



Virginia Register of Regulations

VOL. 26 ISS. 1

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

SEPTEMBER 14, 2009

TABLE OF CONTENTS

Register Information Page 1

Publication Schedule and Deadlines 2

Petitions for Rulemaking..... 3

Notices of Intended Regulatory Action..... 4

Regulations 6

4VAC20-252. Pertaining to the Taking of Striped Bass (Final) 6

4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (Final)..... 7

4VAC20-620. Pertaining to Summer Flounder (Emergency)..... 8

4VAC20-1040. Pertaining to Crabbing Licenses (Final)..... 9

4VAC20-1070. Pertaining to Haul Seines (Final)..... 9

4VAC20-1090. Pertaining to Licensing Requirements and License Fees (Final)..... 10

4VAC20-1180. Pertaining to Fishing Guides (Final) 13

4VAC20-1220. Pertaining to Separation Between Nets (Final)..... 13

6VAC20-260. Regulations Relating to Bail Enforcement Agents (Final) 14

6VAC35-30. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs (Proposed) 26

8VAC20-150. Management of the Student's Scholastic Record in the Public Schools of Virginia (Proposed) 37

8VAC20-180. Regulations Governing School Community Programs (Proposed) 37

8VAC20-210. Classifications of Expenditures (Proposed)..... 37

8VAC20-240. Regulations Governing School Activity Funds (Proposed)..... 37

8VAC20-250. Regulations Governing the Testing of Sight and Hearing of Pupils (Proposed) 37

8VAC20-310. Rules Governing Instructions Concerning Drugs and Substance Abuse (Proposed)..... 37

8VAC20-320. Regulations Governing Physical and Health Education (Proposed)..... 37

8VAC20-390. Rules Governing Division Superintendent of Schools (Proposed)..... 37

8VAC20-410. Regulations Governing Allowable Credit for Teaching Experience (Proposed)..... 37

8VAC20-420. Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards (Proposed)..... 38

8VAC20-460. Regulations Governing Sick Leave Plan for Teachers (Proposed)..... 38

8VAC20-490. Regulations Governing School Boards Local (Proposed) 38

8VAC20-565. Regulations for the Protection of Students As Participants in Human Research (Proposed) 38

8VAC20-720. Regulations Governing Local Boards and School Divisions (Proposed) 38

8VAC40-120. Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates (Final)..... 44

12VAC5-550. Board of Health Regulations Governing Vital Records (Final)..... 44

13VAC5-112. Enterprise Zone Grant Program Regulation (Final) 44

13VAC6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (Proposed) 55

18VAC50-22. Board for Contractors Regulations (Proposed)..... 69

TABLE OF CONTENTS

18VAC50-30. Individual License and Certification Regulations (Proposed)	85
18VAC115-20. Regulations Governing the Practice of Professional Counseling (Final)	93
18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (Final)	93
18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (Final)	93
18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (Final)	93
18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (Final)	93
18VAC135-30. Condominium Regulations (Final)	98
20VAC5-317. Rates for Standby Service Furnished to Certain Renewable Cogeneration Facilities Pursuant to § 56-235.1:1 of the Code of Virginia (Proposed)	98
22VAC40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records (Final)	102
23VAC10-210. Retail Sales and Use Tax (Final)	103
24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (Final)	105
General Notices/Errata	117

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, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

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.

Proposed 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

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: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

September 2009 through July 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
FINAL INDEX Volume 25		October 2009
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
INDEX 1 Volume 26		January 2010
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 (Tuesday)	January 4, 2010
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
INDEX 2 Volume 26		April 2010
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
INDEX 3 Volume 26		July 2010
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Initial Agency Notice

Title of Regulation: **12VAC5-490. Radiation Protection Regulations: Fee Schedule.**

Statutory Authority: § 32.1-229 of the Code of Virginia.

Name of Petitioner: Harvey V. Lankford, M.D.

Nature of Petitioner's Request: Request for Reducing Radiological Materials Licensing Fee. The petitioner requests that the recently adopted radiological materials fee schedules be reexamined and revised so as not to exceed comparable federal Nuclear Regulatory Commission (NRC) fees, that they be consistent with what the petitioner believes the board represented in regulatory promulgation documents (culminating in the March 2009 final regulations) to the effect that licensees' fees would be "significantly reduced in most cases" and would therefore be less than those imposed by the NRC.

Agency's Plan for Disposition of the Request: The agency will review all comments received in response to publication of this petition and will look closely at the possibility of revising the fee schedules affecting radiological materials licensees.

Public comments may be submitted until October 5, 2009.

Agency Contact: Leslie Foldesi, M.S., CHP, Director, Division of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

VA.R. Doc. No. R10-01; Filed August 28, 2009, 9:45 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-820, General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia.** The purpose of the proposed action is to amend and reissue the existing general permit that expires on December 31, 2011. The general permit governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorus.

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

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

Public Comment Deadline: October 14, 2009.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

VA.R. Doc. No. R10-2123; Filed August 25, 2009, 4:18 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-120, Waivered Services.** The purpose of the proposed action is to update and revise the regulations for the Technology Assisted Home and Community Based Care Waiver program.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396).

Public Comment Deadline: October 14, 2009.

Agency Contact: Brian McCormick, 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.

