



# VIRGINIA

## REGISTER OF REGULATIONS

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### TABLE OF CONTENTS

<b>Register Information Page</b> .....	2241
<b>Publication Schedule and Deadlines</b> .....	2242
<b>Petitions for Rulemaking</b> .....	2243
<b>Notices of Intended Regulatory Action</b> .....	2244
<b>Regulations</b> .....	2245
4VAC10-30. Virginia State Forests Regulations (Final) .....	2245
9VAC25-20. Fees for Permits and Certificates (Forms).....	2245
12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (Final).....	2246
18VAC90-20. Regulations Governing the Practice of Nursing (Final) .....	2246
18VAC90-25. Regulations Governing Certified Nurse Aides (Final) .....	2246
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Final).....	2246
18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (Final).....	2246
18VAC90-50. Regulations Governing the Certification of Massage Therapists (Final) .....	2246
18VAC90-60. Regulations Governing the Registration of Medication Aides (Final) .....	2246
<b>Governor</b> .....	2251
<b>General Notices/Errata</b> .....	2255

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **26:20 V.A.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Patricia L. West**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### June 2011 through June 2012

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 ( <b>Tuesday</b> )	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 ( <b>Tuesday</b> )	January 2, 2012
28:10	December 27, 2011 ( <b>Tuesday</b> )	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Initial Agency Notice

Title of Regulation: 9VAC25-260. Water Quality Standards.

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

Name of Petitioner: National Park Service.

Nature of Petitioner's Request: The petitioner has requested that the State Water Control Board amend the Water Quality Standards to designate Bull Run from the northern end of Manassas National Battlefield Park boundary, at the confluence of Little Bull Run, south to where it crosses Route 66 as a Tier III exceptional state water.

Agency's Plan for Disposition of Request: A 21-day public comment period is hereby announced in the Virginia Register of Regulations. Upon completion of the public comment period, the State Water Control Board will consider the petition at its fall meeting and decide whether to move forward with the rulemaking.

Public Comment Deadline: June 27, 2011.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R11-42; Filed May 11, 2011, 4:26 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-340, Regulations Governing Driver Education**, and repealing **8VAC20-60, Regulations Governing the Approval of Correspondence Courses for Home Instruction**. The purpose of the proposed action is to amend 8VAC20-340 by adopting new language directed specifically at approving driver education courses offered by correspondence or over the Internet and repeal 8VAC20-60, which is an outdated regulation.

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

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

Public Comment Deadline: July 8, 2011.

Agency Contact: Anne D. Wescott, Assistant Superintendent for Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2403, FAX (804) 225-2524, or email [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).

VA.R. Doc. No. R11-2644; Filed May 5, 2011, 11:47 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-20, Condominium Regulations**. The purpose of the proposed action is to conduct a general review of the regulations. Changes are made annually to the Condominium Act by the General Assembly. The regulations have not undergone substantial revision since 1988 and in 2008 the regulatory authority was moved from the Real Estate Board to the newly created Common Interest Community Board. Therefore, a thorough review is necessary to ensure that the regulation complements the current Condominium Act, provides minimal burdens on regulants while still protecting the public, and reflects current procedures and policies of the Department of Professional and Occupational Regulation.

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

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: July 6, 2011.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R11-2805; Filed May 5, 2011, 11:33 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### VIRGINIA AVIATION BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Aviation Board intends to consider amending **24VAC5-20, Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia**. The purpose of the proposed action is to consider changes to the regulations regarding airport licensure, with a focus on 24VAC5-20-140, Minimum requirements for licensing, and 24VAC5-20-275, Conditional licenses. The proposed change to 24VAC5-20-140 would more closely align state minimum requirements with Federal Aviation Administration standards. The proposed change to 24VAC5-20-275 would modify the process for addressing airports not in compliance with state minimum licensing standards. The modification would offer better defined solutions to address noncompliant situations that would lead to finite resolutions not currently realized, thereby improving the efficiency of the licensing process. The changes for minimum licensing requirements and conditional licenses will benefit the operation and safety of the statewide air transportation system. The proposal also includes changes to clarify procedural information, reduce redundancy, update citations, and provide consistency throughout the chapter.

