. Performance requirements. (Repealed.)**

~~Purple warning lights as described in this chapter must (i) meet all criteria as set forth for single color optical warning devices in SAE Recommended Practice J845 for Class 2 warning lamps with a minimum flash of that specified for the color red; (ii) meet all criteria as set forth for single color gaseous discharge warning lamps in SAE Recommended Practice J1318 for Class 2 warning lamps with a minimum flash of that specified for the color red; or (iii) meet all criteria of SAE Recommended Practice J595 with a minimum candleluminous intensity of that specified for the color red.~~

**19VAC30-165-40. Color definition (purple). (Repealed.)**

~~The fundamental requirements of color are expressed as chromaticity coordinates according to the CIE (1931) standard colorimetric system. The purple color of light emitted from this device shall fall within the following boundaries:~~

~~$x = .25$  (blue boundary)~~

~~$x = .33$  (red boundary)~~

~~$y = .18$  (white boundary).~~

**19VAC30-165-50. Approval process. (Repealed.)**

~~An application for approval of a specific manufacturer's model of warning light shall be directed to the Safety Officer, Department of State Police, 491 Southlake Boulevard, Richmond, Virginia 23236. Such requests must include a sample of the device, a laboratory report prepared by a test facility independent of the device's manufacturer that certifies the device has been tested and found to meet the requirements of this chapter, and a fee of \$150.~~

~~Upon review of the application for approval and laboratory results, the applicant will be notified in writing of the department's findings.~~

~~Devices found to meet the requirements of this chapter will be added to the Approved Equipment List and distributed to official inspection stations.~~

**19VAC30-165-60. Proof of compliance. (Repealed.)**

~~The device shall be prominently and permanently marked with the manufacturer's name or trademark and model~~

---

# Regulations

---

~~designation. Such markings must be visible for inspection without dismantling the device when properly installed.~~

~~DOCUMENTS INCORPORATED BY REFERENCE (19VAC30-165)~~

~~Society of Automotive Engineers Standard J595, January 1990.~~

~~Society of Automotive Engineers Standard J845, March 1992.~~

~~Society of Automotive Engineers Standard J1318, May 1998.~~

VA.R. Doc. No. R24-7919; Filed June 18, 2024, 9:22 a.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 (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** 22VAC40-61. Standards and Regulations for Licensed Adult Day Care Centers (amending 22VAC40-61-10, 22VAC40-61-20, 22VAC40-61-60, 22VAC40-61-100, 22VAC40-61-110, 22VAC40-61-130, 22VAC40-61-170, 22VAC40-61-260, 22VAC40-61-300, 22VAC40-61-340, 22VAC40-61-510).

22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-10, 22VAC40-73-40, 22VAC40-73-110, 22VAC40-73-280, 22VAC40-73-490).

22VAC40-80. General Procedures and Information for Licensure (amending 22VAC40-80-10, 22VAC40-80-30, 22VAC40-80-60, 22VAC40-80-130, 22VAC40-80-180, 22VAC40-80-340, 22VAC40-80-390).

22VAC40-90. Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (amending 22VAC40-90-10, 22VAC40-90-20, 22VAC40-90-40).

**Statutory Authority:** §§ 63.2-217 and 63.2-1733 of the Code of Virginia.

**Effective Date:** August 14, 2024.

**Agency Contact:** Samantha Fogt, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 845-0308, or email [samantha.fogt@dss.virginia.gov](mailto:samantha.fogt@dss.virginia.gov).

**Summary:**

*Pursuant to Chapters 37 and 150 of the 2024 Acts of Assembly, the amendments rename "adult day care centers" to "adult day centers."*

#### Chapter 61

#### Standards and Regulations for Licensed Adult Day Care Centers

#### 22VAC40-61-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and feeding. A person's degree of independence in performing these activities is a part of determining required care needs and necessary services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the participant for whom it is ordered in such a manner as is ordered or is appropriate.

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

"Adult day care center" or "center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more adults who are aged, or infirm, or disabled adults who have disabilities and who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services and (ii) the home or residence of an individual who cares for only persons related to ~~him~~ the individual by blood or marriage. Included in this definition are any two or more places, establishments, or institutions owned, operated, or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more adults who are aged, or infirm, or disabled adults who have disabilities.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time ~~he~~ the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as



described in 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Business entity" means an individual or sole proprietor, association, partnership, limited liability company, business trust, corporation, public agency, or religious organization.

"Chapter" or "this chapter" means these regulations, that is, Standards and Regulations for Licensed Adult Day ~~Care~~ Centers, 22VAC40-61, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the participant's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits an individual from reaching ~~his~~ the participant's highest level of functioning.

"Communicable disease" means an illness that spreads from one person to another or from an animal to a person.

"CPR" means cardiopulmonary resuscitation.

"Department" means the Virginia Department of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient, for example, vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. "Dietary supplements" may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a center who assist participants in the performance of personal care or ADLs.

"Director" means the qualified person who has been delegated responsibility for the programmatic and administrative functions of the adult day ~~care~~ center.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Good character and reputation" means findings have been established that the individual (i) maintains business or professional 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 adults.

"Legal representative" means a person legally responsible for representing or standing in the place of the participant for the conduct of ~~his~~ the participant's affairs. "Legal representative" may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the participant as ~~his~~ the participant's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a participant for the function for which ~~he~~ the legal representative has legal authority to act. A participant is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect ~~his~~ the participant's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the participant in a properly executed and signed document. A participant may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of ~~his~~ that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means the business entity to whom a license is issued and who is legally responsible for compliance with the laws and regulations related to the center. A license may not be issued in the name of more than one business entity.

"Mandated reporter" means a person specified in § 63.2-1606 of the Code of Virginia who is required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Nonambulatory" means the condition of a participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Participant" means an adult who takes part in the program of care and receives services from the center.

---

# Regulations

---

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the participant's body that the participant cannot remove easily, which restricts freedom of movement or access to ~~his~~ the participant's body.

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

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience.

"Significant change" means a change in a participant's condition that is expected to last longer than 30 days. "Significant change" does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Staff" or "staff person" means personnel working at a center who are compensated or have a financial interest in the center, regardless of role, service, age, function, or duration of employment at the center. "Staff" or "staff person" also includes those individuals hired through a contract with the center to provide services for the center.

"Standard precautions" means a set of basic infection prevention practices intended to prevent transmission of infectious diseases from one person to another. These practices are applied to every person at every contact to assure that transmission of disease does not occur.

"Volunteer" means a person who works at the center who is not compensated. "Volunteer" does not include a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

## **22VAC40-61-20. Requirements of law and applicability.**

A. Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia includes requirements of law relating to licensure, including licensure of adult day ~~care~~ centers.

B. This chapter applies to adult day ~~care~~ centers as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-61-10.

C. All programs, processes, plans, policies, or procedures required by this chapter must be in writing and must be implemented.

## **22VAC40-61-60. Requirements for licensee.**

A. The licensee shall ensure compliance with all regulations for licensed adult day ~~care~~ centers and terms of the license

issued by the department; with relevant federal, state, or local laws; with other relevant regulations; and with the center's own policies and procedures.

B. The licensee shall:

1. Be of good character and reputation;
2. Protect the physical and mental well-being of the participants;
3. Keep such records and make such reports as required by this chapter for licensed adult day ~~care~~ centers. Such records and reports may be inspected by the department's representative at any reasonable time in order to determine compliance with this chapter;
4. Meet the qualifications of the director if ~~he~~ the licensee assumes those duties;
5. Act in accordance with General Procedures and Information for Licensure (22VAC40-80);
6. Ensure that the current license is posted in the center in a place conspicuous to the participants and the public; and
7. Be responsible for the overall planning of the program and services to be provided by the center, including the following:
  - a. Develop and keep current a statement of the purpose and scope of the services to be provided by the center, a description of adults who may be accepted into the program as well as those whom the program cannot serve, and policies and procedures under which the center will operate.
  - b. Appoint and identify in writing a qualified director to be responsible for the day-to-day operation and management of the center. When the business entity is an individual who serves as the director, this shall also be noted in writing.
  - c. Provide an adequate number of qualified staff capable of carrying out the operation of the program and ~~to~~ develop a staffing plan that includes a staffing schedule.
  - d. Develop policies and procedures for the selection and supervision of volunteers.
  - e. Develop a written organizational chart indicating chain of command.
  - f. Make certain that when it is time to discard records, the records are disposed of in a manner that ensures confidentiality.

## **22VAC40-61-100. General qualifications.**

All staff members shall:

1. Be of good character and reputation;
2. Be competent, qualified, and capable of carrying out assigned responsibilities;

3. Be considerate, understanding, and respectful of the rights, dignity, and sensitivities of persons who are aged; or infirm, and disabled or who have disabilities;
4. Be clean and well groomed;
5. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities;
6. Be able to understand and apply the standards in this chapter as they relate to their respective responsibilities; and
7. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day ~~Care~~ Centers (22VAC40-90).

**22VAC40-61-110. Staff orientation and initial training.**

A. Prior to working directly with participants, all staff shall receive training in:

1. Participant rights and responsibilities;
2. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguishers, fire alarm boxes, and approved exits;
3. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid kit and emergency supplies;
4. Their individual responsibilities in the event of emergencies, such as a lost or missing participant, severe weather, and loss of utilities;
5. Infection control;
6. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of participants and for the mandated reporters, the consequences for failing to make a required report (§ 63.2-1606 of the Code of Virginia); and
7. Confidential treatment of personal information about participants and their families.

B. Staff who work with participants shall receive training in the following areas or topics no later than three weeks after their starting date of employment; part-time staff shall receive the training no later than six weeks after their starting date of employment. The areas or topics to be covered in the staff training shall include:

1. The purpose and goals of the adult day ~~care~~ center;
2. The policies and procedures of the center as they relate to the staff member's responsibilities;
3. Required compliance with regulations for adult day ~~care~~ centers as it relates to their duties and responsibilities;
4. The physical, emotional, and cognitive needs of the center's population;

5. The current participants' strengths and preferences, their individualized plans of care, and their service needs and supports;
6. The schedule of activities;
7. Behavioral interventions, behavior acceptance and accommodation, and behavior management techniques;
8. Interdisciplinary team approach;
9. Implementation of advance directives and Do Not Resuscitate Orders;
10. Risk management; and
11. The needs of participants' family members or caregivers.

C. A supervisor or designated trained staff shall be on the premises and closely oversee the individual's work with participants until training required in subsection B of this section is complete.

**22VAC40-61-130. Director.**

A. The director, or a designated assistant director who meets the qualifications of the director, shall be responsible for the center's program and day-to-day operations of the center and shall be present at least 51% of the center's weekly hours of operation. The responsibilities of the director shall include the following areas:

1. The content of the program offered to the participants in care.
2. Programmatic functions, including orientation, training, and scheduling of all staff.
3. Management of the supervision provided to all staff.
4. Assignment of a sufficient number of qualified staff to meet the participants' needs for:
  - a. Adequate nutrition;
  - b. Health supervision and maintenance;
  - c. Personal care;
  - d. Socialization, recreation, activities, and stimulation; and
  - e. Supervision, safety, and protection.
5. The duties and responsibilities required by this chapter.

B. The director shall meet the following qualifications:

1. Be at least 21 years of age.
2. Have completed, at a minimum, a bachelor's degree from an accredited college or university and two years of experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment, volunteer work, or internship. The following qualifications are also acceptable for the director:

---

# Regulations

---

a. Current licensure as a nursing home administrator or assisted living facility administrator from the Board of Long-Term Care Administrators; or

b. Current licensure in Virginia as a registered nurse. The requirement for two years of experience working with older adults or persons with disabilities also must be met.

c. An exception to subdivisions 2 a and 2 b of this subsection is made for any person continuously employed in an adult day ~~care~~ center licensed prior to July 1, 2000, as either a director or assistant director who has completed at least 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or institution and has completed at least two ~~years~~ years' experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment or in volunteer work.

3. The director shall demonstrate knowledge, skills, and abilities in the administration and management of the adult day ~~care~~ program, including (i) knowledge and understanding of the population being served by the center, (ii) supervisory and interpersonal skills, (iii) ability to plan and implement the program, and (iv) knowledge of financial management sufficient to ensure program development and continuity.

C. The director shall complete 24 hours of continuing education training annually to maintain and develop skills. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments participate at the center, at least four of the required hours shall focus on topics related to participants' mental impairments. This training shall be in addition to first aid, CPR, orientation, or initial or refresher medication aide training. Documentation of attendance shall be retained at the center and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

## **22VAC40-61-170. Volunteers.**

A. Individuals who volunteer at the center shall:

1. Have qualifications appropriate to the services they render; and
2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an adult day ~~care~~ center without the permission or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. Duties and responsibilities of all volunteers shall be clearly defined in writing.

D. At least one staff member shall be assigned responsibility for overall selection, supervision, and orientation of volunteers.

E. All volunteers shall be under the supervision of a designated staff person when participants are present.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation, including information on their duties and responsibilities, participant rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements. All volunteers shall sign and date a statement that they have received and understood this information.

G. Volunteers may be counted in the staff-to-participant ratio if both of the following criteria are met:

1. These volunteers meet the qualifications and training requirements for staff; and
2. For each volunteer, there shall be at least one staff also counted in the staff-to-participant ratio.

## **22VAC40-61-260. Physical examinations and report.**

A. Within the 30 days preceding admission, a participant shall have a physical examination by a licensed physician.

B. The report of the required physical examination shall be on file at the center and shall include:

1. The person's name, date of birth, address, and telephone number.
2. The date of the physical examination.
3. Height, weight, and blood pressure.
4. Significant medical history.
5. General physical condition, including a systems review as is medically indicated.
6. All diagnoses and significant medical problems.
7. Any known allergies and description of the person's reactions.
8. Any recommendations for care, including:
  - a. A list of all medications, including dosages, route, and frequency of administration;
  - b. Any special diet or any food intolerances;
  - c. Any therapy, treatments, or procedures the individual is undergoing or should receive and by whom; and
  - d. Any restrictions or limitations on physical activities or program participation.
9. The participant shall obtain an evaluation by a qualified licensed practitioner ~~that~~ who completes an assessment for tuberculosis (TB) in a communicable form no earlier than 30 days before admission. The evaluation for tuberculosis shall be consistent with the TB risk assessment as published by the Virginia Department of Health, with additional testing, singly or in combination, as deemed necessary. Documentation of the TB evaluation is required, which

includes the information contained on the form "Report of Tuberculosis Screening" recommended by the Virginia Department of Health. The form shall be signed by the qualified licensed practitioner who performs the evaluation.

10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory.

11. A statement that specifies whether the individual is or is not capable of self-administering medication.

12. The signature of the examining physician or ~~his~~ the physician's designee.

C. Subsequent medical evaluations.

1. Each participant shall annually submit a report of physical examination by a physician, including the information required in subdivisions B 1 through B 8 and B 10, B 11, and B 12 of this section.

2. At the request of the licensee or director of the center or the Department of Social Services, a report of examination by a physician shall be obtained when there are indications that the center can no longer provide appropriate or safe care because of changes in the participant's physical or mental health. The written report of the physical examination shall be:

- a. Dated;
- b. Signed by a physician or the physician's designee; and
- c. Used in evaluating the participant's continued suitability for adult day ~~care~~ services.

D. Subsequent evaluations for tuberculosis.

1. Any participant who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

2. Any participant who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. Any such participant shall not be allowed to return to the program until a physician has determined that the individual is free of infectious tuberculosis.

3. If a participant develops an active case of tuberculosis, the center shall report this information to the local health department.