VA.R. Doc. No. R09-597; Filed August 19, 2009, 10:43 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider promulgating the following regulations: **18VAC15-50, Lead-based Paint Renovation, Repair and Painting Regulation.** The purpose of the proposed action is to create a new regulation that is consistent with the United States Environmental Protection Agency final rule "Lead; Renovation, Repair, and Painting Program," which is mandated by Chapter 819 of the 2009 Acts of Assembly. The federal final rule will require contractors, real estate firms, property management companies, and rental housing providers to obtain a license to disturb painted surfaces in pre-1978 or child-occupied housing. There are also training and licensing requirements for individuals who disturb painted surfaces.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: October 14, 2009.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R10-2047; Filed August 21, 2009, 8:23 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider promulgating the following regulations: **18VAC15-60, Mold Inspector and Mold Remediation Licensing Regulation.** The purpose of the proposed action is to create a new regulation for licensing of mold inspectors and mold remediators regarding the professional qualifications, the requirements for passing an applicable examination, the proper conduct of board examinations, the proper conduct of individuals licensed by

the board, the implementation of exemptions from licensure requirements, and the proper discharge of board duties. The board has the discretion to impose different requirement for licensure for the performance of mold inspections and mold remediation. This regulatory program is mandated by Chapter 358 of the 2009 Acts of Assembly.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: October 14, 2009.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R10-2048; Filed August 21, 2009, 8:24 a.m.

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 promulgating the following regulations: **18VAC48-50, Common Interest Community Manager Regulations**. The purpose of the proposed action is to establish qualifications and standards of practice and conduct for employees of common interest community managers who have principal responsibility for management services provided to a common interest community, or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community pursuant to § 54.1-2349 A 3 of the Code of Virginia by July 1, 2011, in accordance with § 54.1-2346 C. In addition, § 54.1-2349 A 7 requires establishment of an education-based certification program for persons who are involved in the business or activity of providing management services to common interest communities and authorizes the board to approve training courses and instructors.

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: October 14, 2009.

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.

VA.R. Doc. No. R10-2069; Filed August 20, 2009, 3:40 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

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 Social Services intends to consider repealing **22VAC40-130, Minimum Standards for Licensed Child Placing Agencies** and promulgating **22VAC40-131, Minimum Standards for Licensed Private Child-Placing Agencies**. The purpose of the proposed action is to: (i) improve clarity of the regulation; (ii) incorporate improvements in the language and reflect requirements of current federal and state law; (iii) align home approvals, supervision, and monitoring practices and responsibilities of private child-placing agencies with public child-placing agencies; (iv) relieve intrusive and burdensome language; and (v) provide greater protection for children in care. The current regulation will be repealed.

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

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Comment Deadline: October 14, 2009.

Agency Contact: Joni S. Baldwin, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7162, FAX (804) 726-7132, TTY (800) 828-1120, or email joni.baldwin@dss.virginia.gov.

VA.R. Doc. No. R10-2036; Filed August 20, 2009, 4:29 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-90, 4VAC20-252-100, 4VAC20-252-135).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: September 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment reinstates the two fish limit for the December recreational striped bass fishery in the Chesapeake Bay and its tributaries and in the Potomac River tributaries.

4VAC20-252-90. Bay fall striped bass recreational fishery.

A. The open season for the bay fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length, except as provided in subsection ~~GF~~ of this section.

E. The possession limit for this fishery shall be two fish per person from ~~October 4 through December 20~~.

~~F. The possession limit for this fishery shall be one fish per person from December 21 through December 31.~~

~~GF~~ E. The possession limits described in subsection E ~~and F~~ of this section may consist of only one striped bass 34 inches or greater.

4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries summer/fall striped bass fishery shall correspond to the open summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length, except as provided in subsection ~~GF~~ of this section.

E. The possession limit for this fishery shall be two fish per person from ~~October 4 through December 20~~.

~~F. The possession limit for this fishery shall be one fish per person from December 21 through December 31.~~

~~GF~~ E. The possession limits described in subsection E ~~and F~~ of this section may consist of only one striped bass 34 inches or greater.

4VAC20-252-135. Gill net mesh size and tending restrictions: exemptions.

A. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 C and sets or fishes any gill net in the coastal area shall be exempt from the maximum gill net mesh size requirements during November and December as described in 4VAC20-430-65 A and B.

B. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 C and sets or fishes any gill net seven inches or greater in stretched mesh in the coastal area shall be exempt from the tending requirements described in 4VAC20-430-65 E and F during the months of November and December.

C. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 C shall display an optic yellow flag issued by the commission while fishing for striped bass in the coastal area and while transiting the coastal area before and

after a striped bass fishing trip. This flag shall be prominently displayed on the starboard side of the vessel.

~~D. It shall be unlawful for any registered commercial fisherman who is permitted to harvest striped bass from Virginia waters and possesses striped bass tags on board a vessel to place, set, fish or possess aboard a vessel any gill net with a stretched mesh size greater than nine inches, from February 1, 2006, through March 31, 2006, and November 1, 2006, through December 31, 2006.~~

VA.R. Doc. No. R10-2098; Filed August 28, 2009, 9:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-60).**

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

Effective Date: October 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment requires all seafood landing licensees to: (i) submit a monthly harvest report to the commission; (ii) notify the commission when they do not land any seafood species in Virginia during any month; (iii) maintain daily harvest records for one year and make those records available, upon request, to authorized representatives of the commission; and (iv) allow those authorized by the commission to sample their landings for biological information. The amendments also make it unlawful for seafood landing licensees to fail to fully report harvests and related information.

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia, to

fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee, oyster aquaculture product owner permittee, and clam aquaculture product owner permittee shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily harvest records described in subsection E of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E. The monthly harvest report and daily harvest records from registered commercial fishermen shall include the name and signature of the registered commercial fisherman and his license registration number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the registered commercial fisherman fished; number of crew on board, including captain; species harvested; market category; live weight or processed weight ~~of~~ of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily. The monthly harvest report and daily harvest records from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of harvest, city or county of landing, gear (growing technique) used, species harvested in weight or amount, number of crew, and buyer or private sale information. The monthly harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and his seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; nonfederally permitted species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

F. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product

Regulations

owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month, shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line.

G. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall maintain their daily harvest records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen, seafood landing licensees, and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

J. The reporting of oyster harvest and transactions by licensed seafood buyers, oyster aquaculture product owner permittees, clam aquaculture product owner permittees, and any registered commercial fisherman who self-markets his oyster harvest shall be made in accordance with 4VAC20-200 and Article 3 (§ 28.2-538 et seq.) of Chapter 5 of Title 28.2 of the Code of Virginia.