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

Statutory Authority: §§ 5.1-2.2 and 5.1-2.15 of the Code of Virginia.

Public Comment Deadline: July 6, 2011.

Agency Contact: Susan H. Simmers, Senior Airport Planner, Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3632 ext: 105, FAX (804) 236-3635, or email [susan.simmers@doav.virginia.gov](mailto:susan.simmers@doav.virginia.gov).

VA.R. Doc. No. R11-2811; Filed May 17, 2011, 7:39 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF FORESTRY

#### Final Regulation

Title of Regulation: **4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-170).**

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Effective Date: July 7, 2011.

Agency Contact: Ronald S. Jenkins, Administrative Officer, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

Background: In response to a petition for rulemaking, the Department of Forestry published a proposed amendment to 4VAC10-30-170, which would remove the prohibition against lawful concealed firearms and continue the prohibition on open carried firearms, and sought public input on this proposal (26:12 VA.R. 1864-1865 February 15, 2010). Due to the overwhelming level of requests to remove the prohibition against not only lawful concealed firearms but also open-carried firearms, the Department of Forestry conducted a second public comment period after publication of a revised proposed amendment to allow the lawful carrying of both open and concealed firearms in state forests (27:12 VA.R. 1275-1276 February 14, 2011).

#### Summary:

*This final amendment allows persons to carry lawful open and concealed firearms onto state forest properties under the ownership and management of the Department of Forestry.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### **4VAC10-30-170. Explosives, ~~fires~~ firearms, etc.**

No person shall bring into or have in any forest any explosive or explosive substance ~~, except commercial sporting firearms ammunition, explosives, explosive substances and firearms of all types are prohibited in any portion of a forest assigned to the Department of Forestry, for administration as a recreational area. This regulation shall not apply to the lawful carrying of concealed handguns within~~

~~state forests by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia firearms and firearms ammunition.~~

VA.R. Doc. No. R09-06; Filed May 10, 2011, 11:15 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Forms

Title of Regulation: **9VAC25-20. Fees for Permits and Certificates.**

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Agency Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 498-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

#### FORMS (9VAC25-20)

~~Water Quality Division Permit Application Fee Form (rev. 7/04).~~

~~Form 1 Biosolids Land Application Local Monitoring Expenses Reimbursement Invoice, 2007.~~

[DEQ Water Division Permit Application Fee Form Effective January 1, 2008 \(rev. 1/10\).](#)

[Form 1 Biosolids Land Application Local Monitoring Expenses - Reimbursement Invoice \(rev. 5/10\).](#)

[Form 2 Biosolids Land Application Fee - Reimbursement Multiple Owners Payment Assignment \(2007\).](#)

[Form 3 Biosolids Land Application Fee - Reimbursement Notice of Intent to Seek Reconsideration \(rev. 8/07\).](#)

Form 4 Biosolids Land Application Fee - Reimbursement Reconsideration Claim Form (rev. 8/07).

VA.R. Doc. No. R11-2853; Filed May 16, 2011, 3:11 p.m.

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# Regulations

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from 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 Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (adding 12VAC30-10-435).

**Statutory Authority:** § 32.1-325 of the Code of Virginia.

**Effective Date:** July 6, 2011.

**Agency Contact:** Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

#### Summary:

*This regulatory action prohibits any payment for items or services provided under Virginia's Plan for Medical Assistance or under a waiver to any financial institution or entity located outside of the United States. The prohibition is required by the federal Centers for Medicare and Medicaid Services in accordance with § 6505 of the Patient Protection and Affordable Care Act (Pub. L. 111-148), which amends § 1902 (a) of the Social Security Act.*

#### **12VAC30-10-435. Medicaid prohibition on payments to institutions or entities located outside of the United States.**

The state shall not provide any payments for items or services provided under the state plan or under a waiver to any financial institution or entity located outside of the United States.

VA.R. Doc. No. R11-2779; Filed May 11, 2011, 3:36 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Final Regulation

**Titles of Regulations:** 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-30, 18VAC90-20-40, 18VAC90-20-60, 18VAC90-20-151, 18VAC90-20-160).