**22VAC40-61-300. Medication management.**

A. The center shall have, keep current, and implement a plan for medication management. The center's medication management plan shall address procedures for administering medication and shall include:

1. Standard operating procedures and any general restrictions specific to the center;

2. Methods to ensure an understanding of the responsibilities associated with medication management, including the following:

- a. Determining that staff who are responsible for administering medications meet the qualification requirements of subdivisions E 7 a and E 7 b of this section;
- b. Ensuring that staff who are responsible for administering medications are trained on requirements of the center's medication management plan; and
- c. Ensuring that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication administration. Supervision shall be provided by (i) an individual employed by the center who is licensed by the Commonwealth of Virginia to administer medications or (ii) the director who has successfully completed a training program as required in subdivisions E 7 a and E 7 b of this section.

3. Methods to ensure that authorizations for the administration of medications are current;

4. Methods to secure and maintain supplies of each participant's prescription medications and any over-the-counter drugs and supplements in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs), including within 24 hours of receipt of a new order or a change in an order;

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. Methods to ensure that participants do not receive medications or dietary supplements to which they have known allergies;

8. Methods to ensure accurate accounting for all controlled substances whenever received by center staff, returned to participant, or whenever assigned medication administration staff changes;

9. Procedures for proper disposal of medication; and

10. Procedures for preventing, detecting, and investigating suspected or reported drug diversion.

B. The center shall have readily accessible as reference materials for medication aides; at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old.

C. Prescription and nonprescription medications, including sample medications, shall be given to a participant according to the center's medication policies and only with written or verbal authorization from the physician or prescriber, or the physician's authorized agent. For the purposes of this section,

---

# Regulations

---

an "authorized agent" means an employee of the physician who is under ~~his~~ the physician's immediate and personal supervision. Verbal orders shall be reviewed and signed by the physician or prescriber within 10 working days.

D. The center shall maintain a list of all medications, including those taken at home and at the center, for each participant. The center shall attempt to verify and update the list of center-administered medications with the prescribing health care professional at least twice a year. Unsuccessful attempts to verify shall be documented.

E. The following standards shall apply when medications are administered to participants at the adult day ~~care~~ center:

1. All medication shall be in the original container with the prescription label or direction label attached and legible. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the participant's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.

2. All medication shall be labeled with the participant's name, the name of the medication, the strength and dosage amount, the route of administration, and the frequency of administration.

3. The medication shall be kept in a locked compartment or area, not accessible to participants. The locked compartment or area shall be free from direct sunlight and high temperatures and free from dampness and shall remain darkened when closed.

4. The area in which the medication is prepared shall have sufficient light so that the labels can be read accurately and the correct dosage can be clearly determined.

5. Medication shall be refrigerated, if required. When medication is stored in a refrigerator used for food, the medications shall be stored together in a locked container in a clearly defined area. If a refrigerator is used for medication only, it is permissible to store dietary supplements and foods and liquids used for medication administration.

6. Unless it is contrary to the center's policy, a participant may take ~~his~~ the participant's own medication, provided that:

a. A physician has deemed the participant capable of ~~administering~~ self-administering medication ~~to himself~~;

b. The physician has given written authorization for the participant to self-administer ~~his~~ the participant's medication; and

c. Medications are kept in a safe manner inaccessible to other participants.

7. When the center staff administers medications to participants, the following standards shall apply:

a. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Code of Virginia. All staff responsible for medication administration shall:

(1) Be licensed by the Commonwealth of Virginia to administer medications;

(2) Be a registered medication aide;

(3) Successfully complete a training program approved by the Board of Nursing and accepted for use in adult day ~~care~~ centers; or

(4) Successfully complete a training program approved by the Board of Nursing for the registration of medication aides that consists of 68 hours of student instruction and training.

b. All staff who administer medications, except those licensed by the Commonwealth, shall complete, on an annual basis, four hours of medication management refresher training on topics specific to the administration of medications in the adult day ~~care~~ center setting.

c. Medications shall remain in the original or pharmacy issued container until administered to the participant by the qualified medication staff. All medications shall be removed from the pharmacy container and be administered by the same qualified person within one hour of the individual's scheduled dosing time.

d. Documentation shall be maintained on the MAR of all medications, including prescription, nonprescription, and sample medication, administered to a participant while at the center. This documentation shall become part of the participant's permanent record and shall include:

(1) Name of participant;

(2) All known allergies;

(3) Diagnosis, condition, or specific indications for which the medication is prescribed;

(4) Date medication prescribed;

(5) Drug product name;

(6) Dosage and strength of medication;

(7) Route of administration;

(8) Frequency of administration;

(9) Date and time given and initials of staff administering the medication;

(10) Date the medication is discontinued or changed;

(11) Any medication errors or omissions;

(12) Notation of any adverse effects or unusual reactions that occur; and

(13) The name, signature, and initials of all staff administering medications. A master list may be used in lieu of this documentation on individual MARs.

F. In the event of an adverse drug reaction or a medication error, the following applies:

1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;

2. The participant's physician and family member or other legal representative shall be notified as soon as possible. If not contrary to immediate medical needs of the participant, the participant shall also be notified of the error; and

3. Medication administration staff shall document actions taken in the participant's record.

G. The use of PRN (as needed) medications is prohibited unless one or more of the following conditions exist:

1. The participant is capable of determining when medication is needed;

2. A licensed health care professional administers the medication;

3. The participant's physician has provided detailed written instructions, including symptoms that might indicate the need for the medication, exact dosage, exact timeframes the medication is to be given in a 24-hour period, and directions for what to do if symptoms persist; or

4. The center staff has telephoned the participant's physician prior to administering the medication and explained the symptoms and received a documented verbal order that includes the information in subdivision 3 of this subsection.

H. Any ~~physician-ordered~~ physician-ordered treatment provided by staff shall be documented and shall be within the staff's scope of practice.

**22VAC40-61-340. Food service.**

A. Meals and snacks shall be provided by the center. The center shall (i) prepare the food, (ii) have the food catered, or (iii) utilize a contract food service.

B. When any portion of an adult day care center is subject to inspection by the Virginia Department of Health, the center shall be in compliance with those regulations, as evidenced by an initial and subsequent annual report from the Virginia Department of Health. The report shall be retained at the center for a period of at least two years.

C. If a catering service or contract food service is used, the service shall be approved by the local health department. The center shall be responsible for monitoring continued compliance by obtaining a copy of the Virginia Department of Health approval.

D. The center shall encourage, but not require, participants to eat the meals and snacks provided by the center. If a participant brings food from home, the food shall be labeled with the participant's name, dated, and stored appropriately until meal or snack time. The fact that the participant brought food does not relieve the center of its responsibility to provide meals and snacks.

E. A minimum of 45 minutes shall be allowed for each participant to complete a meal. If a participant needs additional time to finish ~~his~~ the meal due to special needs, such additional time shall be provided.

**22VAC40-61-510. Fire safety: compliance with state regulations and local fire ordinances.**

A. The center shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the center for at least two years.

B. An adult day care center shall comply with any local fire ordinance.

**22VAC40-73-10. Definitions.**

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and ~~eating/feeding~~ feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time ~~he~~ the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair,

---

# Regulations

---

walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, or infirm, or ~~disabled~~ who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to ~~him~~ that individual by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or disabled persons who have disabilities between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for ~~the handicapped individuals with disabilities~~ pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for ~~persons~~ individuals who are 62 years of age or older or the disabled individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged, or infirm, or disabled adults who have disabilities. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an individual who is aged, or infirm, or disabled individual who has a disability.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching ~~his~~ the resident's highest level of functioning.

"Commissioner" means the commissioner of the department, ~~his~~ the commissioner's designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision ~~or political subdivisions~~ participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department



for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Individuals requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient ~~or ingredients~~, (e.g., vitamins, minerals, amino acids, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility, or institution licensed by ~~this~~ the Commonwealth to provide health care or professional services, including a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or ~~life-threatening~~ life-threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living ~~for himself~~ independently without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or

---

# Regulations

---

indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of ~~his~~ the resident's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as ~~his~~ the resident's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the ~~function or~~ functions for which ~~he~~ the legal representative has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect ~~his~~ the resident's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the ~~function or~~ functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of ~~his~~ that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be

licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to ~~his~~ the resident's body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to ~~his~~ the resident's body.

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

"Premises" means a building or group of buildings; under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or

having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in ~~his~~ the resident's capabilities and are provided to restore or improve ~~his~~ the resident's level of functioning.

---

# Regulations

---

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of ~~adults who are aged, or infirm, or disabled adults who have a disability~~ adults who are aged, or infirm, or disabled for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining ~~his~~ the resident's level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to (i) acute or

episodic conditions, ~~not~~ (ii) conditions arising from treatable metabolic or chemical imbalances, or ~~caused by~~ (iii) reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect ~~his~~ the individual's own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the ~~department-designated~~ department-designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

**22VAC40-73-40. Licensee.**

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state, and local laws; with other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall:

1. Give evidence of financial responsibility and solvency.
2. Be of good character and reputation in accordance with § 63.2-1702 of the Code of Virginia. Character and reputation investigation includes background checks as required by § 63.2-1721 of the Code of Virginia.
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day ~~Care~~ Centers (22VAC40-90).
4. Act in accordance with General Procedures and Information for Licensure (22VAC40-80).
5. Protect the physical and mental well-being of residents.
6. Exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, this chapter, and the welfare of the residents.
7. Ensure that ~~he~~ the licensee, ~~his~~ the licensee's agents, the facility administrator, or facility staff or the relatives of any of these persons shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.
8. Ensure that the current license is posted in the facility in a place conspicuous to the residents and the public.

9. Ensure that the facility keeps and maintains at the facility records, reports, plans, schedules, and other information as required by this chapter for licensed assisted living facilities.

10. Ensure that any document required by this chapter to be posted shall be in at least 12-point type or equivalent size, unless otherwise specified.

11. Make certain that when it is time to discard records, they are disposed of in a manner that ensures confidentiality.

12. Ensure that at all times the department's representative is afforded reasonable opportunity to inspect all of the facility's buildings, books, and records and to interview agents, employees, residents, and any person under its custody, control, direction, or supervision as specified in § 63.2-1706 of the Code of Virginia.

C. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner. Training for such owners and currently employed administrators shall be required at the time of initial application for licensure. In all cases, such training shall be completed prior to the granting of any initial license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the commissioner.
2. The commissioner may, at ~~his~~ the commissioner's discretion, also approve for licensure applicants who meet requisite experience criteria as established by the board.
3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.
4. The commissioner may, at ~~his~~ the commissioner's discretion, issue a license conditioned upon the completion by the owner or administrator of the required training.

D. The licensee shall notify in writing the regional licensing office of intent to sell or voluntarily close the facility. The following shall apply:

1. No less than 60 days prior to the planned sale date or closure, the licensee shall notify the regional licensing office, residents, and as relevant, legal representatives, case managers, assessors, eligibility workers, and designated contact persons of the intended sale or closure of the facility and the date for such.

Exception: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, assessors, eligibility workers, and designated

---

# Regulations

---

contact persons as soon as the intent to sell or close the facility is known.

2. If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, ~~his~~ the resident's legal representative, case manager, assessor, and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.

3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

## 22VAC40-73-110. Staff general qualifications.

All staff shall:

1. Be considerate and respectful of the rights, dignity, and sensitivities of persons who are aged, or infirm, or ~~disabled~~ who have disabilities;
2. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities; and
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day ~~Care~~ Centers (22VAC40-90).

## 22VAC40-73-280. Staffing.

A. The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental, and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to ensure compliance with this chapter.

B. The assisted living facility shall maintain a written plan that specifies the number and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan shall be directly related to actual resident acuity levels and individualized care needs.

C. An adequate number of staff persons shall be on the premises at all times to implement the approved fire and emergency evacuation plan.

D. At least one direct care staff member shall be awake and on duty at all times in each building when at least one resident is present.

Exception: For a facility licensed for residential living care only, in buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if (i) none of the residents have care needs that require a staff member awake at night and (ii) the facility ensures compliance with the requirements of 22VAC40-73-930 C.

E. No employee shall be permitted to work in a position that involves direct contact with a resident until a background check has been received as required in the Regulation for Background Checks for Assisted Living Facilities and Adult Day ~~Care~~ Centers (22VAC40-90), unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of the background check regulation (22VAC40-90).

## 22VAC40-73-490. Health care oversight.

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience as a health care professional in an adult residential facility, adult day ~~care~~ center, acute care facility, nursing home, or licensed home care or hospice organization, either by direct employment or on a contractual basis, to provide on-site health care oversight.

1. For residents who meet the criteria for residential living care:

- a. The licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least every six months, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or the stability of a resident's condition; or
- b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least annually, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

2. For residents who meet the criteria for assisted living care:

- a. The licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least every three months, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition; or
- b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of ~~his~~ the health care professional's profession, shall provide health care oversight at least every six months, or more often if indicated, based on ~~his~~ the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

3. All residents shall be included at least annually in health care oversight.

B. While on site, as specified in subsection A of this section, the licensed health care professional shall provide health care oversight of the following and make recommendations for change as needed:

1. Ascertain whether a resident's service plan appropriately addresses the current health care needs of the resident.
2. Monitor direct care staff performance of health-related activities.
3. Evaluate the need for staff training.
4. Provide consultation and technical assistance to staff as needed.
5. Review documentation regarding health care services, including medication and treatment records, to assess ~~that~~ whether services are being provided in accordance with physicians' or other prescribers' orders.
6. Monitor conformance to the facility's medication management plan and the maintenance of required medication reference materials.
7. Evaluate the ability of residents who self-administer medications to continue to safely do so.
8. Observe infection control measures and consistency with the infection control program of the facility.

C. For all restrained residents, onsite health care oversight shall be provided by a licensed health care professional at least every three months and include the following:

1. The licensed health care professional shall be, at a minimum, a registered nurse who meets the experience requirements in subdivision A of this section.
2. The licensed health care professional shall review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.
3. The licensed health care professional providing the oversight for this subdivision shall also provide the oversight for subdivisions B 1 through B 8 of this section for restrained residents.
4. The oversight provided shall be a holistic review of the physical, emotional, and mental health of the resident and identification of any unmet needs.
5. The oversight shall include review of physician's orders for restraints to determine whether orders are no older than three months, as required by 22VAC40-73-710 E 2.
6. The oversight shall include an evaluation of whether direct care staff have received the restraint training required by 22VAC40-73-270 and whether the facility is meeting the requirements of 22VAC40-73-710 regarding the use of restraints.

7. The licensed health care professional shall make recommendations for change as needed.

D. The licensed health care professional who provided the health care oversight shall certify that the requirements of subsection B and, if applicable, C of this section were met, including the dates of the health care oversight. The specific residents for whom the oversight was provided must be identified. The administrator shall be advised of the findings of the health care oversight and any recommendations. All of the requirements of this subsection shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

E. Action taken in response to the recommendations noted in subsection D of this section shall be documented in the resident's record if resident specific, and if otherwise, in the facility files.

**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

---

# Regulations

---

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-placing agency, children's residential facility, child-caring institution, 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.

"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~~ in this chapter.

"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 2.2-4021 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.

"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. 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~~ day centers;
2. Assisted living facilities;
3. Private child placing agencies;
4. Child caring institutions; and
5. Independent foster homes.

**22VAC40-80-60. General.**

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children or adults. An organization may be a partnership, association, corporation, limited liability company, or public entity.

B. Pursuant to § 63.2-1712 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day ~~care~~ center, or child welfare agency shall be guilty of a Class 1 misdemeanor if ~~he~~ the individual:

1. Interferes with any representative of the commissioner in the discharge of ~~his~~ licensing duties;

2. Makes to the commissioner or any representative of the commissioner any report or statement with respect to the operation of any assisted living facility, adult day ~~care~~ center, or child welfare agency that is known by such person to be false or untrue;

3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked, suspended, or has expired and not been renewed; or

4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.

C. When a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility closes or the sale is finalized, the license shall be returned to the appropriate licensing office.

**22VAC40-80-130. Provider support services.**

A. The programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.

B. Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards, and residents' rights where applicable, offered through or approved by the department. The commissioner may, at ~~his~~ the commissioner's discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.