K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of § 28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

VA.R. Doc. No. R10-2096; Filed August 28, 2009, 9:55 a.m.

Emergency Regulation

Title of Regulation: 4VAC20-620. Pertaining to Summer Flounder (adding 4VAC20-620-75).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: August 28, 2009, through September 27, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

The amendment allows research exceptions to possession and size limits in the recreational Summer Flounder fishery. Possession of VIMS-tagged Summer Flounder shall not count towards the personal recreational possession limit of five Summer Flounder, 19 inches or greater in length; possession of any undersized Summer Flounder with VIMS tags shall not constitute a violation of the minimum size limit of 19 inches in total length. It is unlawful for any person to remove tags affixed by VIMS from any caught or harvested Summer Flounder.

4VAC20-620-75. Research exceptions to possession and size limits.

Nothing in this emergency chapter shall preclude any person who is legally eligible to fish from possessing any Summer Flounder tagged by the Virginia Institute of Marine Science (VIMS) with two different types of tags, in each of 260 Summer Flounder. One tag is a white data recording tag of 1/2-inch diameter and 1-1/2 inches in length that VIMS affixed to the stomach area of Summer Flounder. That tag is inscribed with "VIMS \$200 reward" and the VIMS telephone contact number. The second tag is a yellow "T-bar" or "spaghetti" type tag that VIMS affixed to the dorsal area of these double-tagged Summer Flounder. The yellow T-bar tag is inscribed with "reward" and the VIMS contact telephone number. Possession of these VIMS-tagged Summer Flounder shall not count towards the personal recreational possession limit of five Summer Flounder, 19 inches or greater in total length. Possession of any undersized flounder that have any affixed VIMS tag, as described above, shall not constitute a violation of the minimum size limit of 19 inches in total length. It shall be unlawful for any person to remove either type of tag from any caught or harvested Summer Flounder. It shall be unlawful for any person to retain any of these VIMS-tagged Summer Flounder for a period of time that is longer than necessary to provide the VIMS-tagged Summer Flounder to a VIMS representative. Under no circumstances shall any VIMS-tagged Summer Flounder be stored for future use or sale or delivered to any person who is not a VIMS representative.

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-1040. Pertaining to Crabbing Licenses (amending 4VAC20-1040-20).**

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

Effective Date: September 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment requires that any crab pot or peeler pot license that is purchased by the commission through the Federal Crab Disaster Relief Program shall be permanently retired and shall not be available for sale to any fisherman.

4VAC20-1040-20. License sales moratorium and license ineligibility conditions.

A. For the lawful crabbing seasons of 2008 through 2010, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these licenses in 2007, except as described in subsection B of this section.

B. For the lawful crabbing seasons of 2009 and all subsequent seasons, those registered commercial fishermen who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses, but reported no harvest from 2004 through 2007, shall be placed on a waiting list and shall be ineligible to purchase a crab pot or peeler pot license, except as described in subdivisions 1 and 2 of this subsection.

1. Those crab pot or peeler pot fishermen described in this subsection who reported harvest prior to the control date of December 17, 2007, from the crab dredge fishery for both the 2005/06 and 2006/07 seasons shall remain eligible to purchase their crab pot or peeler pot license for the lawful crabbing seasons of 2009 and 2010.

2. Those crab pot or peeler pot fishermen described in this subsection who do not meet the condition described in subdivision 1 of this subsection shall remain on the waiting list until such time that results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 200

million age 1+ blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December - March) surveys.

C. Any person receiving a crab license by lawful transfer in 2008 through 2010 also establishes his eligibility to purchase that specific license through 2010; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license through 2010.

D. Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee at any time and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman at any time. Crabbing licenses also may be transferred to another registered commercial fisherman, except that not more than 100 licenses shall be transferred in the current year. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

E. Any crab pot or peeler pot license that is purchased by the commission through the Federal Crab Disaster Relief Program shall be permanently retired and shall not be available for sale to any fisherman at any time. Any person whose license is purchased under the Crab Disaster Relief Program may re-enter the fishery only through the transfer of another crab pot or peeler pot license as authorized by regulations in effect at the time of the transfer.

Final Regulation

Title of Regulation: **4VAC20-1070. Pertaining to Haul Seines (amending 4VAC20-1070-30).**

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

Effective Date: August 28, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments exempt certain shoreline haul seine operations from the prohibition on fishing the net in less than three feet of water.

4VAC20-1070-30. Gear restrictions; exemptions; application process.

A. It shall be unlawful for any person to place or set in the water, encircle or enclose any haul seine that exceeds 1,000 yards in length.

Regulations

B. It shall be unlawful for any person to tie together, set or fish two or more haul seines with a combined total length of netting that exceeds 1,000 yards.

C. It shall be unlawful for any person to tow or drag a haul seine by two vessels so that it operates as a long haul seine. When setting a haul seine with more than one vessel, it shall be unlawful for any person to tow or drag a haul seine more than a distance of 1.0 nautical miles from the point of its deployment in an open configuration through the water.

D. It shall be unlawful for any person to use more than one vessel to move either end of a haul seine net or nets.

E. It shall be unlawful for any person to remove fish or other catch from the pocket when the pocket is located in waters that are less than three feet in depth, except as described in subsection F of this section. Measurement of the depth of water containing the pocket may be taken within the pocket or within a distance of 15 feet from the pocket, using a pole-type measuring device graduated into one-foot intervals of measurement.

F. It shall be lawful for any person to remove fish or other catch from the pocket when the pocket is located in waters that are less than three feet, provided that:

1. The area where the pocket is to be established, as well as any area within 15 feet of the pocket, are devoid of submerged aquatic vegetation;

2. Establishing the pocket and removing fish or catch from the pocket is accomplished without the use of a boat or vessel; and

3. The haul seine licensee has received permission from the commissioner or his designee to establish the pocket, at the site requested by the haul seine licensee, after that licensee has notified the commissioner or his designee, in writing, and described the haul seine operation and location of the haul seine area.