**18VAC90-25. Regulations Governing Certified Nurse Aides (amending 18VAC90-25-80).**

**18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-50).**

**18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-70).**

**18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-30).**

**18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-30).**

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

**Effective Date:** July 6, 2011.

**Agency Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

#### Summary:

*The amendments (i) increase fees charged to regulants and applicants and (ii) establish new fees to cover the cost of continued approval of nursing education programs. Biennial renewal fees for registered nurses are increased by \$45 and for licensed practical nurses by \$25. For initial approval of a nursing education program, there is an increase in the application fee of \$450. Fees for survey visits and site visits to nursing education programs are added in amounts sufficient to offset the boards expenses for such visits.*

*Similar increases are adopted for clinical nurse specialists, licensed nurse practitioners, and certified massage therapists. For certified nurse aides, the board changed the renewal cycle from a biennial cycle to an annual cycle with a fee of \$30. The annual fee for medication aides is raised by \$5.00 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions, are increased proportionally.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

**18VAC90-20-30. Fees.**

Fees required by the board are:

1. Application for licensure by examination - <u>RN</u>	<del>\$130</del> <u>\$190</u>
2. Application for licensure by endorsement - <u>RN</u>	<del>\$130</del> <u>\$190</u>
<u>3. Application for licensure by examination - LPN</u>	<u>\$170</u>
<u>4. Application for licensure by endorsement - LPN</u>	<u>\$170</u>
<del>3-</del> <u>5. Reapplication for licensure by examination</u>	<del>\$25</del> <u>\$50</u>
<del>4-</del> <u>6. Biennial licensure renewal - RN</u>	<del>\$95</del> <u>\$140</u>
<u>7. Biennial inactive licensure renewal - RN</u>	<u>\$70</u>
<u>8. Biennial licensure renewal - LPN</u>	<u>\$120</u>
<u>9. Biennial inactive licensure renewal - LPN</u>	<u>\$60</u>
<del>5-</del> <u>10. Late renewal - RN</u>	<del>\$35</del> <u>\$50</u>
<u>11. Late renewal - LPN</u>	<u>\$40</u>
<del>6-</del> <u>12. Reinstatement of lapsed license - RN</u>	<del>\$145</del> <u>\$225</u>
<u>13. Reinstatement of lapsed license - LPN</u>	<u>\$200</u>
<del>7-</del> <u>14. Reinstatement of suspended or revoked license</u>	<del>\$185</del> <u>\$300</u>
<del>8-</del> <u>15. Duplicate license</u>	<del>\$5</del> <u>\$15</u>
<del>9-</del> <u>16. Replacement wall certificate</u>	<del>\$15</del> <u>\$25</u>
<del>10-</del> <u>17. Verification of license</u>	<del>\$25</del> <u>\$35</u>
<del>11-</del> <u>18. Transcript of all or part of applicant/licensee records</u>	<del>\$25</del> <u>\$35</u>
<del>12-</del> <u>19. Returned check charge</u>	<u>\$35</u>
<del>13-</del> <u>20. Application for CNS registration</u>	<del>\$95</del> <u>\$130</u>
<del>14-</del> <u>21. Biennial renewal of CNS registration</u>	<del>\$60</del> <u>\$80</u>
<del>15-</del> <u>22. Reinstatement of lapsed CNS registration</u>	<del>\$105</del> <u>\$125</u>
<del>16-</del> <u>23. Verification of CNS registration to another jurisdiction</u>	<del>\$25</del> <u>\$35</u>
<del>17-</del> <u>24. Late renewal of CNS registration</u>	<del>\$20</del> <u>\$35</u>

<del>18. Inactive licensure renewal</del>	<u>\$50</u>
<del>19. Late renewal of an inactive license</del>	<u>\$15</u>
<u>25. Application for approval of a nursing education program</u>	<u>\$1,650</u>
<u>26. Survey visit for nursing education program</u>	<u>\$2,200</u>
<u>27. Site visit for NCLEX passage rate for nursing education program</u>	<u>\$1,500</u>