EXCEPTIONS: The following persons are exempt from the requirements of prelicensure training:

1. An applicant who has previously owned or managed a facility in satisfactory compliance with regulations; and
2. Applicants for adult day ~~care~~ centers and child welfare agencies if notified by the department that such training is unavailable.

**22VAC40-80-180. Determination of continued compliance (renewal and monitoring inspections).**

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative will make announced and unannounced inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring inspections.

---

# Regulations

---

B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

C. Adult day care centers issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced. Adult day care centers issued a license for a period of one year shall be inspected at least three times each year, and at least two of those inspections shall be unannounced. Adult day care centers issued a license for a period of two years shall be inspected at least two times each year, and at least one of those inspections shall be unannounced. Adult day care centers issued a license for a period of three years shall be inspected at least one time each year, and that inspection shall be unannounced.

D. Assisted living facilities issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced.

E. Assisted living facilities issued a license for a period of one, two, or three years shall be:

1. Inspected at least once each year, and that inspection shall be unannounced; and
2. Inspected as needed based on compliance with applicable laws and regulations.

F. The department's representative may also make such inspections of any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

G. For any licensed assisted living facility, adult day care center, or child welfare agency, the department may conduct such other announced or unannounced inspections as are considered appropriate.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced inspections made to licensed facilities during the year.

## **22VAC40-80-340. Administrative sanctions.**

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers, and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Behavioral Health and Developmental Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;

2. Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for a violation that adversely affects, or is an immediate and substantial threat to, the health, safety, or welfare of residents, or for permitting, aiding, or abetting the commission of any illegal act in an adult care facility;

3. Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;

4. Requiring an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage, or operate the facility on an interim basis if the commissioner receives information from any source indicating immediate and substantial risk of harm to residents. This action shall be an attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the commissioner. The contract shall be negotiated in accordance with the provisions of § 63.2-1709 of the Code of Virginia;

5. Issuing a notice of summary suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia or pursuant to proceedings set forth in § 63.2-1710.1 of the Code of Virginia for assisted living facilities operated by agencies of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of residents;

6. Issuing a notice of summary suspension of the license to operate a child welfare agency pursuant to proceedings set forth in § 63.2-1709.1 C of the Code of Virginia or pursuant to proceedings set forth in § 63.2-1710.1 for child welfare agencies operated by an agency of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action, when conditions or practices exist in the child welfare agency that pose an immediate and substantial threat to the health, safety, and welfare of children receiving care; and

7. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709.2 of the Code of Virginia. These include:

- a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants, or children are at risk;
- b. Reducing the licensed capacity or prohibiting new admissions when the commissioner has determined that the licensee cannot make necessary corrections to achieve

compliance with the regulations except by a temporary restriction of its scope of service;

c. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the commissioner has determined that the lack of such training has led directly to violations of regulations;

d. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of an adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;

e. Assessing a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk. The aggregate amount of such civil penalties shall not exceed \$10,000 in any 12-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, are developed by the board and are based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the commissioner in a consistent manner;

f. Requiring licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

g. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

**22VAC40-80-390. Scope.**

The appeal process as set forth in this part shall apply whenever the Department of Social Services takes adverse action on a license for an assisted living facility, adult day care center or child welfare agency. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for an assisted living facility, adult day care center, or child welfare agency, the procedures specified in this part to produce a case decision shall be initiated.

Chapter 90

Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers

**22VAC40-90-10. Definitions.**

The following words and terms when used in conjunction with this chapter shall have the following meanings:

"Applicant for licensure" means the entity applying for approval as a licensed assisted living facility. An applicant may be an individual, association, partnership, limited liability company, corporation, or public agency.

"Barrier crimes" means certain crimes that automatically bar individuals convicted of same from employment at a licensed assisted living facility or adult day care center and that

automatically bar licensure of applicants convicted of same from assisted living facility licensure. These crimes, as specified by § 19.2-392.02 of the Code of Virginia, are a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

"Central Criminal Records Exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal history record report on an individual.

"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 criminal record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.

---

# Regulations

---

"Employee" means compensated personnel working at a facility regardless of role, service, age, function, or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.

"Facility" means an assisted living facility or adult day care center subject to licensure by the Department of Social Services.

"Sworn statement or affirmation" means a document to be completed, signed, and submitted for licensure or employment. The document discloses the licensure applicant's or employment applicant's criminal convictions and pending criminal charges that occurred within or outside the Commonwealth of Virginia. For applicants for licensure as an assisted living facility, the document also discloses whether or not the applicant has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth of Virginia. This is required as specified in §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

## **22VAC40-90-20. Legal base and applicability.**

A. Sections 63.2-1702 and 63.2-1721 of the Code of Virginia require all applicants for licensure as assisted living facilities to undergo background checks consisting of a sworn statement or affirmation and criminal history record check. If the applicant is an individual, ~~he~~ the individual must undergo a background check. If the applicant is an association, partnership, limited liability company, corporation, or public agency, the officers and agents of the applicant must undergo background checks.

B. Section 63.2-1720 of the Code of Virginia requires all employees of assisted living facilities and adult day care centers, as defined by § 63.2-100 of the Code of Virginia, to obtain a criminal history record report from the Department of State Police.

C. Section 63.2-1720 of the Code of Virginia requires all applicants for employment at assisted living facilities and adult day care centers to provide the hiring facility with a sworn statement or affirmation.

D. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to § 63.2-1720 of the Code of Virginia.

## **22VAC40-90-40. General requirements.**

A. The applicant for licensure shall submit a criminal history record report upon application for licensure as an assisted living facility.

B. The criminal history record report shall be obtained on or prior to the 30th day of employment for each employee.

C. Any person required by this chapter to obtain a criminal history record report shall be ineligible for employment if the report contains convictions of the barrier crimes.

D. If a criminal history record is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

E. Criminal history record reports shall be kept confidential. Reports on employees shall only be received by the facility administrator, licensee, board president, or their designee.

F. A criminal history record report issued by the State Police shall not be accepted by the facility if the report is dated more than 90 days prior to the date of employment.

G. Any applicant denied licensure as an assisted living facility or employment at an assisted living facility or adult day care center because of convictions appearing on ~~his~~ the applicant's criminal history record report shall be provided a copy of the report by the licensing authority or the hiring facility.

H. A facility shall not continue to employ any person who has a conviction of any of the barrier crimes.

VA.R. Doc. No. R24-7849; Filed June 18, 2024, 8:59 a.m.

## **Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **22VAC40-675. Personnel Policies for Local Departments of Social Services.**

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email [karin.clark@dss.virginia.gov](mailto:karin.clark@dss.virginia.gov).

FORMS (22VAC40-675)

~~Classification and Compensation Self Analysis Form for Local Departments of Social Services, 032-10-0175-00-eng (rev. 9/2015)~~

~~Human Resource Policy Record, 032-10-0162-04-eng (rev. 10/2015)~~

~~Jurisdiction Wide Self Analysis Form, 032-10-0165-03-eng (rev. 9/2015)~~

~~Local Policy Request Form, 032-10-0161-06-eng (rev. 9/2015)~~

[Classification and Compensation Self-Analysis Form for Local Departments of Social Services, 032-10-0175-00-eng \(rev. 7/2024\)](#)

[Human Resources Policy Record, 032-10-0162-04-eng \(rev. 7/2024\)](#)

[Jurisdiction-Wide Self-Analysis Form, 032-10-0165-03-eng \(rev. 7/2024\)](#)

[Local Policy Request Form, 032-10-0161-06-eng \(rev. 7/2024\)](#)

V.A.R. Doc. No. R24-7980; Filed June 26, 2024, 9:19 a.m.

## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Fast-Track Regulation

**Titles of Regulations:** 23VAC10-20. **General Provisions Applicable to All Taxes Administered by the Department of Taxation** (amending 23VAC10-20-60; repealing 23VAC10-20-30).

23VAC10-110. **Individual Income Tax** (amending 23VAC10-110-130, 23VAC10-110-142, 23VAC10-110-143; repealing 23VAC10-110-144, 23VAC10-110-250, 23VAC10-110-280).

23VAC10-115. **Fiduciary Income Tax** (repealing 23VAC10-115-10, 23VAC10-115-40, 23VAC10-115-50, 23VAC10-115-90, 23VAC10-115-151, 23VAC10-115-153).

23VAC10-120. **Corporation Income Tax** (repealing 23VAC10-120-70).

23VAC10-210. **Retail Sales and Use Tax** (repealing 23VAC10-210-32, 23VAC10-210-130, 23VAC10-210-220, 23VAC10-210-352, 23VAC10-210-353, 23VAC10-210-390, 23VAC10-210-485, 23VAC10-210-500, 23VAC10-210-590, 23VAC10-210-595, 23VAC10-210-650, 23VAC10-210-720, 23VAC10-210-766, 23VAC10-210-770, 23VAC10-210-790, 23VAC10-210-810, 23VAC10-210-900, 23VAC10-210-970, 23VAC10-210-1070, 23VAC10-210-1071, 23VAC10-210-2020, 23VAC10-210-2050, 23VAC10-210-4030).

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

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** September 13, 2024.

**Effective Date:** September 28, 2024.

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

**Basis:** Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. The authority for the current regulatory action is discretionary.

**Purpose:** The agency has identified numerous sections that may be repealed or amended to reduce the number of requirements imposed in regulation. Some of these sections address statutes that have been amended or repealed. Other sections address statutes that are clear and unambiguous and do not need any regulatory interpretation. Other sections are duplicative of other regulation sections. Repeal of the regulatory provisions does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Rulemaking Process:** There is no mandate associated with this action. Rather, it is prompted by Executive Order 19 (June 30, 2022), which requires executive branch agencies to achieve a 25% reduction of their regulatory requirements. The Department of Taxation has identified numerous regulation sections that may be repealed or amended to reduce the number of requirements it imposes in its regulations. As the provisions repealed are no longer necessary, this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

**Substance:** The amendments repeal selected provisions of the agency's chapters on General Provisions Applicable to All Taxes Administered by the Department of Taxation, Individual Income Tax, Fiduciary Income Tax, Corporation Income Tax, and Retail Sales and Use Tax to reduce the number of requirements imposed in regulation. Provisions are being repealed because the provisions (i) address statutes that have been repealed; (ii) address statutes that are clear and unambiguous and do not need regulatory interpretation; and (iii) are duplicative of other sections. Repeal of these provisions does not reflect a change in existing departmental policy.

**Issues:** The primary advantage of this regulatory action to the public is that it will reduce the number of requirements in regulation. The primary advantage to the Department of Taxation is that the agency will no longer need to maintain the provisions being repealed. As these provisions and the requirements imposed are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

**Summary of the Proposed Amendments to Regulation.** As the result of Executive Directive One (2022)<sup>2</sup> the Department of Taxation has adopted a fast-track regulatory action to amend five regulations: the General Provisions Applicable to All Taxes Administered By the Department of Taxation, the Individual Income Tax, the Fiduciary Income Tax, the Corporation Income Tax, and the Retail Sales and Use Tax. In total, the action would update and retain four sections and

---

## Regulations

---

repeal thirty-four sections that are either outdated or repetitive of tax provisions in the Code of Virginia.

**Background.** The Department of Taxation reports that these regulations are typically used by tax attorneys who are either helping clients plan for their tax liabilities or appeal an audit finding, and that taxpayers and tax preparers are typically only relying on the forms and instructions used to pay taxes or prepare tax returns. Thus, the agency's intent in reviewing the current regulation was to remove provisions that were outdated, and thus confusing, and provisions that mainly served to explain requirements in statute. Further, the regulation for Retail Sales and Use Tax contains numerous industry-specific provisions that the agency believes are either nearly obsolete (such as 23VAC10-210-970 governing microfilm/microfiche documents) or that follow the general rule for either retail sales or service providers and no longer need to be the subject of their own separate sections of the regulation. The proposed changes for each of the five regulations are briefly summarized below.

**23VAC10-20 General Provisions Applicable to All Taxes Administered by the Department of Taxation:** 23VAC10-20-30, pertaining to the filing of tax returns or payment of taxes by mail, is being repealed in its entirety because it paraphrases § 58.1-9 of the Code of Virginia.<sup>3</sup> 23VAC10-20-60, pertaining to the interest rates for late payments, currently contains interest rates for years up to December 1984. The Department of Taxation reports that these interest rates are now communicated to the public via a quarterly bulletin,<sup>4</sup> and do not need to be updated in the regulation. This section would retain language noting that Virginia uses the nominal interest rate established by Internal Revenue Code § 6621 would be retained, and that Virginia applies simple interest computations without compounding. The agency also proposes to add a reference to § 58.1-15 of the Code of Virginia, which pertains to the rate of interest.<sup>5</sup>

**23VAC10-110 Individual Income Tax:** 23VAC10-110-130, pertaining to exemptions and exclusions, would be retained in part. The Department of Taxation notes that the filing thresholds in the current subsection A are outdated and that they are frequently updated by the General Assembly; thus, subsection A would be repealed entirely, and subsection B would be repealed in part such that only the item pertaining to part-year residents would be retained. The remaining items, which pertain to nonresidents and military personnel, would also be retained. A reference to Virginia Code § 58.1-321 would be added to the parenthetical note at the end of the section.<sup>6</sup> 23VAC10-110-142, pertaining to subtractions from Virginia taxable income, would also be retained in part. Subsections that would be removed are either outdated or redundant to § 58.1-322.02 of the Code of Virginia; a reference to this section of statute would be added.<sup>7</sup> For example, the subsection governing WIN (Work Incentive) or targeted jobs tax credit would be repealed because it was replaced by the Work Opportunity Credit in 2017; the language pertaining to this subtraction can be found in § 58.1-322.02 of the Code of

Virginia.<sup>8</sup> This section would retain subsections pertaining to (i) interest or dividends on U.S. bonds or similar securities, (ii) interest or dividends on pass-through entities, and (iii) Social Security and Railroad Retirement benefits. 23VAC10-110-143, governing deductions from Virginia taxable income would largely be repealed as most provisions are also in Code § 58.1-322.03; a reference to this statute would be added.<sup>9</sup> Two subsections would be retained, as follows: (i) subdivision 1, pertaining itemized deductions would be replaced with a statement that says, "For the purposes of computing the amount of reduction required to federal itemized deductions for income taxes imposed by Virginia or any other taxing jurisdiction, the term any other taxing jurisdiction includes any other state, any locality, and any foreign country"; (ii) subdivision 2, pertaining to the standard deduction, would be replaced with a definition of the term "earned income" and a statement that "this rule applies to dependents younger than age 19 years and full-time students who are eligible to be claimed on their parents return." 23VAC10-110-144 (modifications and adjustments), 23VAC10-110-250 (special cases in which nonresidents are not required to file a Virginia return), and 23VAC10-110-280 (nongame wildlife voluntary contribution) would be repealed as they are either outdated or repetitive of statute.<sup>10</sup>

**23VAC10-115 Fiduciary Income Tax:** 23VAC10-115-10 (definitions), 23VAC10-115-40 (Virginia taxable income of a resident estate or trust), 23VAC10-115-50 (Virginia taxable income of a nonresident estate or trust), 23VAC10-115-90 (other credits), 23VAC10-115-151 (amendments of declaration), and 23VAC10-115-153 (other payment dates) would all be repealed as they are either outdated or repetitive of statute.<sup>11</sup>

**23VAC10-120 Corporate Income Tax:** 23VAC10-120-70, pertaining to the imposition of tax for corporations would be repealed in its entirety, because it paraphrases § 58.1-400 of the Code of Virginia.<sup>12</sup>