VA.R. Doc. No. R10-2105; Filed August 28, 2009, 10:03 a.m.

Final Regulation

Title of Regulation: 4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).

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

Effective Date: December 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments increase nonresident fees for any Virginia saltwater recreational fishing license, and any nonresident whose private boat is not registered in Virginia shall not be eligible to purchase a saltwater fishing license for that private boat.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration.	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00
OYSTER HARVESTING AND SHUCKING LICENSES	
For each person taking oysters by hand, or with ordinary tongs	\$10.00
For each single-rigged patent tong boat taking oysters	\$35.00

For each double-rigged patent tong boat taking oysters	\$70.00
Oyster Dredge Public Ground	\$50.00
Oyster Hand Scrape	\$50.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00
BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	\$13.00
For ordinary trotlines	\$13.00
For patent trotlines	\$51.00
For each single-rigged crab-scrape boat	\$26.00
For each double-rigged crab-scrape boat	\$53.00
For up to 210 peeler pots	\$36.00
For up to 20 tanks and floats for shedding crabs	\$9.00
For more than 20 tanks or floats for shedding crabs	\$19.00
For each crab trap or crab pound	\$8.00
CRAB POT LICENSES	
For up to 85 crab pots	\$48.00
For over 85 but not more than 127 crab pots	\$79.00
For over 127 but not more than 170 crab pots	\$79.00

For over 170 but not more than 255 crab pots	\$79.00
For over 255 but not more than 425 crab pots	\$127.00
HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	\$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	\$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	\$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	\$24.00
For each single-rigged patent tong boat taking clams	\$58.00
For each double-rigged patent tong boat taking clams	\$84.00
For each boat using clam dredge (hand)	\$19.00
For each boat using clam dredge (power)	\$44.00
For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For each person taking surf clams	\$124.00
CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	\$58.00
For each person taking channeled whelk by conch pot	\$51.00
FINFISH HARVESTING LICENSES	
Each pound net	\$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00
All other gill nets up to 600 feet	\$16.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00
Each person using a cast net or throw net or similar device	\$13.00

Regulations

Each fyke net head, weir, or similar device	\$13.00
For fish trotlines	\$19.00
Each person using or operating a fish dip net	\$9.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00
For each person using commercial hook and line	\$31.00
For each person using commercial hook and line for catching striped bass only	\$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than \$249	\$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than \$996	\$8.00
For up to 100 fish pots or eel pots	\$19.00
For over 100 but not more than 300 fish pots or eel pots	\$24.00
For over 300 fish pots or eel pots	\$62.00
2. COMMERCIAL GEAR FOR RECREATIONAL USE.	
Up to five crab pots	\$36.00
Crab trotline (300 feet maximum)	\$10.00
One crab trap or crab pound	\$6.00
One gill net up to 300 feet in length	\$9.00
Fish dip net	\$7.00
Fish cast net	\$10.00
Up to two eel pots	\$10.00
3. SALTWATER RECREATIONAL FISHING LICENSE.	
Individual License, resident	\$12.50
Individual, nonresident	<u>\$25.00</u>
Temporary 10-Day License, resident	\$5.00

<u>Temporary 10-Day, nonresident</u>	<u>\$10.00</u>
Recreational boat, resident	\$38.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	<u>\$76.00</u>
Head Boat/Charter Boat, resident, six or less passengers	\$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	<u>\$380.00</u>
Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person over six	\$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person over six	<u>\$380.00</u>
Rental Boat, resident, per boat, with maximum fee of \$635	\$9.00
Rental Boat, nonresident, per boat, with maximum fee of \$1270	<u>\$18.00</u>
Commercial Fishing Pier (Optional)	\$571.00
Disabled Resident Lifetime Saltwater License	\$5.00
Disabled Nonresident Lifetime Saltwater License	<u>\$10.00</u>
Reissuance of Saltwater Recreational Boat License	\$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season:	
Residents	\$24.50 <u>\$30.00</u>
Nonresidents	\$42.50 <u>\$60.50</u>
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days:	
Residents	\$10.50 <u>\$16.00</u>
Nonresidents	\$15.50 <u>\$26.00</u>
Individual Resident Lifetime	\$250.00

License	
<u>Individual Nonresident Lifetime License</u>	\$500.00
Individual <u>Resident</u> Lifetime License age 45 - 50	\$120.00
<u>Individual Nonresident Lifetime License age 45 - 50</u>	\$240.00
Individual <u>Resident</u> Lifetime License age 51 - 55	\$90.00
<u>Individual Nonresident Lifetime License 51 - 55</u>	\$180.00
Individual <u>Resident</u> Lifetime License age 56 - 60	\$60.00
<u>Individual Nonresident Lifetime License age 56 - 60</u>	\$120.00
Individual <u>Resident</u> Lifetime License age 61 - 64	\$30.00
<u>Individual Nonresident Lifetime License age 61 - 64</u>	\$60.00
Individual <u>Resident</u> Lifetime License age 56 - 60	\$60.00
<u>Individual Nonresident Lifetime License age 56 - 60</u>	\$120.00
Individual <u>Resident</u> Lifetime License age 61 - 64	\$30.00
<u>Individual Nonresident Lifetime License age 61 - 64</u>	\$60.00

VA.R. Doc. No. R10-2103; Filed August 28, 2009, 10:06 a.m.

Final Regulation

Title of Regulation: **4VAC20-1180. Pertaining to Fishing Guides (amending 4VAC20-1180-30).**

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

Effective Date: December 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment increases the annual fee for the Class A fishing guide license and the Class B fishing guide license for nonresidents.

4VAC20-1180-30. Fishing guide license; fees.