Part II  
Nursing Education Programs

Article 1  
Establishing a Nursing Education Program

**18VAC90-20-40. Application.**

A. An institution wishing to establish a nursing education program shall:

1. Submit to the board, at least 12 months in advance of expected opening date, a statement of intent to establish a nursing education program along with an application fee ~~of \$1,200~~ as prescribed in 18VAC90-20-30.
2. Submit to the board evidence documenting adequate resources for the projected number of students and the ability to provide a program that can meet the requirements of Article 2 (18VAC90-20-70 et seq.) of this part to include the following information:
  - a. Organizational structure of the institution and relationship of nursing program therein;
  - b. Purpose and type of program;
  - c. Availability of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;
  - d. Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision;
  - e. Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program;
  - f. Availability of academic facilities for the program, including classrooms, laboratory, and library;
  - g. Evidence of financial resources for the planning, implementation and continuation of the program with budget projections for three years;
  - h. Tentative time schedule for planning and initiating the program; and



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# Regulations

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i. An enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval.

3. Respond to the board's request for additional information.

B. A site visit may be conducted by a representative of the board.

C. The Education Special Conference Committee (the "committee"), composed of not less than two members of the board, shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review applications and the report of the site visit and shall make recommendations to the board regarding the granting or denial of approval of the program application.

1. If the board accepts the recommendation to approve the program application, the institution may apply for provisional approval of the nursing education program as set forth in this chapter.

2. If the committee recommendation is to deny approval of the program application, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

## **18VAC90-20-60. Program approval.**

A. The application for approval shall be complete when:

1. A self-evaluation report of compliance with Article 2 (18VAC90-20-70 et seq.) of this part has been submitted along with the fee for a survey visit as required by 18VAC90-20-30;

2. The first graduating class has taken the licensure examination, and the cumulative passing rate for the program's first-time test takers taking the NCLEX over the first four quarters following graduation of the first class is not less than 80%; and

3. A satisfactory survey visit and report has been made by a representative of the board verifying that the program is in compliance with all requirements for program approval.

B. The committee shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the self-evaluation, the NCLEX results and survey reports and shall make a recommendation to the board for the granting or denial of approval or for continuance of provisional approval.

C. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 of the Code of Virginia.

## **18VAC90-20-151. Passage rate on national examination.**

A. For the purpose of continued approval by the board, a nursing education program shall maintain a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters in each year.

B. If a program falls below 80% for two consecutive years, the board shall conduct a site visit and place the program on conditional approval. Prior to the conduct of such a visit, the program shall submit the fee for a site visit pursuant to the NCLEX passage rate as required by 18VAC90-20-30. If a program falls below 80% for three consecutive years, the board may withdraw program approval.

C. For the purpose of program evaluation, the board may provide to the program the examination results of its graduates. However, further release of such information by the program shall not be authorized without written authorization from the candidate.

### Article 3

#### Maintaining or Closing an Approved Nursing Education Program

## **18VAC90-20-160. Maintaining an approved nursing education program.**

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated as follows:

1. A program that has not achieved accreditation as defined in 18VAC90-20-10 shall be reevaluated at least every eight years for a practical nursing program and every six years for a registered nursing program by submission of a comprehensive self-evaluation report based on Article 2 (18VAC90-20-70 et seq.) of this part, and a survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.

2. A program that has maintained accreditation as defined in 18VAC90-20-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation, the board shall conduct an on-site survey visit within one year of such action. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

C. The Education Special Conference Committee (the "committee"), composed of not less than two members of the board, shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the self-evaluation and survey reports and shall make a recommendation to the board to grant continued approval, place the program on conditional approval or withdraw approval.

1. A nursing education program shall continue to be approved provided the requirements set forth in Article 2 of this part are attained and maintained.

2. If the committee determines that a nursing education program is not maintaining the requirements of Article 2 of this part, the committee shall recommend to the board that the program be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies.

a. The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing correction of deficiencies, make a recommendation to the board to grant continued approval, continue the program on conditional approval or withdraw approval.

b. If the nursing education program fails to correct the identified deficiencies within the time specified by an order of the board, the board may withdraw the approval following a formal hearing.

c. The governing institution may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

D. Interim visits shall be made to the institution by board representatives at any time within the approval period either by request or as deemed necessary by the board. Prior to the conduct of such a visit, the program shall submit the fee for a survey visit as required by 18VAC90-20-30.

E. Failure to submit the required fee for a survey or site visit may subject an education program to board action or withdrawal of board approval.