**23VAC10-210 Retail Sales and Use Tax:** A majority of these sections describe what would or would not be considered taxable for specific service industries that are broadly covered under 23VAC10-210-4040 (services).<sup>13</sup> 23VAC10-210-500 (dentists, dental laboratories, and dental supply houses), 23VAC10-210-595 (financial institutions), 23VAC10-210-650 (furniture and storage warehousemen), 23VAC10-210-770 (interior decorators), 23VAC10-210-790 (kennels, stables, and pet shops), 23VAC10-210-810 (laundries and dry cleaners), and 23VAC10-210-2050 (photographs, photostats, and blueprints) would all be repealed as they are covered by the section governing services. 23VAC10-210-32 (adult care facilities) and 23VAC10-210-720 (hospitals and nursing homes) would be repealed as they refer to exemptions that have already been repealed.<sup>14</sup> 23VAC10-210-130 (artists and art dealers) would be repealed because it mainly states that sales of objects of art are sales of tangible personal property.<sup>15</sup> Similarly, 23VAC10-210-390 (consignments) and 23VAC10-210-2020 (peddlers and street vendors) would be repealed because they state the basic principle of sales tax that goods are

subject to the tax when sold by a dealer.<sup>16</sup> 23VAC10-210-220 (tax brackets) would be repealed. This section provides a breakdown of tax amounts for very small transactions, which used to be printed and used as a reference by retail merchants and has been made redundant by point-of-sale terminals. 23VAC10-210-352 and 23VAC10-210-353 (commercial watermen) are covered by § 58.1-609.2 of the Code of Virginia, which pertains to agricultural exemptions and by 58.1-1400 et seq. of the Code of Virginia, which covers Virginia watercraft sales and use tax.<sup>17</sup> 23VAC10-210-590 (feed making) is also covered by agricultural exemptions in § 58.1-609.2 of the Code of Virginia. 23VAC10-210-485 (the dealer's compensation or discount) would be repealed as it reflects obsolete statute, which has been superseded by Item 3-5.06 of the budget.<sup>18</sup> 23VAC10-210-766 (the Innovative Technology Authority) would be repealed because it was merged into the Innovation and Entrepreneurship Investment Authority (IEIA) in 2009 and was then replaced by the Virginia Innovation Partnership Authority (VIPA) in 2020.<sup>19</sup> 23VAC10-210-900 (machinists, foundrymen, and pattern makers) would be repealed as it is repetitive of § 58.1-609.3 of the Code of Virginia.<sup>20</sup> 23VAC10-210-970 (microfilm and microfiche copies of documents) would be repealed because the technology is largely obsolete. 23VAC10-210-1070 and 23VAC10-210-1071 (nonprofit organizations) would be repealed because the statutory section it referenced was repealed and replaced with § 58.1-609.11 of the Code of Virginia.<sup>21</sup> Lastly, 23VAC10-210-4030 (seeds and seedlings) would be repealed because it is repetitive of 23VAC10-210-50, which would be retained.<sup>22</sup>

**Estimated Benefits and Costs.** The proposed amendments primarily serve to meet the regulatory reduction requirements, by removing obsolete or redundant requirements; these changes would thereby benefit readers of the regulation by enhancing the clarity of the regulation.

**Businesses and Other Entities Affected.** As mentioned previously, the proposed amendments primarily affect tax attorneys who rely on the regulations, along with statute, to advise their clients. The Department of Taxation has confirmed that this action does not make any substantive changes to state tax policy and would not result in anyone owing either more or less money to the state.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>23</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>24</sup> Because the proposed amendments serve to only clarify and update the regulatory text, and would not result in any increased tax liability, an adverse impact is not indicated.

**Small Businesses<sup>25</sup> Affected.<sup>26</sup>** The proposed amendments would not adversely affect small businesses.

**Localities<sup>27</sup> Affected.<sup>28</sup>** No locality would be disproportionately affected. Local governments would not incur new costs.

**Projected Impact on Employment.** The proposed regulation does not appear to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> ED One, which was issued on January 15, 2022, directs executive branch agencies "to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute." See <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>. ED One was subsequently amended and reenacted by Executive Order 19 (2022) to "require a 25% reduction in regulatory requirements instead of a reduction in regulations." See <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

<sup>3</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter0/section58.1-9/>.

<sup>4</sup> See <https://www.tax.virginia.gov/tax-bulletins>.

<sup>5</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter0/section58.1-15/>.

<sup>6</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-321/>.

<sup>7</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-322.02/>.

<sup>8</sup> The specific statutory provisions corresponding to each subsection that would be repealed can be found on pages 8-9 of the Agency Background Document (ABD): [https://townhall.virginia.gov/GetFile.cfm?File=75\6353\10169\AgencyStatement\\_TAX\\_10169\\_v3.pdf](https://townhall.virginia.gov/GetFile.cfm?File=75\6353\10169\AgencyStatement_TAX_10169_v3.pdf).

<sup>9</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-322.03/>.

<sup>10</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-315/>, <https://law.lis.virginia.gov/vacode/58.1-342/>, and subsection B in <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-344.3/>, respectively. (Also in ABD, p. 9.)

<sup>11</sup> See ABD, pp. 9-10 for the corresponding Code citations.

<sup>12</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-400/>.

<sup>13</sup> See <https://law.lis.virginia.gov/admincode/title23/agency10/chapter210/section4040/>.

<sup>14</sup> See ABD, pp. 10-13 for specific citations for this and other sections in this regulation that would be repealed.

<sup>15</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-603/#v2/>.

<sup>16</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-612/>.

<sup>17</sup> See item 2 under <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.2/> and <https://law.lis.virginia.gov/vacode/58.1-1400/>, respectively.

<sup>18</sup> The budget language most recently appears in the introduced budget. See <https://budget.lis.virginia.gov/item/2024/1/HB30/Introduced/3/3-5.06/>.

<sup>19</sup> See ABD, p. 11.

<sup>20</sup> See item 2 (i) in <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.3/>.

# Regulations

<sup>21</sup> See <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-609.11/>.

<sup>22</sup> See <https://law.lis.virginia.gov/admincode/title23/agency10/chapter210/section50/>.

<sup>23</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>24</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>25</sup> Pursuant to § 2.2-4007.04, 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."

<sup>26</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>27</sup> "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.

<sup>28</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

## Summary:

*The amendments (i) remove language that provides regulatory interpretation of statute that is clear and unambiguous, (ii) remove language that is duplicative of other regulatory text, and (iii) update language to address statutes that have been amended or repealed.*

## **23VAC10-20-30. Filing of tax returns or payment of taxes by mail. (Repealed.)**

### **A. Generally.**

~~1. When remittance of a tax return or a tax payment is made by mail, receipt of the return or payment by the person with whom the return is required to be filed or the payment is required to be made shall constitute timely filing or payment, provided that (a) the tax return or tax payment is received in a sealed envelope with sufficient postage; and (b) the~~

~~envelope bears a postmark on or before midnight of the day the return is required to be filed or the payment be made without penalty or interest.~~

~~2. Returns mailed with insufficient postage shall not be deemed filed until actually received or remailed with adequate postage.~~

### **B. Definitions.**

~~1. Person. The term "person" includes, but is not limited to, a Commissioner of the Revenue, a Director of Finance or the Department of Taxation.~~

~~2. Postmark. A "postmark" means the United States Post Office cancellation mark stamped upon the envelope. A mark made by a postage meter under control of a person other than the U.S. Post Office is not a postmark.~~

~~C. Example. Taxpayer X is required to file a sales tax return on February 20, which falls on a Saturday. Monday, February 22, is a legal holiday (Washington's birthday). The Department of Taxation receives the return on Friday, February 26 in a sealed envelope bearing a postmark of February 23 (Tuesday). No interest or penalties for late filing or late payment will be assessed.~~

## **23VAC10-20-60. Rate of interest.**

~~A. In general. 1. Unless otherwise specifically provided, interest on omitted taxes, taxes paid after the date prescribed for payment, assessments and refunds shall be computed at a rate equal to the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended. 2. Separate computations shall be made for each period during which the interest rate differs from the current rate by multiplying the deficiency or overpayment outstanding during each period by the rate of interest applicable to that period. 3. The Internal Revenue Code requires that interest accruing after December 31, 1982 be compounded daily. Although Virginia uses the nominal interest rate established pursuant to IRC § 6621, Virginia applies simple interest computations without compounding.~~

~~4. The rates of interest applicable to deficiencies and overpayments under this section and prior law are as follows:~~

<del>Prior to July 1, 1976</del>	<del>6%</del>
<del>July 1, 1976 through January 31, 1978</del>	<del>7%</del>
<del>February 1, 1980 through January 31, 1980</del>	<del>6%</del>
<del>February 1, 1980 through January 31, 1982</del>	<del>12%</del>
<del>February 1, 1982 through December 31, 1982</del>	<del>20%</del>
<del>January 1, 1983 through June 30, 1983</del>	<del>16%</del>
<del>July 1, 1983 through December 31, 1984</del>	<del>11%</del>

~~5. B. Interest is computed by excluding the due date and including the date of payment in the number of days. For example,~~



interest on \$100 tax due June 20, 1983, and paid July 10, 1983, would be computed as follows:

June 21 through June 30 = 10 days at 16%

	10	x 0.16 = 0.004383
	365	

July 1 through July 10 = 10 days at 11%

	10	x 0.11 = 0.003013
	365	

Total Interest Factor 0.007396 x \$100 = \$0.74 interest

Note that June 20, the due date, is not counted, and that July 10 and all intervening days are counted.

~~B. § 6621. The text of IRC § 6621 as amended through December 31, 1983 is set forth below:~~

~~IRC Section 6621. Determination of rate of interest.~~

~~a. In general. The annual rate established under this section shall be such adjusted rate as is established by the Secretary under subsection (b).~~

~~b. Adjustment of interest rate.~~

~~1. Establishment of adjusted rate. If the adjusted prime rate charged by banks (rounded to the nearest full percent)~~

~~(A) during the 6-month period ending on September 30 of any calendar year, or~~

~~(B) during the 6-month period ending on March 31 of any calendar year, differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate.~~

~~2. Effective date of adjustment. Any adjusted rate of interest established under paragraph (1) shall become effective:~~

~~(A) on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and~~

~~(B) on July 1 of the same year in the case of an adjustment attributable to paragraph (1)(B).~~

~~e. Definition of prime rate. For purposes of subsection (b), the term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.~~

C. See § 58.15 of the Code of Virginia for provisions defining rates of interest and methods to determine interest and additions to tax.

**23VAC10-110-130. Exemptions and exclusions.**

~~A. Generally. No tax is imposed upon any individual whose Virginia adjusted gross income, as defined in subsection B, for~~

~~the taxable year is less than \$3,000; nor is any tax imposed upon any individual and spouse whose combined Virginia adjusted gross income is less than \$3,000. Persons who are not subject to the tax are not required to file a return; however, if any state income tax has been withheld, a return must be filed to obtain a refund. B. Virginia adjusted gross income, defined.1. Generally. As used in this regulation, "Virginia adjusted gross income" means FAGI for the taxable year plus the additions set forth in § 58.1-322(B) of the Code of Virginia, and less the subtractions set forth in § 58.1-322(C) of the Code of Virginia and the additional \$400 deduction for taxpayers age 65 and over. Example: A taxpayer, age 67, has FAGI for taxable year 1983 of \$3,200 (\$2,000 in wage income and \$1,200 in interest and dividends). The taxpayer had an additional \$150 in interest which is exempt from federal but not exempt from state tax. Since the taxpayer is over 65 years of age, he qualifies for the additional \$400 deduction. Therefore, his Virginia adjusted gross income is \$2,950 (\$3,200 (FAGI) plus \$150 (taxable interest) less \$400 (additional deduction)). Virginia adjusted gross income includes both earned and unearned income. The itemized and standard deductions, child care deduction and personal exemption amounts, except as noted above, may not be subtracted from FAGI in computing Virginia adjusted gross income.2. Part-year residents. The Virginia adjusted gross income of a part-year resident is computed only with respect to income derived during his the resident's period of residence in Virginia determined in the manner prescribed in 23VAC10-110-40 B.~~

~~3. B. Nonresidents. The Virginia adjusted gross income of a nonresident is computed as though such person had been a resident of Virginia during the full taxable year.~~

~~C. Military personnel.~~

~~1. Military pay. Armed forces personnel who are not domiciliary residents of Virginia and who maintain no place of abode within the State Commonwealth are not subject to Virginia income tax on compensation received from armed forces service. However, a member of the armed forces who is a domiciliary resident of Virginia is subject to tax on his income in the same manner as any other resident.~~

~~2. Other income. Pursuant to the Soldiers' and Sailors' Relief Act (50 USC § 574), compensation for military or naval service of any person residing in Virginia solely by reason of compliance with military or naval orders is not subject to income taxation in Virginia, unless such person is a domiciliary resident of this state the Commonwealth. Similarly, military personnel who are domiciliary residents of Virginia do not attain a domicile elsewhere solely by virtue of their presence without the state in compliance with military or naval orders. Therefore, a Virginia resident who enters military service is subject to Virginia income tax on all of his taxable income, regardless of where the resident is stationed.~~

---

# Regulations

---

However, members of the armed forces who derive income from Virginia sources, excluding compensation for military or naval service, are subject to Virginia tax on such income in the same manner as any nonresident. For example, the compensation derived by an armed forces member from a part-time job is subject to Virginia income tax on such compensation. Similarly, a member of the armed forces may subject himself to taxation in Virginia by acquiring a new legal domicile herein.

3. Spouse of armed forces member. The residency status of a spouse of a member of the armed forces, who is not a member of the armed forces, shall be determined without regard to this section.

{D. See § 58.15 of the Code of Virginia for provisions defining rates of interest and methods to determine interest and additions to tax. See also 23VAC10-110-30 B 3 for Domicile Generally. See also 23VAC10-110-190 B for allocation of deductions and exemptions between resident and nonresident spouses.}

## **23VAC10-110-142. Virginia taxable income; subtractions.**

A. To the extent included in FAGI, the items enumerated below shall be subtracted from FAGI in determining Virginia taxable income. If an item was partially excluded or deducted in determining FAGI, it shall be subtracted from FAGI only to the extent included therein. If an item has already been excluded from Virginia taxable income, it shall not be subtracted again pursuant to this section.

1. Interest or dividends on obligations of the United States or Virginia.

a. "Obligation" means a debt obligation or security issued by the United States or any authority, commission, or instrumentality of the United States or by the Commonwealth of Virginia or any of its political subdivisions, which obligation or security is issued in the exercise of the borrowing power of the United States or Virginia and is backed by the full faith and credit of the United States or Virginia.

b. Guarantees by the United States or Virginia of obligations of private individuals or corporations are merely contingent obligations of the United States or Virginia even though the guarantees may be backed by the full faith and credit of the United States or Virginia. The obligation does not become an obligation of the United States or Virginia because of the guarantee and interest and dividends paid on such guaranteed obligations do not qualify for the subtraction unless specifically exempted by statute.

c. Specific statutory exemptions exist for certain securities issued by particular federal or Virginia agencies or political subdivisions. If a federal or Virginia statute exempts from state taxation the interest or dividends on specific securities of a particular agency or political

subdivision, then such interest or dividends qualify for the subtraction.

d. Repurchase agreements are usually obligations issued by financial institutions ~~which that~~ are secured by U.S. obligations exempt from Virginia income taxation under subdivisions 1 a and c of this section. In such cases, the interest paid by the financial institutions to purchasers of repurchase agreements does not qualify for the subtraction. Repurchase agreements issued following current commercial practice will invariably be regarded as obligations of the issuing financial institution. However, if the purchaser is regarded as the true owner of the underlying exempt obligation, the interest will qualify for the subtraction even though collected by the seller and distributed to the purchaser. Any claim of such ownership must be substantiated by a taxpayer claiming a subtraction.

e. Interest received from regulated investment companies. Interest on exempt obligations received by a regulated investment company and passed through to the stockholders in qualifying distributions, as defined in IRC § 852, will retain its exempt status in the hands of the shareholders. If a shareholder receives a distribution ~~which that~~ includes interest from both exempt and non-exempt obligations, all distributions will be deemed taxable unless the shareholder can substantiate the exempt portion of the distributions. Any individual requiring advice as to the taxable status of distributions from any regulated investment company should contact such company. Due to the turnover in investments held by such companies and the commingling of interest from exempt and non-exempt obligations, the Department cannot render such advice.

f. Expenses. The subtraction for interest on exempt obligations must be reduced by any expenses attributable to such interest and by interest or indebtedness incurred or continued to purchase or carry exempt obligations pursuant to IRC § 265.