A. Either a Class A fishing guide license or Class B fishing guide license or a fishing guide reciprocity permit shall be required for a charter boat or head boat captain operating for hire and fishing in the tidal salt waters of the Commonwealth under the jurisdiction of the commission.

B. The annual fee for the Class A fishing guide license or the Class B fishing guide license shall be \$100 for a resident and \$200 for a nonresident. Fishing guide reciprocity permits can be obtained at no cost provided the applicant furnishes copies of his Maryland fishing guide license and U.S. Coast Guard license.

C. When the same applicant purchases a Class A or Class B fishing guide license prior to purchasing one charter boat or head boat license as required by § 28.2-302.8 of the Code of Virginia, the fee for that charter boat or head boat license shall be reduced by the cost of the fishing guide license.

VA.R. Doc. No. R10-2104; Filed August 28, 2009, 10:09 a.m.

Final Regulation

Title of Regulation: **4VAC20-1220. Pertaining to Separation Between Nets (adding 4VAC20-1220-10, 4VAC20-1220-20, 4VAC20-1220-30).**

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

Effective Date: September 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This chapter establishes a minimum distance of 300 yards separating any net and side or end of any fixed fishing device (pound net, fyke net, or staked gill net).

CHAPTER 1220

PERTAINING TO SEPARATION BETWEEN NETS

4VAC20-1220-10. Purpose.

The purpose of this chapter is to establish a minimum distance separating any net and the side or end of any fixed fishing device.

4VAC20-1220-20. Definitions.

The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Fixed fishing device" means a pound net, fyke net or staked gill net.

Regulations

4VAC20-1220-30. Required distance between nets.

It is unlawful to place a net within 300 yards of the side or end of any fixed fishing device, unless in the same row.

VA.R. Doc. No. R10-2100; Filed August 28, 2009, 10:10 a.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

Title of Regulation: 6VAC20-260. Regulations Relating to Bail Enforcement Agents (adding 6VAC20-260-10 through 6VAC20-260-370).

Statutory Authority: §§ 9.1-102 and 9.1-186.2 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: Lisa D. McGee, Section Chief, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Summary:

This regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards, including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It provides procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the board; conducting investigations; issuing disciplinary action; revoking, suspending, or refusing to renew a license; and an appeal process pursuant to the Administrative Process Act.

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.

CHAPTER 260 REGULATIONS RELATING TO BAIL ENFORCEMENT AGENTS

Part I Definitions

6VAC20-260-10. Definitions.

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

"Armed" means a bail enforcement agent who carries or has immediate access to a firearm in the performance of his duties.

"Bail bondsman" means any person who is licensed by the department who engages in the business of bail bonding and is thereby authorized to conduct business in all courts of the Commonwealth.

"Bail enforcement agent," also known as "bounty hunter," means any individual engaged in bail recovery.

"Bail recovery" means an act whereby a person arrests a bailee with the object of surrendering the bailee to the appropriate court, jail, or police department for the purpose of discharging the bailee's surety from liability on his bond. Bail recovery shall include investigating, surveilling or locating a bailee in preparation for an imminent arrest, with such object and for such purpose.

"Bailee" means a person who has been released on bail and who is or has been subject to a bond as defined in § 19.2-119 of the Code of Virginia.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Firearms endorsement" means a method of regulation that identifies a person licensed as a bail enforcement agent who has successfully completed the annual firearms training and has met the requirements as set forth in this regulation.

"On duty" means the time during which bail enforcement agents receive or are entitled to receive compensation for employment for which licensure is required.

"Private security services training school" means a training school that is certified or licensed by the department for the specific purpose of training regulated personnel in at least one category of the compulsory minimum training standards.

Part II Fees

6VAC20-260-20. Fees.

A. Schedule of fees. The following fees reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing and other administrative requests for services relating to bail enforcement services:

<u>Categories</u>	<u>Fees</u>
<u>Initial bail enforcement agent license</u>	<u>\$200</u>
<u>Bail enforcement agent license renewal (biannually)</u>	<u>\$200</u>
<u>Firearms endorsement (annually)</u>	<u>\$30</u>

<u>Fingerprint card processing (biannually)</u>	<u>\$50</u>
<u>Replacement photo identification</u>	<u>\$30</u>
<u>Partial training exemption</u>	<u>\$25</u>
<u>In-service alternative training credit</u>	<u>\$25</u>

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for license renewal applications not received on or before the expiration date of the expiring license.
2. The reinstatement fee shall be 50% above and beyond the renewal fee of the license or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to nonsufficient funds.

1. The department may suspend the license it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is not honored by the financial institution upon which the check or similar instrument is drawn.
2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the licensee may request that the suspended license or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

Part III

Licensing Procedures and Requirements

6VAC20-260-30. Bail enforcement agent eligibility.

A. Persons required to be licensed pursuant to subdivision 47 of § 9.1-102 of the Code of Virginia as a bail enforcement agent shall meet all licensure requirements in this section. Persons who carry or have access to a firearm while on duty must have a valid license with a firearms endorsement as described under 6VAC20-260-80. If carrying a handgun concealed, the person must also have a valid concealed handgun permit and the written permission of his employer pursuant to § 18.2-308 of the Code of Virginia.

B. Each person applying for a bail enforcement agent license shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 21 years of age;
2. Be a United States citizen or legal resident alien of the United States;
3. Have received a high school diploma or GED; and

4. Have successfully completed all initial training requirements, including firearms endorsement if applicable, requested pursuant to the compulsory minimum training standards in Part IV (6VAC20-260-120 et seq.) of this regulation.

C. The following persons are not eligible for licensure as a bail enforcement agent and may not be employed by or serve as agents for a bail enforcement agent:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned, or whose civil rights have not been restored.
2. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States within the preceding five years. This prohibition may be waived by the department, for good cause shown, so long as the conviction was not for one of the following or a substantially similar misdemeanor: carrying a concealed weapon, assault and battery, sexual battery, a drug offense, driving under the influence, discharging a firearm, a sex offense, or larceny.
3. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States, that is substantially similar to the following: brandishing a firearm or stalking. The department may not waive the prohibitions under this subdivision.