**18VAC90-25-80. Renewal or reinstatement of certification.**

A. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, a notice for renewal shall be mailed by the board to the ~~last known~~ address of record of each currently registered certified nurse aide.

2. The certified nurse aide shall annually submit a completed renewal application with the required fee of ~~\$50~~ \$30 and verification of performance of nursing-related

activities for compensation within the two years immediately preceding the expiration date.

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.

5. The board shall also charge a fee of \$35 for a returned check.

B. Reinstatement of certification.

1. An individual whose certification has lapsed for more than 90 days shall submit the required application and renewal fee and provide:

a. Verification of performance of nursing-related activities for compensation in the two years prior to the expiration date of the certificate and within the preceding two years; or

b. Evidence of having repeated and passed the nurse aide competency evaluation.

2. An individual who has previously had a finding of abuse, neglect or misappropriation of property is not eligible for reinstatement of his certification, except as provided in 18VAC90-25-81.

**18VAC90-30-50. Fees.**

Fees required in connection with the licensure of nurse practitioners are:

1. Application	<del>\$85</del> <u>\$125</u>
2. Biennial licensure renewal	<del>\$50</del> <u>\$80</u>
3. Late renewal	<del>\$20</del> <u>\$25</u>
4. Reinstatement of licensure	<del>\$85</del> <u>\$150</u>
5. Verification of licensure to another jurisdiction	<del>\$25</del> <u>\$35</u>
6. Duplicate license	<del>\$5</del> <u>\$15</u>
7. Duplicate wall certificate	<del>\$15</del> <u>\$25</u>
8. Return check charge	\$35
<u>9. Reinstatement of suspended or revoked license</u>	<u>\$200</u>

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# Regulations

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## 18VAC90-40-70. Fees for prescriptive authority.

The following fees have been established by the boards:

1. Initial issuance of prescriptive authority	<del>\$50</del> <u>\$75</u>
2. Biennial renewal	<del>\$25</del> <u>\$35</u>
3. Late renewal	<del>\$40</del> <u>\$15</u>
4. Reinstatement of lapsed authorization	<del>\$60</del> <u>\$90</u>
5. Reinstatement of suspended or revoked authorization	\$85
6. Duplicate of authorization	<del>\$5</del> <u>\$15</u>
7. Return check charge	\$35

## 18VAC90-50-30. Fees.

A. Fees listed in this section shall be payable to the Treasurer of Virginia and shall not be refunded unless otherwise provided.

B. Fees required by the board are:

1. Application and initial certification	<del>\$105</del> <u>\$140</u>
2. Biennial renewal	<del>\$70</del> <u>\$95</u>
3. Late renewal	<del>\$25</del> <u>\$30</u>
4. Reinstatement of certification	<del>\$120</del> <u>\$150</u>
5. Reinstatement after suspension or revocation	<del>\$150</del> <u>\$200</u>
6. Duplicate certificate	<del>\$5</del> <u>\$15</u>
7. Replacement wall certificate	<del>\$15</del> <u>\$25</u>
8. Verification of certification	<del>\$25</del> <u>\$35</u>
9. Transcript of all or part of applicant/certificate holder records	<del>\$25</del> <u>\$35</u>
10. Returned check charge	\$35

## 18VAC90-60-30. Fees.

A. The following fees shall apply:

1. Application for program approval	\$500
2. Application for registration as a medication aide	\$50
3. Annual renewal for medication aide	<del>\$25</del> <u>\$30</u>
4. Late renewal	\$15
5. Reinstatement of registration	\$90
6. Returned check	\$35
7. Duplicate registration	<del>\$5</del> <u>\$15</u>
8. Reinstatement following suspension, mandatory suspension or revocation	\$120

B. Fees shall not be refunded once submitted.

C. The fee for the competency evaluation shall be paid directly to the examination service contracted by the board for its administration.