2. Interest or dividends from pass-through entities.

a. Under federal law, certain income received by a partnership, estate, trust, or regulated investment company (pass-through entity) and distributed to a partner, beneficiary, or shareholder (recipient) retains the same character in the hands of the recipient. If a pass-through entity receives interest or dividends on U.S. or Virginia obligations ~~which that~~ is distributed to the recipients in a manner that the distributions retain their character in the hands of the recipients under federal law, then such interest or dividends may be subtracted by the recipients in computing Virginia taxable income.

b. A pass-through entity may invest in several types of securities, some of which are U.S. or Virginia obligations. When taxable income is commingled with exempt income all income is presumed taxable unless the portion of

income which is exempt from Virginia income tax can be determined with reasonable certainty and substantiated. The determination must be made for each distribution to each shareholder. For example, if distributions are made monthly, then the determination must be made monthly. As a practical matter, only pass-through entities ~~which that~~ invest exclusively in U.S. or Virginia obligations, or ~~which that~~ have extremely stable investment portfolios, will be likely to make such determinations.

c. Examples:

(1) ABC Fund, a regulated investment company, invests exclusively in U.S. Treasury notes and bills, which are exempt from state taxation under 31 USC § 3124. All distributions are considered to be interest on U.S. obligations and may be subtracted by the recipient.

(2) Va. Fund, a regulated investment company, invests exclusively in obligations of Virginia and its political subdivisions. Distributions are considered to be interest on Virginia obligations and qualify for the subtraction to the extent that such distributions are included in the recipient's federal taxable income.

(3) XYZ Fund, a regulated investment company, invests in a variety of securities, including obligations of the U.S., Virginia, other states, corporations, and financial institutions (repurchase agreements). Due to the commingling of taxable and exempt income, the turnover in XYZ Fund's investments and the fluctuation in a shareholder's investment in XYZ Fund, all distributions are considered taxable income and do not qualify for the subtraction unless XYZ Fund determines the portion of distributions ~~which that~~ is interest and dividends from U.S. and Virginia obligations for each distribution to each shareholder. Note that any portion of XYZ Fund's distributions ~~which that~~ are excluded from federal taxable income as interest on obligations of other states must be added to Virginia taxable income.

~~3. Pension and retirement income. Income received by officers or employees of the Commonwealth, its political subdivisions or agencies as a pension or retirement income shall be subtracted from FAGI in determining Virginia taxable income to the extent that such income is specifically exempted from state taxation by law. Income specifically exempt from state taxation includes that received pursuant to provisions of the Virginia Retirement System, the Judicial Retirement System (§ 51.1-300 et seq. of the Code of Virginia and prior law), State Police Officers Retirement System (§ 51.1-200 et seq. of the Code of Virginia), and the special retirement system for officers and employees of counties, cities and towns (§ 51.1-800 et seq. of the Code of Virginia).~~

~~Qualified retirement income or pensions, as defined above, received by the retiree or his surviving spouse may be subtracted to the extent included in FAGI. No person~~

~~claiming a deduction pursuant to this section may also claim the retirement income tax credit set forth in 23VAC10-110-200 nor may such person claim the disability income exclusion set forth in subdivision 4 of this section.~~

~~4. Disability income. Federal law (IRC § 37) allows retired individuals who are under age 65 and who qualified for retirement on the basis of a permanent and total disability a credit against federal tax liability for a specified percentage amount of a disability income base. Persons who qualify for such federal credit may deduct from FAGI in computing Virginia taxable income the amount on which the federal credit is based. This credit base amount to be deducted is limited to the amount actually allowed in computing the federal credit. Example follows:~~

~~Example: For the taxable year beginning January 1, 1984, Taxpayer A, a disabled retired single individual has FAGI of \$12,500. Under federal law A is entitled to a 15% disability credit based upon a base of \$5,000 less 1/2 of the amount by which FAGI exceeds \$7,500. Since A's FAGI exceeds \$7,500 by \$5,000, his credit base for computing the federal credit is \$5,000 (initial credit base) - 1/2 X 5,000 (amount by which FAGI exceeds \$7,500) or \$2,500. Thus A may deduct \$2,500 from FAGI in computing Virginia taxable income.~~

~~No person claiming a deduction pursuant to this section may also claim the retirement income tax credit set forth in 23VAC10-110-200 nor may such person claim a state or local retirement subtraction as set forth in subdivision 3 of this section.~~

~~5. Social Security and Railroad Retirement benefits. The amount of any Social Security benefits received under Title II of the Social Security Act (Old Age and Survivors Disability Insurance) and any other benefits included in FAGI solely by virtue of IRC § 86 shall be subtracted from FAGI in computing Virginia taxable income. "Other benefits" under IRC § 86 includes Tier 1 Railroad Retirement benefits and workers' compensation to the extent that it reduces OASDI benefits. Tier 2 Railroad Retirement benefits shall be subtracted from FAGI in computing Virginia taxable income by virtue of the Railroad Retirement Act.~~

~~6. Income tax refunds. The amount of any income tax refund or credit for overpayment of income tax to Virginia or any other taxing jurisdiction shall be deducted from FAGI to the extent included therein. For purposes of determining Virginia taxable income, the amount of federally allowable itemized deductions is reduced by the amount of income tax imposed by Virginia or other taxing jurisdictions. (See subdivision 1 of 23VAC10-110-143.) Therefore, any refunds or credits for overpayments of such taxes which are required, by federal law, to be included in FAGI, may be deducted in computing Virginia taxable income.~~

---

# Regulations

---

7. WIN or targeted jobs tax credit. Federal law permits employers to claim an income tax credit based upon certain wages paid under IRC §§ 40 and 44B. If such credit is elected, IRC § 280C bars the deduction of the wages on which such credit is based. To the extent such wages were not deducted from FAGI, they shall be subtracted therefrom in the computation of Virginia taxable income.

## 8. Foreign source income.

a. Generally. Foreign source income as defined in 23VAC10-110-30 shall be subtracted from FAGI, to the extent included therein, in determining Virginia taxable income.

b. Earned income. Federal law allows individual taxpayers to exclude in the computation of FAGI a portion of earned income from foreign sources. To the extent that this exclusion is elected, such earned income will similarly be excluded from Virginia taxable income. However, if a taxpayer does not elect, or is not eligible to elect, to exclude foreign source income from FAGI, he may not deduct such income from FAGI in computing Virginia taxable income.

c. Taxes paid to foreign country. Federal law generally allows an individual who has paid or accrued foreign income tax to elect to either treat such tax as a deduction from FAGI or to apply such taxes as a credit against federal tax liability. If a taxpayer elects to treat foreign taxes as a deduction from FAGI, his allowable itemized deductions will be reduced by such amount in computing Virginia taxable income. (See subdivision 1 of 23VAC10-110-143.)

## 9. Qualified agricultural contributions.

a. Generally. The amount of any qualified agricultural contribution shall be subtracted from FAGI in determining Virginia taxable income.

b. Qualified contributions. Contributions that qualify for subtraction from FAGI are contributions of agricultural products made between January 1, 1985, and December 31, 1987, by an individual who is engaged in the trade or business of growing or raising such products. Thus, contributions of agricultural products by an individual who is not engaged in the business of farming (for instance, contributions of goods raised in a family garden) do not qualify for subtraction.

To be subtractible, a contribution must be made to an organization exempt from federal income taxation under IRC § 501(c)(3) and must meet the following (i) the product contributed must be fit for human consumption; i.e. edible; (ii) the use of the product by the donee must be related to the purpose tests: or function for which the donee was granted exemption under IRC § 501(c)(3) (for instance, contributions of crops to a foundation organized for scientific or literary purposes would not qualify, but contributions of crops to a nonprofit food bank would

qualify); (iii) the contribution is not made in exchange for money, property or service; and (iv) the donor must obtain from the donee a written statement representing that the donee's use and disposition of the product will be in accordance with its charitable mission. Such written statements also must list the type and quantity or volume of products contributed, state that the products donated are fit for human consumption, and state the use to which the donations will be put. Such written statements must be filed with the taxpayer's income tax return when the subtraction for qualified agricultural contributions is claimed.

To be subtractible from FAGI under the above tests, the donee must make use of the agricultural products donated to it consistent with the purpose for which it was granted exemption under IRC § 501(c)(3). Therefore, contributions of crops to a charitable organization which provides food to the needy would qualify. However, contributions of crops to an organization that does not itself provides food to the needy would not qualify, even if the donee in turn contributes the crops to an organization that provides food to the needy.

e. Agricultural product. Crops are the only agricultural products eligible for subtraction when donated. Thus, the subtraction is limited to contributions of products of the soil and does not include contributions of animal products.

d. Computation of subtraction. The subtraction for qualified agricultural contributions is equal to the lowest wholesale market price in the nearest regional market of the type of products donated during the months in which donations are made. For the purpose of determining the lowest wholesale market price for a particular product, a taxpayer must use the lowest wholesale market price, regardless of grade or quality, published in the month of contribution by the U.S. Department of Agriculture Market News Service on Fruits, Vegetables, Ornamentals, and Specialty Crops for the regional market nearest the taxpayer's place of business.

e. Limitation on subtraction. The subtraction for qualified agricultural contributions shall be reduced by the amount of any other charitable deductions relating to qualified agricultural contributions if the deductions are claimed on the donor's federal return for the taxable year in which the contribution is made, or if the deductions are eligible for carryover to subsequent taxable years under IRC § 170. For example, a farmer who itemizes deductions for federal and state income tax purposes and who claims a charitable deduction of qualified agricultural products on his federal return must reduce his Virginia subtraction for qualified agricultural contributions by the amount of his federal charitable deduction for the same products. If the farmer's total charitable contributions of qualified agricultural products exceed the deduction ceiling set by federal law and the farmer is eligible to carryover deductions to

subsequent years, the farmer must also subtract the deductions eligible for carryover from the value of his qualified agricultural contributions.

Example: Farmer contributes fifty 50 pound sacks of round white potatoes to a local nonprofit food bank. The farmer's basis in the contributed property is \$10, of which he claims \$5 as a charitable contribution on his 1986 federal and state income tax returns and will carryover \$5 as a charitable deduction on his 1987 federal and state income tax returns. During the month in which the contribution was made, the lowest wholesale market price for a 50 pound sack of round white potatoes published by the U.S. Department of Agriculture Market News Service in the regional market nearest the farmer's place of business was \$2. The farmer's deduction for his qualified agricultural contribution would be computed as follows:

Units contributed	50
Lowest wholesale market price of unit/mx x	\$2
	\$100
Charitable deduction claimed on contribution	(5)
Charitable deduction carried over	(5)
Deduction for qualified agricultural contribution	\$90

B. See § 58.1-322.02 of the Code of Virginia for provisions defining computation of subtractions in figuring Virginia taxable income.

**23VAC10-110-143. Virginia taxable income; deductions.**

The following items shall be deducted in determining Virginia taxable income.

1. Itemized deductions. a. Generally. Any taxpayer who itemizes his deductions for federal income tax purposes must also itemize deductions for Virginia income tax purposes. The federally allowable amount of itemized deductions (prior to the subtraction of the federal zero bracket amount) shall be subtracted from FAGI in determining Virginia taxable income, but must be reduced by any amount claimed as a deduction for income taxes paid to Virginia or any other state, locality, foreign country, or other taxing jurisdiction. (See subdivision 6 of 23VAC10-110-142.) b. Additional deduction for charitable mileage. The amount of itemized deductions allowed for federal income tax purposes shall be increased to allow a deduction for Virginia purposes of 18 cents per mile for charitable contribution transportation. The additional Virginia deduction is allowed only with respect to transportation expenses allowed under IRC § 170 and only to the extent that such expenses are actually deducted for federal purposes. The amount of charitable mileage expenses claimed for federal purposes is increased to result in a deduction of 18 cents per mile for Virginia purposes. If

a person elects to compute the federal deduction based upon actual expenses, the increased Virginia deduction is computed by converting expenses to a per mile amount and adding to that an amount sufficient to equal 18 cents per mile. The amount of the addition is the additional Virginia deduction. Example 1: Taxpayer A uses his automobile for charitable purposes and determines annual expenses (gasoline, oil, etc.) attributable to charitable usage to be \$500, which is deducted as a charitable contribution for federal tax purposes. A drove his automobile 4,350 miles in incurring the \$500 in expenses, which results in a per mile cost of 11.5 cents. Therefore A is entitled to an additional Virginia deduction of \$282.75 computed as follows:  $(\$18 - \$115) = \$.065 \times 4,350 = \$282.75$  If the standard federal mileage rate for charitable mileage is used, the amount of the Virginia addition is the difference between the standard rate and 18 cents per mile. Example 2: Taxpayer B is entitled to deduct expenses attributable to 5,555 miles of automobile use as a charitable contribution. B utilizes the standard mileage rate (9¢ per mile for taxable year 1983) and therefore is allowed a federal deduction of \$500. B is entitled to an additional Virginia deduction of \$500 computed as follows:  $(\$18 - \$.09) = \$.09 \times 5,555 = \$500$ .

2. Standard deduction. a. Generally. Any taxpayer who does not itemize deductions for federal purposes must claim the standard deduction in the computation of Virginia taxable income. The amount of the standard deduction for a single individual or a married couple filing jointly shall be fifteen percent (15%) of federal adjusted gross income not to exceed \$2,000; except as set forth in c below, the standard deduction shall not be less than \$1,300. In the case of a married individual filing a separate return or separately on a combined return, the standard deduction shall not exceed \$1,000 or be less than \$650. b. Lump sum distribution. When any taxpayer has received a lump sum distribution from a qualified retirement plan and, under the provisions of IRC § 402, has elected to use the special ten year averaging method for the computation of federal tax on the distribution, then for purposes of computing the standard deduction FAGI shall be increased by any amount of the distribution which has not been included in FAGI. c. Dependents. Any individual who may be claimed as a dependent on another taxpayer's return may compute the standard deduction only with respect to earned income. As used in this section the term "earned income" shall mean wages, salaries or professional fees and other amounts received as compensation for professional services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. This rule applies to dependents under age 19 and full-time students who are eligible to be claimed on their parents,

---

# Regulations

---

~~return even though the parents do not actually take the exemption.~~

~~3. Exemptions. There shall be deducted from FAGI \$600 for each personal exemption allowed to the taxpayer for federal income tax purposes. For each exemption allowed to the taxpayer under the provisions of IRC § 151(e), there shall be deducted an additional \$400. IRC § 151(e) allows an additional deduction for an individual who is at least 65 years of age during the taxable year. In the case of a husband and wife filing a joint return, each may claim the additional exemption if both are at least 65 years of age during the taxable year. This additional exemption may not be claimed for dependents even though such dependents may meet the age requirement. (Note: For purposes of qualifying for the additional federal exemption under IRC § 151(e), a person is deemed to be 65 years of age on the day before his birthday. For example, a person who is 65 on January 1, 1985 may claim the additional exemption for taxable year 1984.)~~

~~4. Child and dependent care. Effective for taxable years beginning on and after January 1, 1982, the amount of employment related expenses allowed for computing the federal child and dependent care credit (IRC § 44A) may be subtracted from FAGI in computing Virginia taxable income. The amount of employment related expenses which may be subtracted is limited to that amount actually used in computing the federal credit. Such amount will be limited by the restrictions of IRC § 44A, including the maximum amount of expenses allowable in computing the federal credit and earned income limitations. This subtraction will further be limited to only expenses which qualify for federal credit. For example, if federal law places a ceiling on expenditures for purposes of computing the federal credit such ceiling will similarly limit the Virginia deduction.~~

~~The actual amount of the federal child and dependent care credit claimed has no bearing upon this deduction; only the base for computing the federal credit is relevant.~~

~~A. For provisions defining the computation of deductions from Virginia taxable income see § 58.1-322.03 of the Code of Virginia.~~

~~B. For the purposes of computing the amount of reduction required to federal itemized deductions for income taxes imposed by Virginia or any other taxing jurisdiction, the term "any other taxing jurisdiction" includes any other state, any locality, and any foreign country.~~

~~C. For the purposes of the Virginia standard deduction, the term "earned income" shall mean wages, salaries or professional fees, and other amounts received as compensation for professional services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by the taxpayer to a corporation that represents a distribution of earnings or profits rather than~~

a reasonable allowance as compensation for the personal services actually rendered. This rule applies to dependents younger than 19 years of age and full-time students who are eligible to be claimed on their parent's return.