4. Persons currently the subject of a protective order within the Commonwealth or another state.

5. Employees of a local or regional jail.

6. Employees of a sheriff's office or a state or local police department.

7. Commonwealth's attorneys and any employees of their offices.

8. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local pretrial or community-based probation services agency.

D. The exclusions in subsection C of this section shall not be construed to prohibit law enforcement from accompanying a bail enforcement agent when he engages in bail recovery.

6VAC20-260-40. Initial bail enforcement agent license application.

Prior to the issuance of any bail enforcement agent license, each agent applicant shall:

1. File with the department a completed application for such license on the form and in the manner provided by the department;
2. Provide the address of a physical location in Virginia where records required to be maintained pursuant to

Regulations

6VAC20-260-230 are kept and available for inspection by the department. A post office box is not a physical location;

3. Successfully complete entry-level training, and firearms training if applicable, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation;

4. Submit fingerprints to the department pursuant to 6VAC20-260-50; and

5. Submit the appropriate nonrefundable application processing fee to the department.

6VAC20-260-50. Fingerprint processing.

A. Each person applying for licensure as a bail enforcement agent shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;

2. A fingerprint processing application;

3. The applicable nonrefundable fee; and

4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the person or persons has a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend action on the application pending the resubmittal of a classifiable fingerprint card. The applicant shall be so notified in writing and shall submit a new fingerprint card within 30 days before the processing of his application shall resume. After 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial.

6VAC20-260-60. Application sanctions/denial, probation, suspension and revocation.

A. The department may deny a license in which any person has been convicted in any jurisdiction of any felony. Any plea of nolo contendere shall be considered a conviction for the purposes of this regulation. The record of a conviction, 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 conviction.

B. The department may deny a license in which any person (i) has not maintained good standing in every jurisdiction where licensed; (ii) has had his license denied upon initial

application, suspended, revoked, surrendered, or not renewed; or (iii) has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny licensure to a person for other just cause.

E. A licensee shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this regulation. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation.

6VAC20-260-70. License issuance.

A. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

B. Each license shall be issued to the applicant named on the application and shall be valid only for the person named on the license. No license shall be assigned or otherwise transferred to another person.

C. Each licensee shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this regulation.

D. At the discretion of the department, a temporary license may be issued for a 30-day period while awaiting the results of the applicant's criminal history records search based on extenuating circumstances.

6VAC20-260-80. Firearms endorsement.

A. In addition to applying for a bail enforcement agent license, each applicant who carries or has access to a firearm while on duty must apply for such endorsement on a form and in the manner prescribed by the board and containing any information the board requires.

B. Prior to the issuance of a firearms endorsement, each applicant shall:

1. Successfully complete the entry-level firearms training pursuant to the compulsory minimum training standards as set forth in Part IV (6VAC20-260-120 et seq.) of this regulation; and

2. Submit the appropriate nonrefundable application processing fee to the department.

C. Upon completion of the application requirements, the department may issue a firearms endorsement for a period not to exceed 12 months.

D. Firearms endorsements may be reissued for a period not to exceed a period of 12 months when the applicant has met the following requirements:

1. Filed with the department a completed application for such endorsement on the form and in the manner provided by the department at least 30 days prior to expiration of the current endorsement;
2. Successfully completed the firearms retraining, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation; and
3. Submitted the appropriate nonrefundable application processing fee to the department.

6VAC20-260-90. License renewal application.

A. The department should receive applications for licensure renewal at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensed person. However, if a renewal notification is not received by the person, it is the responsibility of the person to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of a renewal.

B. Each person applying for license renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation;
2. Be in good standing in every jurisdiction where licensed. This subdivision shall not apply to any probationary periods during which the person is eligible to operate under the license; and
3. Maintain eligibility pursuant to 6VAC20-260-30 B.

C. The department may renew a license when the department receives the following:

1. A properly completed renewal application provided by the department;
2. Fingerprint cards submitted pursuant to 6VAC20-260-50;
3. The applicable, nonrefundable license renewal fee; and
4. Proof of successful completion of the in-service training, pursuant to the compulsory minimum training standards set

forth under Part IV (6VAC20-260-120 et seq.) of this regulation.

D. Upon completion of the renewal license application requirements, the department may issue a license for a period not to exceed 24 months.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-260-100. Replacement state-issued identification.

A licensed person seeking a replacement state-issued photo identification shall submit to the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

6VAC20-260-110. Reinstatement.

A. A bail enforcement agent license not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be licensed with the department to provide bail enforcement agent services.

B. A renewal application must be received by the department within 60 days following the expiration date of the license in order to be reinstated by the department, providing all renewal requirements have been met. Prior to reinstatement, the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements, including required training pursuant to this chapter; and
2. The applicable, nonrefundable reinstatement fee pursuant to this chapter and in accordance with 6VAC20-260-20 B.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid license including during a reinstatement period.

C. No license shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date of the license. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

Regulations

Part IV

Compulsory Minimum Training Standards for Bail Enforcement Agents

Article 1

Training Requirements

6VAC20-260-120. Entry-level training.

A. Each bail enforcement agent as defined by § 9.1-186 of the Code of Virginia must meet the compulsory minimum training standards established in this part unless provided for otherwise in accordance with this regulation.

B. Training will be credited only if application for licensure is submitted to the department within 12 months of completion of training.

C. The compulsory minimum entry-level training hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Bail Enforcement Core Training -- 40 hours.
2. Firearms Training -- 14 hours.

D. The compulsory minimum entry-level training course content, excluding examinations, mandated practical exercises and range qualification, shall be as provided in this subsection.