VA.R. Doc. No. R10-2131; Filed May 12, 2011, 1:56 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 33 (2011)

### **Declaration of a State of Emergency for Pulaski County and the Commonwealth of Virginia Due to Significant Damage and Flooding Caused by Tornadoes and Severe Thunderstorms with Damaging Winds and Heavy Rains**

#### Importance of the Issue

On April 9, 2011, I verbally declared a state of emergency to exist for Pulaski County based on severe thunderstorms that resulted in two tornadoes that caused injuries to citizens and widespread damage to structures in Pulaski County. On April 17, 2011, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on tornadoes and severe thunderstorms that caused deaths and injuries to citizens and widespread damage to structures across the Commonwealth. On April 28, 2011, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on tornadoes, severe storms, damaging winds, and periods of heavy rainfall that resulted in loss of life and widespread damage and injuries to residents and buildings in the Commonwealth.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of these severe thunderstorms constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on April 9, 17, and 28, 2011, whereby I proclaimed that a state of emergency exists and I directed that appropriate assistance be rendered by agencies of both state and local governments to alleviate any conditions resulting from significant storm events, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of

Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. The activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP), and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the severe thunderstorms. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

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# Governor

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E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overweight loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles in route and returning to their home base. The above-cited agencies shall communicate this information to all staff

responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Citizen Emergency Response Teams (CERTS), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) and (F) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

K. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

L. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials.

M. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this event and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

(a) Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

(b) Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

(c) All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

(d) In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

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# Governor

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Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in paragraph 4 (a) above pertaining to the Virginia National Guard and in paragraph 5 (d) above pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds and/or federal funds. In addition, up to \$250,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

## Effective Date of this Executive Order

This Executive Order shall be effective retroactively to April 9, 2011, and shall remain in full force and effect until June 30, 2012, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of May, 2011.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### Notice of Periodic Review

The Department of Environmental Quality will conduct a periodic review of certain portions of 9VAC5-40, Existing Stationary Sources. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Fourteen (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The specific portions of the regulation being reviewed are as follows:

#### Part II, Emission Standards

Article 5, Synthesized Pharmaceutical Products Manufacturing Operations  
Article 6, Rubber Tire Manufacturing Operations  
Article 7, Incinerators  
Article 9, Coke Ovens  
Article 10, Asphalt Concrete Plants  
Article 11, Petroleum Refinery Operations  
Article 12, Chemical Fertilizer Manufacturing Operations  
Article 13, Kraft Pulp Mills  
Article 14, Sand-Gravel Processing; Stone Quarrying and Processing  
Article 16, Portland Cement Plants  
Article 17, Woodworking Operations  
Article 18, Primary and Secondary Metal Operations  
Article 19, Lightweight Aggregate Process Operations  
Article 20, Feed Manufacturing Operations  
Article 21, Sulfuric Acid Production Units  
Article 22, Sulfur Recovery Operations  
Article 23, Nitric Acid Production Units  
Article 24, Solvent Metal Cleaning Operations  
Article 25, Volatile Organic Compound Storage and Transfer Operations  
Article 26, Large Appliance Coating Application Systems  
Article 27, Magnet Wire Coating Application Systems  
Article 29, Can Coating Application Systems  
Article 30, Metal Coil Coating Application Systems  
Article 31, Paper and Fabric Coating Application Systems

Article 32, Vinyl Coating Application Systems  
Article 33, Metal Furniture Coating Application Systems  
Article 34, Miscellaneous Metal Parts and Products Coating Application Systems  
Article 35, Flatwood Paneling Coating Application Systems  
Article 36, Graphic Arts Printing Processes  
Article 37, Petroleum Liquid Storage and Transfer Operations  
Article 39, Asphalt Paving Operations  
The regulations may be viewed on the DEQ air regulation webpage: <http://www.deq.state.va.us/air/regulations/airregs.html>.

The purpose of the regulations is to control emissions from specific types of existing stationary sources to protect human health and the environment. Section 10.1-1308 of the Code of Virginia requires that these regulations be promulgated. These regulations are designed to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

Comments on the above regulations will be accepted until June 28, 2011. Comments should be sent to Karen G. Sabasteanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4426, FAX (804) 698-4510, email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov). Please include your full name and mailing address when providing public comment.

### Public Comment Period - Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: 9VAC5-20-21, Documents Incorporated by Reference, and 9VAC5-30, Ambient Air Quality Standards (Revision H10).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: June 6, 2011, to July 7, 2011.



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## General Notices/Errata

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**Public hearing:** A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

**Public comment stage:** The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited in this notice under "purpose of notice" and not on the content of the regulation amendments.