## **23VAC10-110-144. Virginia taxable income; modifications and adjustments. (Repealed.)**

~~The modifications set forth in § 58.1-315 of the Code of Virginia shall be added or subtracted, whichever is applicable, in determining Virginia taxable income. (See also 23VAC10-110-110.)~~

## **23VAC10-110-250. Special cases in which nonresident not required to file Virginia return. (Repealed.)**

~~A. Commuters. A nonresident who did not maintain a place of abode in Virginia at any time during the taxable year and who commuted on a daily basis to employment in Virginia from his residence outside this state is not required to file a Virginia income tax return nor is he liable for the payment of tax to Virginia provided that all of the following conditions are met:~~

- ~~1. His only income from Virginia sources is from salaries and wages;~~
- ~~2. His salaries and wages from Virginia sources are subject to taxation by his state of residence;~~
- ~~3. Such taxpayer's state of residence imposes an income tax substantially similar to Virginia's, i.e., a net income tax;~~
- ~~4. The tax laws of the taxpayer's state of residence allow a credit against the tax liability of a Virginia resident to such state which is substantially similar to that accorded by Virginia as defined in 23VAC10-110-220 through 23VAC10-110-222; and~~
- ~~5. The tax laws of the taxpayer's state of residence accord Virginia residents commuting to work in such state on a daily basis the same relief from filing a return as provided herein for nonresidents of Virginia.~~

~~As of the adoption date of these regulations, residents of Kentucky, Maryland, West Virginia and the District of Columbia may qualify for a filing exclusion under the provisions of this section. Residents of these states who have Virginia income tax withheld on salary and wages earned in Virginia and who would otherwise qualify for the filing exclusion may obtain a refund of Virginia tax withheld by filing Form 763S, Special Nonresident Claim for Individual Income Tax.~~

~~B. Reciprocal agreements. The Department of Taxation may enter into reciprocal agreements with other states to relieve residents of such state from filing a return or paying tax to Virginia on compensation paid herein. Under such reciprocal agreements, Virginia residents will similarly be relieved from filing and payment requirements in the reciprocating state. For~~

taxable years beginning on and after January 1, 1982, such an agreement is in effect with Pennsylvania.

**23VAC10-110-280. Nongame ~~wildlife~~ voluntary contribution. (Repealed.)**

Any individual who is eligible for a state income tax refund may elect to designate that all or a portion of such refund be used for the conservation and management of endangered species and other nongame wildlife. Such election will reduce the amount of refund which the individual will receive by an amount equal to that which is designated for contribution to the nongame wildlife fund.

The amount designated for contribution pursuant to this section must be in whole dollars, i.e., no fractional portions of a dollar may be designated, unless the entire refund is contributed.

If a husband and wife elect to file separately on a combined return (Filing Status #4), they may not designate separate contributions but must instead designate a joint contribution as they mutually agree. For purposes of this section, the term "non game wildlife" shall include protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife both terrestrial and aquatic, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the Board of Game and Inland Fisheries.

**23VAC10-115-10. Definitions. (Repealed.)**

For the purpose of this chapter and unless otherwise required by the context:

"Accumulation distribution" has the meaning set forth in U.S. Treasury Reg. § 1.665(b) 1A(a).

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:
  - a. The ownership of any interest in real or tangible personal property in Virginia; or
  - b. A business, trade, profession or occupation carried on in Virginia.
2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

"Resident estate or trust" means:

1. The estate of a decedent who at his death was domiciled in Virginia;
2. A trust created by will of a decedent who at his death was domiciled in Virginia;

3. A trust created by, or consisting of property of a person domiciled in Virginia, or

4. A trust or estate which is being administered in Virginia. A trust or estate is "being administered in Virginia" if, for example, its assets are located in Virginia, its fiduciary is a resident of Virginia, or it is under the supervision of a Virginia court.

"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.

"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in § 58.1-322 of the Code of Virginia and regulations promulgated thereunder (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in subsection D of § 58.1-322 of the Code of Virginia and regulations promulgated thereunder, except that the amount of state income taxes excluded from federal taxable income shall be included. For example, the Estate of Frederick Jones received \$1,750 of interest from obligations of the State of Massachusetts (not subject to federal income tax), \$5,400 in interest from U.S. Treasury obligations (not subject to Virginia income tax), \$875 in Virginia income tax (permitted as a federal, but not state, itemized deduction) and \$3,250 in other itemized deductions deducted on the federal return. The Virginia fiduciary adjustment is a subtraction of \$2,775, computed as follows in accordance with § 58.1-322 B and C of the Code of Virginia:

Add	
Massachusetts obligations	\$1,750
Virginia income tax	875
	2,625
Subtract	
U.S. Treasury obligations	(5,400)
	(\$2,775)

**23VAC10-115-40. Virginia taxable income of a resident estate or trust. (Repealed.)**

A. The Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year to which there shall be added or subtracted, as the case may be, the share of the estate or trust in the Virginia fiduciary adjustment determined under subsection B.

B. The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary in the Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income

---

# Regulations

---

for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Virginia fiduciary adjustment shall be allocated to the estate or trust.

**Example 1:** The Estate of Jane Doe has federal taxable income of \$36,000 for calendar year 1983 and its Virginia fiduciary adjustment is a subtraction of \$6,000. The Estate has three beneficiaries, two of whom are Virginia residents and the third who is a resident of Maryland. Each beneficiary has a 1/4 share of distributable net income of the Estate. In calendar year 1983 the Estate distributes \$27,000 (3/4 times \$36,000). Each beneficiary is entitled to subtract \$1,500 (1/4 of the \$6,000 Virginia fiduciary adjustment) from his federal adjusted gross income. The \$1,500 balance of the adjustment is allocated to the Estate, yielding Virginia taxable income of \$7,500 (\$36,000 minus \$27,000 distribution minus \$1,500 adjustment).

**Example 2:** Trust X has no distributable net income and no federal taxable income for calendar year 1982. The Virginia fiduciary adjustment is \$15,000, comprised of excess cost recovery under § 58.1-322 B-6 of the Code of Virginia. The trust instrument provides that all income shall be distributed currently, in the following percentages: 50% to A, 30% to B and 20% to C. All of the adjustment (\$7,500 to A, \$4,500 to B and \$3,000 to C) is accordingly allocated to the beneficiaries and the trust's Virginia taxable income is \$0.

## **23VAC10-115-50. Virginia taxable income of a nonresident estate or trust. (Repealed.)**

A. The Virginia taxable income of a nonresident estate or trust shall be its share of income, gain, loss and deduction attributable to Virginia sources as determined under 23VAC10-115-60 increased or reduced, as the case may be, by:

1. The amount derived from or connected with Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the computation of distributable net income of the estate or trust; and
2. The net amount of any modifications as provided for in § 58.1-322 of the Code of Virginia and regulations promulgated thereunder (not including subsection D thereof) with respect to the income or gain referred to in A-1 of this section.

B. **Example:** Nonresident Trust Z owned rental property in Virginia. It disposed of the property and recognized a short-term capital gain of \$10,000. The trust instrument provides that capital gains are allocable to corpus and are not paid, credited or required to be distributed to any beneficiary during the taxable year. Under federal law, the capital gain is excluded from the computation of distributable net income and, accordingly, must be added to the trust's share of income from

Virginia sources. If the share of nonresident Trust Z in income, gain, loss and deduction attributable to Virginia sources is \$45,000, the Virginia taxable income of Trust Z would be \$55,000 (\$45,000 + \$10,000).

## **23VAC10-115-90. Other credits. (Repealed.)**

A. **Virginia Neighborhood Assistance Act credit.** A tax credit is provided under the Virginia Neighborhood Assistance Act for businesses which invest in approved neighborhood assistance projects designed to benefit low income individuals. The Act is administered by the Virginia Department of Social Services, which should be contacted for additional information. To claim the credit, fiduciaries or beneficiaries must attach to their respective income tax returns a copy of a statement from the Department of Social Services certifying the credit. A statement from the fiduciary should also be attached specifying the amount of the business credit applicable to each beneficiary.

B. **Urban Enterprise Zone credit.** A tax credit is provided under the Virginia Urban Enterprise Zone Act to qualified business firms which derive income from conducting business in an urban enterprise zone. The Act is administered by the Virginia Department of Housing and Community Development, which should be contacted for additional information.

To claim the credit, fiduciaries or beneficiaries must attach to their respective income tax returns a copy of a certificate of qualification to receive state tax incentives issued by the Department of Housing and Community Development. A statement from the fiduciary should also be attached specifying the amount of credit applicable to each beneficiary. Form 301, Urban Enterprise Zone Credit, must be attached to the fiduciary income tax return.

## **23VAC10-115-151. Amendments of declaration. (Repealed.)**

If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

## **23VAC10-115-153. Other payment dates. (Repealed.)**

A. **Fiscal year.** If the estate or trust has a taxable year other than a calendar year then the payments shall be due on the fifteenth day of the fourth, sixth, or ninth month of the taxable year or on the fifteenth day of the first month of the succeeding taxable year, as appropriate.

B. **Installments or entire estimated tax paid in advance.** A fiduciary may elect to pay any installment of the estimated tax before the date prescribed for its payment. A fiduciary may also elect to file a declaration of estimated tax in the closing



days of a calendar year for the taxable year about to begin, and may pay in full the amount of the estimated tax for such taxable year at the time the declaration is filed.

**23VAC10-120-70. Imposition of tax. (Repealed.)**

~~A tax at the rate of six percent is imposed on the Virginia taxable income of every corporation organized under Virginia law and every foreign corporation having income from Virginia sources, as defined in 23VAC10-120-20, regardless of whether or not such foreign corporation has registered with the State Corporation Commission and obtained a certificate of authority to transact business in Virginia.~~

**23VAC10-210-32. Adult care facilities. (Repealed.)**

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

~~"Adult care residence" means an adult care residence often referred to as a "home for adults" and defined in § 63.1-172 of the Code of Virginia as any public or private place, establishment, or institution operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an education program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.~~

~~"Adult day care center" means an adult day care center as defined in § 63.1-194.1 of the Code of Virginia as a facility which provides supplementary care and protection during part of the day only to four or more aged, infirm, or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage.~~

B. Purchases of tangible personal property by nonprofit adult care residences and nonprofit adult day care centers licensed by the Department of Social Services are exempt from the tax.

Purchases of tangible personal property by all other adult care residences and adult day care centers, whether conducted for profit or not, are taxable unless otherwise exempt. If a vendor fails to collect the tax from a nonexempt entity, the entity must remit the tax to the department as provided in 23VAC10-210-6030.

~~Any adult care residence or adult day care center, whether for profit or nonprofit, which engages in selling tangible personal property shall register as a dealer and collect and remit the tax to the department. For example, sales of meals to residents or day care attendees for which a separate charge is made and to nonresidents are taxable. However, meals furnished in connection with services provided in caring for persons and the cost price of which are included as a part of the charge for such services are nontaxable. Purchases of tangible personal property for subsequent resale may be made exempt from the tax under a certificate of exemption, Form ST-10.~~

Charges for the care and maintenance of persons by adult care residences and adult day care centers are not taxable.

**23VAC10-210-130. Artists and art dealers. (Repealed.)**

~~A. Generally. Sales of objects of art, including paintings, sculptures and models, are sales of tangible personal property. The total charge for the property, including any labor or other components of such charge, is subject to tax.~~

~~B. Sales by prisoners. The tax does not apply to sales by prisoners confined in state correctional facilities of artistic products personally made by such prisoners.~~

**23VAC10-210-220. Brackets for collection of the tax. (Repealed.)**

~~A. The rate of the sales and use tax is 5.3%, which is comprised of a 4.3% state tax and a 1.0% local tax applicable throughout Virginia. (See 23VAC10-210-6040 through 23VAC10-210-6043 for special tax rate and provisions applicable to sales through vending machines.) An additional state sales and use tax is imposed in the Northern Virginia and Hampton Roads Regions at the rate of 0.7%. The total rate of the state and local sales and use tax is 6.0% in localities that fall within these regions (4.3% state, 0.7% regional, and 1.0% local). For definitions of the "Hampton Roads Region" and the "Northern Virginia Region" see 23VAC10-210-2070.~~

~~The bracket system is used to eliminate fractions of \$.01 and must be used to compute the tax on transactions of \$5.00 or less. On transactions over \$5.00, the tax is computed at a straight 5.3% (6.0% in the Hampton Roads and Northern Virginia Regions), with one half cent or more treated as \$.01. Any dealer who collects the tax in accordance with the bracket system set forth herein shall not be deemed to have over collected the tax. For over collection of the tax generally, see 23VAC10-210-340 D.~~

~~B. The bracket system does not relieve the dealer from the liability to pay an amount equal to 5.3% (6.0% in the Hampton~~

# Regulations

Roads and Northern Virginia Regions) of his gross taxable sales. However, if the dealer can prove to the department that more than 85% of the gross taxable sales for the period were from individual sales of \$.10 or less (and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him), the department will determine the proper tax liability of the dealer based on the portion of gross taxable sales that came from sales of \$.11 or more. Any dealer who may claim this exception must file with each return a separate statement explaining his claim in detail for consideration by the department.

C. Below is the bracket system for the combined state and local tax of 5.3% on transactions of \$5.00 or less:

Sales Price	Tax Due
0.01 to 0.09	0
0.10 to 0.28	0.01
0.29 to 0.47	0.02
0.48 to 0.66	0.03
0.67 to 0.84	0.04
0.85 to 1.03	0.05
1.04 to 1.22	0.06
1.23 to 1.41	0.07
1.42 to 1.60	0.08
1.61 to 1.79	0.09
1.80 to 1.98	0.10
1.99 to 2.16	0.11
2.17 to 2.35	0.12
2.36 to 2.54	0.13
2.55 to 2.73	0.14
2.74 to 2.92	0.15
2.93 to 3.11	0.16
3.12 to 3.30	0.17
3.31 to 3.49	0.18
3.50 to 3.67	0.19
3.68 to 3.86	0.20
3.87 to 4.05	0.21
4.06 to 4.24	0.22
4.25 to 4.43	0.23
4.44 to 4.62	0.24

4.63 to 4.81	0.25
4.82 to 4.99	0.26
5.00	0.27

For differential rate on fuels for domestic consumption, see 23VAC10-210-630.