Core subjects. The entry-level curriculum sets forth the following areas identified as:

I. Orientation: ethics -- 2 hours

A. Ethics

1. Professionalism
2. Conflict of Interest
3. Code of Ethics

II. Law: Code of Virginia and Regulations; basic law; courts; and bail enforcement -- 12 hours + 1 practical exercise

A. Code of Virginia and Regulations

1. Definitions
2. Licensing Procedures and Requirements
3. Compulsory Minimum Training Standards
4. Standards of Practice and Prohibited Acts
5. Administrative Requirements/Standards of Conduct
6. Administrative Reviews, Complaints, Procedures

B. Basic Law

1. Legal Terminology and Definitions
2. Purpose and Function of Law
3. U.S. Constitution

a. Bill of Rights

b. Amendments

4. Code of Virginia

a. Bail Bonding Laws

b. Laws of Arrest

5. Landmark Cases

a. Taylor v. Taintor

b. Old Fugitive Slave Laws

6. Virginia Cases

7. Limitations and Liabilities

C. Courts

1. Federal Court System

a. Criminal

b. Civil

2. State Court System

a. Criminal

b. Civil

D. Bail Enforcement

1. Right to Arrest

2. Search and Seizure

3. Uniform Extradition Act

4. Virginia Extradition Procedures

5. Legal and Criminal Forms

III. Fugitive Recovery: investigative techniques; recovery procedures; agent survival; and apprehension of a fugitive -- 24 hours + 1 practical exercise

A. Investigative Techniques

1. Surveillance
2. Court Research
3. Law Enforcement Coordination
4. Interviewing
5. Impersonation and Misrepresentation
6. Reference Materials and Resource List
7. Skip Tracing Techniques
8. Fugitive Identification

B. Recovery Procedures

1. Pursuit

a. Foot

b. Vehicular

c. Other

2. Entry and Search

3. Perimeter/Interior Room Control

C. Agent Survival

1. Confrontation Management

2. Use of Force

3. Deadly Force

4. Escalation of Force

5. Emergency Procedures

D. Apprehension of a Fugitive

1. Compliant versus Noncompliant Procedures

2. Search of Person

a. Personal Items

b. Seizure of Contraband

3. Handcuffing Techniques

4. Rights of the Accused

5. Detainment and Transportation

6. Interstate Transport

7. False Arrest

IV. Remanding to Custody: legal detainment facilities; entering the jail or sally port; signing the bail piece/return to court; and hospital procedures for injuries -- 2 hours + 1 practical exercise

A. Legal Detainment Facilities

B. Entering the Jail or Sally Port

C. Signing the Bail Piece/Return to Court

D. Hospital Procedures for Injuries

V. Written Comprehensive Examination.

6VAC20-260-130. In-service training.

A. Each person licensed with the department as a bail enforcement agent shall complete the compulsory in-service training standards within the last 12 months preceding the expiration date of licensure.

B. The compulsory minimum in-service training course content by category, excluding examinations, practical exercises and range qualification, shall be as follows:

Bail enforcement core subjects:

1. Legal authority -- 2 hours

2. Job-related training -- 6 hours

Total hours -- 8 hours

6VAC20-260-140. Training exemption.

Persons who meet the statutory requirements as set forth in § 9.1-186 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from the date of issuance; otherwise the partial exemption shall become null and void.

6VAC20-260-150. Entry-level training exemption.

A. Persons previously employed as law-enforcement officers for a local, state or federal government who have not terminated or been terminated from the employment more than five years prior to the application date must submit official documentation of the following with the application for partial exemption of the entry-level training requirements:

1. Completion of law-enforcement entry-level training; and

2. Five continuous years of law-enforcement employment, provided such employment as a law-enforcement officer was not terminated due to misconduct or incompetence.

B. Persons having previous bail enforcement agent training and five years continuous experience must submit official documentation of the following with the application for partial exemption:

1. Completion of previous bail enforcement agent training, which has been approved by the department and which meets or exceeds the compulsory minimum training standards promulgated by the board; and

2. Five years continuous experience in bail recovery, provided such experience did not end more than 12 months prior to submittal of licensure application.

6VAC20-260-160. In-service alternative training credit.

Persons who have completed training that meets or exceeds the compulsory minimum training standards promulgated by the board for the in-service training required for bail enforcement agents may be authorized credit for such training, provided the training has been completed within 12 months of the expiration date of the license period during which in-service training is required. Such training must be provided by a third party organization offering services or expertise for the particular training category. Official

Regulations

documentation of the following must accompany the application for in-service training credit:

1. Information regarding the sponsoring organization, including documentation regarding the instructor for each session;
2. An outline of the training session material, including the dates, times and specific subject matter;
3. Proof of attendance and successful completion; and
4. The applicable, nonrefundable application fee.

6VAC20-260-170. Prior firearms training exemption.

Persons having previous department-approved firearms training may be authorized credit for such training that meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application. Official documentation of the following must accompany the application for partial in-service training credit:

1. Completion of department-approved firearms training; and
2. Qualification at a Virginia criminal justice agency, academy or correctional department.

6VAC20-260-180. Renewal extension.

A. An extension of the time period to meet in-service training requirements for renewal of a license may be approved only under specific circumstances that do not allow bail enforcement agents to complete the required renewal procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;
2. Extended injury; or
3. Military deployment.

B. A request for extension shall:

1. Be submitted in writing, dated and signed by the licensee prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department in cases of military deployment;
2. Indicate the projected date the person will be able to comply with the requirements; and
3. Include a copy of the physician's record of the injury or illness or a copy of the government orders.

C. No extension will be approved for licenses that have expired except in the cases involving military deployment.

D. Applications for additional extensions may be approved upon written request of the licensee.

E. Approved extensions may only be granted for a period not to exceed 12 months.

F. The bail enforcement agent shall be nonoperational during the period of extension.

Article 2

Firearms Training Requirements

6VAC20-260-190. General firearms training requirements.