**Description of proposal:** In essence, the proposed revision will consist of amendments to existing regulation provisions concerning the ambient air quality standard for sulfur oxides. The major provisions of the proposal are: (i) Appendix A-1 to 40 CFR Part 50 has been added to the federal documents incorporated by reference list; (ii) Appendix A to 40 CFR Part 50 has been renamed as Appendix A-2 in the federal documents incorporated by reference list; (iii) Appendix T to 40 CFR Part 50 has been added to the federal documents incorporated by reference list; (iv) a new ambient air quality standard for SO<sub>2</sub> has been added to 9VAC5-30-30 A; (v) provision has been made for the existing primary standards to no longer apply to an area in 9VAC5-30-30 A; (vi) use of the reference methods in Appendices A-1 and A-2 to 40 CFR Part 50 has been specified in 9VAC5-30-30 C; and (vii) data requirements for demonstrating attainment of the new standard have been added as 9VAC5-30-30 D.

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

**How to comment:** DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

**To review regulation documents:** The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative listed. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

**Contact Information:** Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, or FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### **Proposed Consent Order for Baltimore Tank Lines, Inc.**

An enforcement action has been proposed for Baltimore Tank Lines, Inc. for alleged violations in Fairfax County. The action seeks to resolve the unauthorized discharge of oil to state waters. The consent order describes a settlement to resolve these violations. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 7, 2011, through July 7, 2011.

## **Public Meeting Regarding Application for Multiple No Discharge Zones**

Public meeting: Tuesday, June 14, 2011, 6 p.m., in the A.T. Johnson Alumni Museum Auditorium located at 18849 Kings Highway, Montross, VA 22520.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing its intent to apply to the U.S. Environmental Protection Agency (EPA) for multiple federal No Discharge Zones (NDZs) and is seeking public comment on the draft application.

Meeting description: To provide a summary of a draft application for designation of selected waterbodies within Westmoreland County (Bonum, Jackson, and Gardner Creeks; Ragged Point, Lower Machodoc, Glebe, Cabin Point, Nomini, Buckner, Poor Jack, Currioman, Cold Harbor, Popes, and Mattox Creeks; and Monroe Bay, Goldman, and Rosier Creeks) and a portion of one waterbody in King George County (Rosier Creek) as federal NDZs. The NDZ designation would prohibit the overboard discharge of treated sewage effluent from marine sanitation devices in these waterways.

Description of study: House Bill 1774 resolves that all tidal creeks in Virginia be designated federal No Discharge Zones and directs DEQ to pursue this designation. It is currently illegal to discharge raw sewage in U.S. territorial waters. In a NDZ, this ban is expanded to include sewage treated by on-board marine sanitation devices. A NDZ is determined by EPA upon application from the states and is contingent on the states' demonstrating (i) the need for enhanced protection of water quality, (ii) the availability of sufficient local alternatives to overboard discharge (i.e., pump-outs), and (iii) local stakeholder support. DEQ is seeking this designation as one component of a "pollution diet" for small tidal Chesapeake Bay tributaries, which are frequently impaired for shellfish harvest due to elevated levels of fecal bacteria. The Northern Neck Planning District Commission has conducted an analysis of boat traffic and pump-out availability for the waterbodies proposed for NDZs in Westmoreland County (and a portion of one waterbody in King George County), and DEQ has concluded that existing pump-out facilities are adequate to service estimated peak demand. A draft application to EPA for NDZ designation has been prepared and will be available for public review and comment on the DEQ website <http://www.deq.virginia.gov/tmdl/ndz.html> the day of or the day after the public meeting. Presentations provided at the meeting will also be available on the website.

How to comment: DEQ will accept written comments beginning Wednesday, June 15, 2011, by email, FAX, or postal mail. Comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on Friday, July 15, 2011.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

## **STATE BOARD OF SOCIAL SERVICES**

### **Notice of Periodic Review**

Pursuant to Executive Order Number 14 (2010), the Department of Social Services is currently reviewing 22VAC40-41, Neighborhood Assistance Tax Credit Program, to determine if it should be terminated, amended, or retained in its current form. The Neighborhood Assistance Program is a state tax credit program that provides tax credit to businesses and individuals who make donations to approved organizations whose primary function is providing assistance to impoverished individuals and families.