D. This subsection contains the bracket system for the combined state, regional, and local tax of 6.0% in the Hampton Roads and Northern Virginia Regions on transactions of \$5.00 or less:

Sales Price	Tax Due
0.00 to 0.08	0
0.09 to 0.24	0.01
0.25 to 0.41	0.02
0.42 to 0.58	0.03
0.59 to 0.74	0.04
0.75 to 0.91	0.05
0.92 to 1.08	0.06
1.09 to 1.24	0.07
1.25 to 1.41	0.08
1.42 to 1.58	0.09
1.59 to 1.74	0.10
1.75 to 1.91	0.11
1.92 to 2.08	0.12
2.09 to 2.24	0.13
2.25 to 2.41	0.14
2.42 to 2.58	0.15
2.59 to 2.74	0.16
2.75 to 2.91	0.17
2.92 to 3.08	0.18
3.09 to 3.24	0.19
3.25 to 3.41	0.20
3.42 to 3.58	0.21
3.59 to 3.74	0.22
3.75 to 3.91	0.23
3.92 to 4.08	0.24
4.09 to 4.24	0.25

4.25 to 4.41	0.26
4.42 to 4.58	0.27
4.59 to 4.74	0.28
4.75 to 4.91	0.29
4.92 to 5.00	0.30

**23VAC10-210-352. Commercial watermen; typical taxable items. (Repealed.)**

A commercial waterman's purchase of the following items is taxable since they are not directly used in commercial fishing activities:

1. Boat marking letters;
2. Cooking utensils;
3. Deck brooms;
4. Fuel for cooking or space heating aboard vessels;
5. Flashlight and batteries;
6. Hand held radios and other communication devices not permanently affixed to a boat;
7. Life preservers;
8. Maps;
9. Tools used to repair equipment;
10. Any other tangible personal property purchased for family or personal use or not purchased for use in extracting seafood from waters for commercial purposes.

**23VAC10-210-353. Commercial waterman; taxation of certain vessels. (Repealed.)**

Certain vessels are subject to the watercraft sales and use tax despite the fact that they may be exempt from the retail sales and use tax pursuant to this regulation. See Chapter 14 (§ 58.1-1400 et seq.) of Title 58.1 of the Code of Virginia and the regulations thereunder.

**23VAC10-210-390. Consignments. (Repealed.)**

Tangible personal property consigned, delivered or entrusted to a dealer for the purpose of sale is taxable at the time of sale at retail. The tax must be collected in accordance with the definition of sales price in 23VAC10-210-4000 with no deduction for the amount of any consignment commission.

**23VAC10-210-485. Dealer's compensation or discount. (Repealed.)**

A. Generally. As compensation for accounting for and paying the state tax, a dealer is allowed a discount of 0.8%, 1.2%, or 1.6%, depending on the volume of monthly taxable sales, of the first 3.0% of the state tax due in the form of a deduction, provided the amount due was not delinquent at the time of

payment. No compensation is allowed on the remainder of the state sales tax or on the local tax. Dealers must compute the discount without regard to the number of certificates of registration that they hold (see subsection C of this section).

To compute the dealer's discount, a dealer (other than a vending machine dealer) would multiply the 4.3% state tax listed on his return by:

1. 0.01116 if monthly taxable sales are less than \$62,501; or
2. 0.00837 if monthly sales are at least \$62,501 but are less than \$208,001; or
3. 0.00558 if monthly taxable sales equal or exceed \$208,001.

Any dealer whose average monthly sales tax liability exceeds \$20,000 is not eligible for the discount. No dealer discount is allowed on the 0.7% regional tax imposed in the Hampton Roads and Northern Virginia Regions. For definitions of the "Hampton Roads Region" and the "Northern Virginia Region" see 23VAC10-210-2070.

Examples:

Dealer A who makes taxable sales of \$10,000 during the month would report state and local tax of \$530 (\$430 state tax and \$100 local tax), from which he would retain a dealer's discount of \$4.80, provided that his return is timely filed and the state and local tax is timely paid. The \$4.80 discount is computed by multiplying the 4.3% state tax (\$430) by 0.01116 since the dealer's monthly taxable sales volume is less than \$62,501.

Dealer B who makes taxable sales of \$250,000 during the month would report state and local tax of \$13,250 (\$10,750 state tax and \$2,500 local tax), from which he would retain a dealer's discount of \$55.99 provided that his return is timely filed and the state and local tax is timely paid. The \$55.99 discount is computed by multiplying the 4.3% state tax (\$10,750) by 0.00558 since the dealer's monthly taxable sales volume is greater than \$208,001.

B. Vending machine sales. In the case of a vending machine dealer who pays combined state and local tax at the rate of 6.3% on his wholesale purchases for resale, the dealer's discount would be computed by multiplying the 5.3% state tax listed on his return by:

1. 0.01208 if monthly taxable sales are less than \$62,501; or
2. 0.00906 if monthly taxable sales are at least \$62,501 but are less than \$208,001; or
3. 0.00604 if monthly taxable sales equal or exceed \$208,001.

Examples:

Vending machine dealer A with \$15,000 in wholesale purchases for resale during the month would report state and

---

# Regulations

---

local tax of \$945 (\$795 state tax and \$150 local tax), from which he would retain a dealer's discount of \$9.60, provided that his return is timely filed and the state and local tax is timely paid. The \$9.60 discount is computed by multiplying the 5.3% state tax (\$795) by 0.01208 since the dealer's monthly taxable sales volume is less than \$62,501.

Vending machine dealer B with \$200,000 in wholesale purchases for resale during the month would report state and local tax of \$12,600 (\$10,600 state tax and \$2,000 local tax), from which he would retain a dealer's discount of \$96.04, provided that his return is timely filed and the state and local tax is timely paid. The \$96.04 discount is computed by multiplying the 5.3% state tax (\$10,600) by 0.00906 since the dealer's monthly taxable sales volume is at least \$62,501 but is less than \$208,001.

**C. Multiple registrations.** Dealers holding two or more certificates of registration must compute the dealer's discount based upon taxable sales from all business locations. This requirement applies to dealers filing consolidated returns and those filing separate returns for each business location.

**Example:**

Dealer C holds separate certificates of registration for five business locations. Each location has monthly taxable sales of less than \$62,501, but total taxable sales for all five locations are \$300,000 for the month. Because total taxable sales exceed \$208,001, the dealer's discount is computed using the 0.00558 discount rate.

Dealers with multistate business locations must compute the discount based upon taxable sales from all business locations in Virginia and on Virginia taxable sales from out of state business locations.

**Example:**

Dealer A, with business locations in Virginia, also has business locations in other states, all of which are registered for collection and remittance of the tax. The out-of-state business locations sell goods to Virginia customers located in Virginia. The total monthly taxable sales for all Dealer A's Virginia business locations are \$200,000, and the total Virginia taxable sales from Dealer A's out of state business locations are \$100,000. Because total taxable sales exceed \$208,001, the dealer's discount is computed using the 0.00558 discount rate.

The department will perform a reconciliation, on an annual basis or more frequently, of dealers holding multiple certificates of registration in order to ensure that the dealer's discount is computed properly by those dealers.

**D. Quarterly filers.** Dealers filing quarterly returns may determine the appropriate dealer's discount rate by dividing their quarterly taxable sales by 3.

**Example:**

Dealer D has quarterly taxable sales of \$100,000. His average monthly taxable sales for the quarter ( $\$100,000 \div 3$ ) are \$33,333.33. Because his average monthly taxable sales are less than \$62,501, Dealer D would compute the dealer's discount using the 0.01116 rate.

**E. Refund requests.** Any amount of tax refunded by the department to a dealer will be reduced by any dealer's discount claimed on the transaction to which the refund relates. For example, if a dealer sells an item for \$1,000, timely files a return reporting the \$53 tax on the transaction and claims the discount, the amount refunded would be \$52.52 (\$53 less 0.01116 of the \$43 state tax =  $\$50 - 0.48 = \$52.52$ ) (assuming the dealer's taxable sales during the month of the sale were less than \$62,501).

For extensions, see 23VAC10-210-550; for penalties and interest, see 23VAC10-210-2030 through 23VAC10-210-2032.

## **23VAC10-210-500. Dentists, dental laboratories, and dental supply houses. (Repealed.)**

**A.** Dentists are deemed to be providing professional services and charges for their services are not subject to the tax. Similarly, dentists are deemed to be the consumers of all tangible personal property purchased for use in their practice except controlled drugs which may be purchased exempt from the tax.

The tax applies to sales to a dentist by a dental laboratory or supplier of dentures, plates, braces and similar prosthetic devices, or the component parts thereof, unless such dentures, braces, etc. are purchased on behalf of a specific patient. If such items are purchased in bulk and then dispensed to a particular patient, the original purchase will be subject to the tax even if the items withdrawn from the bulk inventory are modified for a specific patient. The tax does not apply to charges by the dentist to the patient for such dentures, plates, braces, etc.

The tax applies to sales to a dentist of furnishings, equipment, tools and all other dental supplies of any type.

**B.** Dental laboratories engaged in the production of dentures and the prosthetic items are deemed to be industrial manufacturers and qualify for the exemption set out in 23VAC10-210-920. Dental laboratories making sales of tangible personal property to dentists must collect and pay the tax on all charges for such property without deduction for labor or other expenses.

**C.** Dental supply houses are those businesses primarily engaged in selling fixtures, equipment, instruments, materials and supplies to both dentists and dental laboratories. Dental supply houses must collect and pay the tax on retail sales of tangible personal property to dentists, dental laboratories, and other users unless a properly executed certificate of exemption is furnished by the purchaser.

**23VAC10-210-590. Feed making. (Repealed.)**

When used directly in making feed for sale or resale, the tax does not apply to the following items:

1. Machinery, tools, or repair parts;
2. Cereal grains and other feed ingredients;
3. Fuel, power, or energy; or
4. Supplies.

~~Feed ingredients include drugs, vitamins, minerals, nonprotein nitrogen, supplements, and additives. Tangible personal property used in administration, distribution, or indirectly in feed making, such as in heating and illumination of a building, is subject to the tax.~~

**23VAC10-210-595. Financial institutions. (Repealed.)**

~~A. Purchases. The tax applies to purchases of tangible personal property by all national, state and local banks, savings and loan associations, and loan and finance companies.~~

~~B. Sales. When any bank, savings and loan association, or loan and finance company engages in selling, leasing or renting tangible personal property to consumers or users, it must register as a dealer and collect and pay the tax to the Department of Taxation. The tax applies to all sales even if the property has been repossessed or obtained by default of the borrower.~~

~~The rental of safe deposit boxes does not qualify as the rental of tangible personal property and is not subject to the tax. For trustees, see 23VAC10-210-6010.~~

**23VAC10-210-650. Furniture and storage warehousemen. (Repealed.)**

~~Furniture and storage warehousemen are primarily engaged in the business of moving, storing, packing and delivering tangible personal property belonging to other people. These activities are services and are not subject to tax. The tax does apply, however, to crating, boxing, packing materials, etc., purchased by warehousemen for use in the performance of such services. Warehousemen are also required to collect and pay the tax on retail sales of furniture or other tangible personal property.~~

~~An operator of a furniture and storage warehouse who is also engaged in business as a common carrier of property by motor vehicle is not entitled to any exemption under 23VAC10-210-370 (common carrier of property) on purchases made for the conduct or operation of the business of storage.~~

**23VAC10-210-720. Hospitals and nursing homes. (Repealed.)**

~~A. Hospitals and nursing homes conducted for profit. A hospital or nursing home is primarily engaged in the business of selling services and is a user or consumer of all tangible personal property purchased for use or consumption in~~

~~connection with its operations. Each is required to pay the tax to its vendor at the time of purchase.~~

~~B. Hospitals and licensed nursing homes conducted not for profit. The tax does not apply to sales of tangible personal property to such hospitals or licensed nursing homes, for use or consumption by them, and paid for out of their own funds.~~

~~C. Hospitals and nursing homes (conducted for profit and not for profit.) When any hospital or nursing home, through any division or department, engages in selling tangible personal property, it must register as a dealer and collect and pay the tax.~~

~~For sales of medicines, drugs and certain other enumerated items of tangible personal property sold on prescriptions of licensed physicians or dentists, 23VAC10-210-940.~~

~~D. Clinics. Unless a clinic is an integral part of a hospital conducted not for profit or is itself licensed as a hospital under the provisions of § 32.1-123 of the Code of Virginia and conducted not for profit, sales to such a clinic are taxable.~~

~~E. Hospital cooperatives and hospital corporation conducted not for profit. The tax does not apply to sales of tangible personal property to hospital cooperatives or hospital corporations conducted not for profit when organized and operated for the sole purpose of providing services exclusively to hospitals conducted not for profit.~~

~~F. Homes for adults conducted not for profit. Effective July 1, 1980, the tax does not apply to sales of tangible personal property to homes for adults as defined by § 63.1-172 of the Code of Virginia conducted not for profit. The tax applies to sales of tangible personal property to all other homes for adults whether conducted for profit or not.~~

**23VAC10-210-766. Innovative Technology Authority. (Repealed.)**

~~The Innovative Technology Authority is exempt from the sales and use tax under § 9-262 of the Code of Virginia on all of its purchases, leases or rentals of tangible personal property. The application of the tax generally to political subdivisions such as the Innovative Technology Authority is set forth in 23VAC10-210-690 through 23VAC10-210-694. In addition, all tangible personal property purchased, leased or rented by a nonprofit college or university in conjunction with research sponsored, encouraged or inspired by the Innovative Technology Authority or the Center for Innovative Technology is exempt from the tax pursuant to 23VAC10-210-4020.~~

~~Effective July 1, 1986, tangible personal property withdrawn from inventory for donation to the Innovative Technology Authority, Center for Innovative Technology, or nonprofit colleges or universities is not taxable to the donor pursuant to § 58.1-609.8(5) of the Code of Virginia.~~

---

# Regulations

---

For additional information on the manufacturing exemptions, see 23VAC10-210-920; for the research exemption, see 23VAC10-210-3070 through 23VAC10-210-3074; for the "true object" test, see 23VAC10-210-4040.

## **23VAC10-210-770. Interior decorators. (Repealed.)**

The tax does not apply to an interior decorator's charges for services. When a decorator goes beyond the rendition of services and sells tangible personal property, the decorator must register as a dealer and collect and pay the tax on retail sales. When a decorator makes a lump sum charge for services and furnishes tangible personal property, the tax applies to the total charge, unless the charge for services is billed separately from the tangible personal property.

## **23VAC10-210-790. Kennels, stables and pet shops. (Repealed.)**

The tax does not apply to charges for keeping pets. Operators of kennels, stables and pet shops are required to pay the tax on purchases of tangible personal property used in their operations. Sales of pets are subject to the tax. The sale or rental of riding horses is also subject to the tax.

## **23VAC10-210-810. Laundries and dry cleaners. (Repealed.)**

The tax applies to all tangible personal property purchased by laundries and dry cleaners for use in providing services. This includes machinery, equipment, repair parts, materials and supplies. Services rendered by these operators are not taxable. However, when the operators go beyond the rendition of services and sell clothing or other articles of tangible personal property, they must register as dealers and collect and pay the applicable tax.

The tax does not apply to receipts from coin-operated laundry and dry cleaning devices. The tax does apply to all tangible personal property purchased by coin-operated laundries for use in providing services, including machinery, equipment, repair parts, materials and supplies. For linen supply operations, see 23VAC10-210-860.

## **23VAC10-210-900. Machinists, foundrymen and pattern makers. (Repealed.)**

The tax applies to dies, castings, patterns, tools, machinery and other tangible personal property made by machinists, foundrymen and pattern makers. However, if such items are purchased by an industrial manufacturer, processor, etc., for direct use in manufacturing, etc., or pursuant to any other exemption, the purchase may be made under a certificate of exemption. (For manufacturers, processors, etc., see 23VAC10-210-920.)

When machinists, foundrymen, etc., perform fabrication, the total charge for such fabrication is subject to the tax. For example, if a machinist takes customer-supplied metal piping

and cuts threads into such piping, he has fabricated a new item and the total charge is subject to the tax.

Machinists, foundrymen and pattern makers engaged in making or fabricating tangible personal property for sale or resale may qualify for exemption as an industrial manufacturer or processor. (See 23VAC10-210-920.)

## **23VAC10-210-970. Microfilm and microfiche copies of documents. (Repealed.)**

Sales of microfilm and microfiche copies of documents and other printed or other graphic matter are taxable as sales of tangible personal property. A retailer of microfilm or microfiche copies should collect sales tax on the total sales price of furnishing the microfilm or microfiche to the customer, even though a separate charge for services may have been billed to the customer. Also, where the customer furnishes the microfilm or microfiche to be used in copying documents, the sales tax would apply to the charge for making the copies.