The review will be guided by the principles listed in Executive Order Number 14 (2010) and in the department's plan for review of existing agency regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need for the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation are is clearly written and easily understandable.

Written comments may be submitted until June 27, 2011, to J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219, (804) 726-7922, FAX (804) 726-7946, or email [james.grigsby@dss.virginia.gov](mailto:james.grigsby@dss.virginia.gov).

### **Notice of Periodic Review**

Pursuant to Executive Order Number 14 (2010), the Department of Social Services is currently reviewing 22VAC40-293, Locality Groupings, to determine if it should be terminated, amended, or retained in its current form. This regulation provides rules for local departments of social services seeking to change locality groupings, including the data to be provided, the requirement that funds be available as determined by the commissioner, and the ability to change data sources upon agreement of the board.

The review will be guided by the principles listed in Executive Order Number 14 (2010) and in the department's plan for review of existing agency regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need for the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve,

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## General Notices/Errata

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and whether the regulation are is clearly written and easily understandable.

Written comments may be submitted until June 27, 2011, to Christine Raines, Economic Assistance and Employment Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, (804) 726-7387, FAX (804) 726-7357, or email [christine.raines@dss.virginia.gov](mailto:christine.raines@dss.virginia.gov).

### Notice of Periodic Review

Pursuant to Executive Order Number 14 (2010), the Department of Social Services is currently reviewing 22VAC40-890, Human Subject Research Regulations, to determine if it should be terminated, amended, or retained in its current form. This regulation provides the basis on which the Virginia Department of Social Services (VDSS), local departments of social services, facilities licensed by the VDSS, and contractors to these entities may authorize, conduct, or propose to conduct or authorize any human research.

The review will be guided by the principles listed in Executive Order Number 14 (2010) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need for the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation are is clearly written and easily understandable.

Written comments may be submitted until June 27, 2011, to Todd W. Areson, Administrator, Institutional Review Board, Department of Social Services, 801 East Main Street, Richmond, VA 23219, (804) 726-7490, FAX (804) 726-7946, or email [todd.areson@dss.virginia.gov](mailto:todd.areson@dss.virginia.gov).

### STATE WATER CONTROL BOARD

#### Proposed Special Order for Judy M. McGee and Martin E. McGee

An enforcement action has been proposed for Judy M. McGee and Martin E. McGee for violations of the underground storage tank regulations at the former GUNZ Grocery and Deli in Cedar Bluff, Virginia. A proposed special order by consent describes a settlement for failure to properly investigate, abate, or remediate a potential petroleum release. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Dallas R. Sizemore will accept comments by email at [dallas.sizemore@deq.virginia.gov](mailto:dallas.sizemore@deq.virginia.gov), FAX (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA

24212, from June 6, 2011, through July 6, 2011. The office is located at 355 Deadmore Street, Abingdon, Virginia.

### VIRGINIA CODE COMMISSION

#### Recodifying Titles of the Code of Virginia -- Public Input Requested

The Virginia Code Commission is responsible for publishing and maintaining the Code of Virginia, which contains the general and permanent statutes of the Commonwealth. In addition, it is the commission's duty to revise or recodify individual titles of the Code of Virginia as determined by the commission.

The Virginia Code Commission seeks input from law practitioners and other interested parties concerning which titles of the Code of Virginia the commission should consider placing on its future work plan for the purpose of recodification or revision. The main purposes of a title recodification are to improve the organization of the title and modernize the language. To the extent practical, the commission avoids making substantive changes to the statutory text. In the event a substantive change is made, the change is highlighted and explained in the final report.

The commission currently is completing its work on Title 64.1, Wills and Decedents' Estates, assisted by an advisory panel of practitioners experienced in this area. For a list of other recent title revisions and to view the final reports, go to the [commission's website:](http://codecommission.dls.virginia.gov/titlerevisions.htm)

Send recommendations to Jane Chaffin at [jchaffin@dls.virginia.gov](mailto:jchaffin@dls.virginia.gov) or 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, by July 1, 2011.

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *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 <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**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/cumultab.htm>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked 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.