The retailer may purchase raw materials and supplies that become component parts of the finished product under the resale certificate of exemption. Also, if the retailer orders reproductions of microfilm or microfiche that he has produced, on a customer's behalf (i.e., for resale to a customer), he may purchase them under a resale certificate of exemption; however, he must collect sales tax from the customer purchasing such reproductions.

## **23VAC10-210-1070. Nonprofit organizations; criteria for exemption. (Repealed.)**

A. The Tax Commissioner has no authority to grant an exemption from the retail sales and use tax to a nonprofit organization. Only the General Assembly can enact legislation which will grant exemption from the tax.

The General Assembly has not enacted a general exemption from the retail sales and use tax for nonprofit organizations. The only nonprofit organizations exempt from the tax are those specifically set forth in §§ 58.1-608.1 and 58.1-609.1 through 58.1-609.13 of the Code of Virginia. These organizations are typically exempt from federal and state income taxes and serve educational, medical, civic, religious, charitable or cultural purposes. However, the vast majority of nonprofit organizations which are exempt from federal and state income taxes are not exempt from the Virginia retail sales and use tax because they do not qualify for a sales and use tax exemption set out in the Code of Virginia.

If a nonprofit organization is not exempt by Virginia statute from tax on the purchase of tangible personal property or taxable services, it must pay tax on those purchases used or consumed in its operations. If a supplier of the nonprofit organization is not registered to collect the tax or if the supplier is a registered dealer who fails to collect the tax, the nonprofit organization must report and pay the use tax on a Consumer's Use Tax Return, Form ST 7.

If a nonprofit organization regularly engages in selling tangible personal property, it is required to register as a dealer and collect and remit to the department the tax on retail sales unless it is specifically exempt by statute from collecting the tax.

~~B. Strict construction of the exemption. As indicated in 23VAC10-210-540, when determining which organizations qualify for exemption from the tax, the department is bound by court decisions to strictly construe laws granting the tax exemption. This means that a nonprofit organization must meet all of the requirements specified in the law in order to qualify for an exemption. For example, subdivision 15 of § 58.1-609.4 of the Code of Virginia exempts:~~

~~From July 1, 1991, through June 30, 1996, tangible personal property purchased for use or consumption by a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code and organized exclusively to combat illiteracy by tutoring and training adults and by increasing community awareness of the illiteracy problem within the metropolitan Richmond area.~~

~~Under strict construction of the statute, to meet the criteria established for this exemption, an organization must (i) purchase tangible personal property during the period July 1, 1991, to June 30, 1996, (ii) have a § 501 (c)(3) designation from the Internal Revenue Service, (iii) be organized for the sole purpose of combating illiteracy in adults, and (iv) conduct operations in the metropolitan Richmond area. Organizations that provide programs to combat illiteracy as part of a larger operation do not qualify for this exemption. In addition, similar organizations created solely to combat illiteracy, but operating outside the metropolitan Richmond area, would not qualify for this exemption. Lastly, when an exemption "sunset," it typically applies to a specific period and expires after a certain date. Purchases before or after that period are taxable. Therefore, in the example above, purchases made before July 1, 1991, or after June 30, 1996, would be taxable.~~

**~~23VAC10-210-1071. Nonprofit organizations; exempt transactions. (Repealed.)~~**

~~A. The exemptions that have been granted by the General Assembly typically apply only to the use or consumption of tangible personal property by an organization. When an exemption is limited solely to the use or consumption of tangible personal property, the organization generally will be subject to the tax on purchases of meals and lodging, which are considered taxable services. In limited situations, the General Assembly has granted broader exemptions to certain organizations so as to exempt taxable services, such as meals and lodging, and sales of tangible personal property.~~

~~When a nonprofit organization is exempt from paying the tax on the purchase of tangible personal property or services, it should furnish to its supplier a properly completed exemption certificate, either Form ST-13 or ST-13A. If such nonprofit~~

~~organization is not making taxable sales as a registered dealer or is not required to register for consumer use tax, it will usually not have a Virginia Retail Sales and Use Tax registration number. In this instance, there is no requirement to place a registration number on the exemption certificate when making purchases. Instead, "Not Applicable" should be placed on the Certificate of Exemption where the registration number is required.~~

~~If the nonprofit organization does not have an exemption certificate but has received a ruling letter from the department stating that it is exempt by statute, then this letter may be furnished to suppliers instead of the exemption certificate in order to verify that the purchase is exempt from the tax.~~

~~B. According to 23VAC10-210-4040, meals and lodging are considered taxable services rather than tangible personal property. In order to make an exempt purchase of meals and lodging, an organization's exemption must contain specific language which exempts the purchase of services. An example of this language is found in subdivision 4 of § 58.1-609.4 of the Code of Virginia, which exempts:~~

~~Tangible personal property and services purchased by an educational institution doing business in the Commonwealth which (i) admits regularly enrolled high school and college students and (ii) provides a face to face educational experience in American government, a program which leads towards the successful completion of United States history, civics, and problems in democracy courses in high school, or which is acceptable for full credit towards an undergraduate or graduate level college degree, provided such institution is conducted not for profit.~~

~~Therefore, nonprofit organizations are subject to the sales tax on meals and lodging unless their respective statutes specifically exempt services.~~

~~C. If an organization is regularly engaged in selling tangible personal property, it is not required to collect the tax if the organization's exemption contains specific language exempting these sales. An example of this language is found in subdivision 14 of § 58.1-609.8 of the Code of Virginia, which exempts:~~

~~... tangible personal property purchased for use or consumption, or to be sold at retail, by any nonsectarian youth organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code which is organized for the purposes of the character development and citizenship training of its members using the methods now in common use by Girl Scout or Boy Scout organizations in Virginia.~~

**~~23VAC10-210-2020. Peddlers and street vendors. (Repealed.)~~**

~~Any person engaged in the retail selling of tangible personal property, whether through stores, from private residences, from trucks or wagons, by house to house canvass, or in any~~

---

# Regulations

---

other manner, is required to file an application for a Certificate of Registration and to collect and pay the tax due the state.

A vendor of tangible personal property at retail, who peddles property in Virginia from his place of business outside the state, is required to register as a dealer for each county and city in which he peddles, and to collect and pay the state and local tax on all sales.

The Department of Taxation may decline to issue a Certificate of Registration to certain peddlers, street vendors and others who sell at retail from other than an established place of business, because of the transient nature of their business. The department may require vendors selling to such persons to collect the tax on the sale of property to them. Any person who questions whether he must register as a dealer should apply in writing to the department for a ruling. A ruling may also be requested by a vendor selling to such persons.

## **23VAC10-210-2050. Photographs, photostats, blueprints, etc. (Repealed.)**

~~A. Sales. The tax applies to sales of photographs, portraits, prints, slides from camera film, photostats, blueprints, frames, camera film, etc. The tax does not apply to charges for developing films (including movie films) and coloring or tinting photographs.~~

~~The tax is applicable to the total charge to the customer for a photograph, slide, etc., including, but not limited to, charges for labor, photocomposition, setting design, photography time, and any other components of the charge, regardless of whether such components are separately stated.~~

~~The tax also applies to the total charge for aerial photographs, security photographs, audio visual films, and similar items produced under a contractual agreement which includes design time and similar labor charges.~~

~~B. Purchases. Chemicals, paper and other materials that become a component part of the finished photograph or other print for sale may be purchased under a resale certificate of exemption. Purchases of cameras, equipment and other tangible personal property by commercial photographers and others for use or consumption are taxable.~~

~~For industrial processing, see 23VAC10-210-920.~~

## **23VAC10-210-4030. Seeds and seedlings. (Repealed.)**

~~The tax does not apply to sales of seeds and seedlings to a person who plants them in soil for growing agricultural products for market.~~

~~The tax applies to purchases of seeds and seedlings for use on lawns, golf courses, or in residential, commercial or other beautification projects.~~

~~For agricultural production of trees, see 23VAC10-210-50.~~

VA.R. Doc. No. R24-7737; Filed June 18, 2024, 4:47 p.m.



---

# 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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

### BOARD OF ACCOUNTANCY

Title of Document: [Virginia Board of Accountancy Enforcement Processes.](#)

Public Comment Deadline: August 14, 2024.

Effective Date: August 15, 2024.

Agency Contact: Kelli Yoder, Communications Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, or email [kelli.yoder@boa.virginia.gov](mailto:kelli.yoder@boa.virginia.gov).

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).

### STATE WATER CONTROL BOARD

Title of Document: [Virginia Stormwater Management Handbook, Version 1.1.](#)

Public Comment Deadline: August 14, 2024.

Effective Date: August 15, 2024.

Agency Contact: Rebecca Rochet, Deputy Director, Water Permitting Division, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23219, telephone (804) 801-2950, or email [swmguidance@deq.virginia.gov](mailto:swmguidance@deq.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Chapter 2 of Baby Care Manual.](#)

[Chapter 4 of Baby Care Manual.](#)

Public Comment Deadline: August 14, 2024.

Effective Date: August 15, 2024.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

### STATE BOARD OF HEALTH

Title of Document: [Guidance for X-ray Machine Operators.](#)

Public Comment Deadline: August 14, 2024.

Effective Date: August 15, 2024.

Agency Contact: Cameron Rose, Deputy Director, Office of Radiological Health, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7090, or email [cameron.rose@vdh.virginia.gov](mailto:cameron.rose@vdh.virginia.gov).

Public Comment Deadline: August 14, 2024.

Effective Date: August 15, 2024.

Agency Contact: Emily McClellan, Policy Division Director, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Early and Periodic Screening, Diagnostic, and Treatment Inpatient Services Supplement.](#)

---

# GENERAL NOTICES

---

## DEPARTMENT OF CONSERVATION AND RECREATION

### Public Comment Notice: Round 5 Community Flood Preparedness Fund Draft Manual

The Department of Conservation and Recreation (DCR) is accepting public comments for the [Round 5 Community Flood Preparedness Fund \(CFPF\) draft manual](#). The purpose of this manual is to provide guidance regarding the policies, criteria, conditions, and procedures for determining project eligibility and awarding grants and loans from the Virginia Community Flood Preparedness Fund to local governments per §§ 10.1-603.25 and 10.1-603.29 of the Code of Virginia and as required by the Clean Energy and Community Flood Preparedness Act.

The comment draft of the Round 5 Manual uses the text of the previous manual from round four, with minor updates to account for recent legislative changes. Given the success of this prior round, and general stakeholder understanding of how the CFPF functions under the Round 4 Manual, DCR believes that it will function as a useful baseline for interested parties to submit comments.

In addition to general feedback, DCR encourages stakeholders to provide comments on (i) definitions; (ii) eligible activities; (iii) periods of performance for the various activities supported by the CFPF, and in particular whether a five-year period of performance may be appropriate for capacity building, resilience plan implementation, and projects; (iv) match requirements and scoring; and (v) the availability of both short-term and long-term loans for projects.

After reviewing public comment and making any necessary and appropriate amendments, the official manual will be published to the DCR website. DCR intends to host at least one public meeting, which may be virtual, during the comment period to solicit feedback from interested parties.

Contact Information: Angela Davis, Division Director, Floodplain Management, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-6135, FAX (804) 786-6141, or email [angela.davis@dcr.virginia.gov](mailto:angela.davis@dcr.virginia.gov).

## DEPARTMENT OF ENERGY

### Virginia Energy Receives \$2.6 Million Gas and Oil Methane Mitigation Grant to Reduce Methane Emissions in Virginia

Big Stone Gap, VA - Methane emissions will be lower in Virginia thanks to a new program to plug natural gas wells that are considered marginal producers. The Department of Energy (Virginia Energy) received \$2,643,702 for the Methane

Emissions Reduction Program. Virginia Energy's Gas and Oil program will oversee the grant.

"This funding will help provide Virginia operators with funds to close these natural gas wells and reclaim the site," said Director of Gas and Oil Phil Skorupa. "We hope to plug several of these wells over the next few years, stopping the potential for methane entering the atmosphere."

The program is funded by the National Energy Technology Laboratory under the U.S. Department of Energy (DOE) and in partnership with the Environmental Protection Agency.

U.S. DOE funding is designated for wells producing less than 90,000 cubic feet of gas daily. Operators will apply to Virginia Energy for the funding to plug or permanently seal wells. Once the well is plugged, the site will be reclaimed to prevent any potential environmental impacts.

The average well in Virginia produces around 30,000 cubic feet of natural gas each day. It costs \$25,000 to \$75,000 to plug a natural gas well, depending on well bore depth and producing formations.

Operators interested in applying for funding should visit the Virginia Energy website at <https://www.energy.virginia.gov/>. Plugging operations are expected to begin in late 2024. Methane emissions eliminated through this project will be reported on the Virginia Energy website.

Contact Information: Sarah Gilmer, Board and Permitting Specialist, Department of Energy, 2405 Mountain Empire Road, Big Stone Gap, VA 23219, telephone (276) 415-9700, FAX (276) 415-9671, TDD (800) 828-1120, or email [sarah.gilmer@energy.virginia.gov](mailto:sarah.gilmer@energy.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Wythe County Solar Project LLC Notice of Intent for Small Renewable Energy (Energy Storage) - Wythe County

Wythe County Solar Project LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (energy storage) in Wythe County pursuant to 9VAC15-100. The project name is Wythe BESS (DEQ project number RE0000316), the owner is Wythe County Solar Project LLC, and the project developer is RWE Clean Energy.

The location of the project is 0 Payne Town Road, Max Meadows, VA 24360, east of Interstate 77 and has a centroid of latitude 36.874274, longitude -80.825090. The project will have a maximum storage capacity of 52.2 megawatts alternating current on approximately 12 acres. As proposed, the project will include the utilization of approximately 64 battery cell module containers.

**Contact Information:** Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474, or email [amber.foster@deq.virginia.gov](mailto:amber.foster@deq.virginia.gov).

### **Proposed Enforcement Action for Purdy Brothers Trucking, LLC**

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Purdy Brothers Trucking, LLC for violations of the State Water Control Law and regulations in Smyth County. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from July 15, 2024, through August 14, 2024.

**Contact Information:** Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for Rayaanik Inc.**

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Rayaanik Inc. for violations of the State Water Control Law and regulations in Southampton County. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from July 15, 2024, through August 14, 2024.

**Contact Information:** Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, telephone (757) 647-8060, or email [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov).

### **Proposed Enforcement Action for Wythe County Solar Project LLC**

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Wythe County Solar Project LLC for violations of the State Water Control Law and regulations in Wythe County. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from July 15, 2024, through August 14, 2024.

**Contact Information:** Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for Gary Lewis**

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Gary Lewis for violations

of the State Water Control Law and regulations at the Empire Mobile Home Park sewage treatment plant in Scott County. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from July 15, 2024, through August 14, 2024.

**Contact Information:** Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@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](mailto: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

---

---

**STATE BOARD OF BEHAVIORAL HEALTH AND  
DEVELOPMENTAL SERVICES**

**Title of Regulation: 12VAC35-105 Rules and Regulations  
for Licensing Providers by the Department of Behavioral  
Health and Developmental Services.**

Publication: 40:22 VA.R. 1824-1851; June 17, 2024

Correction to Final Regulation:

Page 1826, 12VAC35-105-20, definition of "Community-  
based crisis stabilization"

line 8, after "may include" insert "mobile crisis response."

line 24, after "support system" delete "during the periods" and  
after "(i)" insert "as part of an initial mobile crisis response; (ii)  
during the period"

line 26, after "level of care;" replace "(ii)" with "(iii)"

line 28, after "for access; or" replace "(iii)" with "(iv)"

Page 1830, 12VAC35-105-20, definition of "Mobile crisis  
response"

line 1, after "means a" insert "type of community-based crisis  
stabilization"

VA.R. Doc. No. R24-7796; Filed June 26, 2024, 4:17 p.m.