Firearms training endorsement is required for all bail enforcement agents who carry or have access to a firearm while on duty. Each person who carries or has access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

6VAC20-260-200. Firearms (handgun/shotgun) entry-level training.

All armed bail enforcement agents must satisfactorily complete the firearms classroom training, practical exercises and range training as prescribed in 6VAC20-171, Regulations Relating to Private Security Services, for handgun and for shotgun, if applicable, prior to the issuance of the firearms endorsement.

6VAC20-260-210. Firearms (handgun/shotgun) retraining.

On an annual basis all armed bail enforcement agents must requalify for a firearms endorsement by satisfactorily completing firearms classroom training, practical exercises and range training as prescribed in 6VAC20-171, Regulations Relating to Private Security Services, for handgun and for shotgun, if applicable.

Article 3

Training Sessions

6VAC20-260-220. Bail enforcement and firearms training sessions.

A. Training sessions will be conducted by private security services training schools certified or licensed under 6VAC20-171, Regulations Relating to Private Security Services, in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be publicly accessible and submitted to the department upon request. All notifications shall be posted no less than seven calendar

days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. A notification to conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.

2. Notification of any changes to the dates, times, location or cancellation of a future training session must be made at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately.

3. On a form provided by the department, the training school director shall issue an original training completion form and training certificate to each student who satisfactorily completes a training session no later than five business days following the training completion date.

4. In a manner approved by the department, the training school director shall maintain an original training completion roster and submit to the department upon request, affirming each student's successful completion of the session.

5. A written examination shall be administered at the conclusion of each entry-level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 70% for all entry-level training examinations to satisfactorily complete the training session.

6. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

7. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

8. To successfully complete the firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

9. To successfully complete the bail enforcement agent entry-level training session, the individual must:

- a. Successfully complete each of the three graded practical exercises required; and
- b. Pass the written examination with a minimum score of 70%.

C. Attendance.

1. Individuals enrolled in an approved training session are required to be present for the hours required for each

training session unless they have been granted a partial exemption to training from the department.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. Such training must be completed within 60 days after the completion of the training session or at the next available session offered by the training school. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals who do not successfully complete the compulsory minimum training standards of the training session shall not be reported to the department except where required pursuant to this chapter.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

D. Standards of conduct.

1. The training school, training school director and instructor shall at all times conform to the application requirements, administrative requirements and standards of conduct established for certification as a training school and instructor.

2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter.

3. Training sessions will be conducted utilizing lesson plans developed, including at a minimum the compulsory minimum training standards established pursuant to this chapter.

4. Instruction shall be provided in no less than 50-minute classes.

5. Training sessions may not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals and testing.

6. All audiovisual training aids must be accompanied by a period of instruction where the instructor reviews the

Regulations

content of the presentation and the students are provided the opportunity to ask questions regarding the content.

7. A training session must adhere to the minimum compulsory training standards and must be presented in its entirety. Training school directors may require additional hours of instruction, testing or evaluation procedures.

8. A training session must provide accurate and current information to the students.

9. Mandated training conducted not in accordance with the Code of Virginia and this chapter is null and void.

10. A duplicate set of instructor course materials including all student materials shall be made available to any department inspector during the training session, if requested.

Part V

Recordkeeping Standards and Reporting Requirements

6VAC20-260-230. Reporting standards and requirements.

A. Each licensed bail enforcement agent shall report within 30 calendar days to the department any change in his residence, name, or business name or business address, and ensure that the department has the names and fictitious names of all companies under which he carries out his bail recovery business.

B. Each licensed bail enforcement agent arrested or issued a summons for any crime shall report such fact within 30 calendar days to the department and shall report to the department within 30 days the facts and circumstances regarding the final disposition of his case.

C. Each licensed bail enforcement agent shall report to the department within 30 calendar days of the final disposition any administrative action taken against him by another governmental agency in this Commonwealth or in another jurisdiction. Such report shall include a copy of the order, consent to order or other relevant legal documents.

D. Each licensed bail enforcement agent shall report to the department within 24 hours any event in which he discharges a firearm during the course of his duties.

E. The bail enforcement agent shall retain, for a minimum of three calendar years from the date of a recovery, copies of all written documentation in connection with the recovery of a bailee pursuant to 6VAC20-260-260.

Part VI

Administrative Requirements; Standards of Conduct

6VAC20-260-240. General requirements.

All bail enforcement agents are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this regulation.

6VAC20-260-250. Professional conduct standards; grounds for disciplinary actions.

A. Any violations of the restrictions or standards under the Code of Virginia or this regulation shall be grounds for placing on probation, refusal to issue or renew, sanctioning, suspension or revocation of the bail enforcement agent's license. A licensed bail enforcement agent is responsible for ensuring that his employees, partners and individuals contracted to perform services for or on his behalf comply with all of these provisions and do not violate any of the restrictions that apply to bail enforcement agents. Violations by a bail enforcement agent's employee, partner, or agent may be grounds for disciplinary action against the bail enforcement agent, including probation, suspension or revocation of license.

B. A licensed bail enforcement agent shall not:

1. Engage in any fraud or willful misrepresentation, or provide materially incorrect, misleading, incomplete or untrue information in applying for an original license or renewal of an existing license, or in submitting any documents to the department.

2. Use any letterhead, advertising, or other printed matter in any manner representing that he is an agent, employee, or instrumentality of the federal government, a state, or any political subdivision of a state.

3. Impersonate, permit or aid and abet any employee to impersonate a law-enforcement officer or employee of the United States, any state, or a political subdivision of a state.

4. Use a name different from that under which he is currently licensed for any advertising, solicitation, or contract to secure business unless the name is an authorized fictitious name.

5. Coerce, suggest, aid and abet, offer promise of favor, or threaten any person to induce that person to commit any crime.

6. Give or receive, directly or indirectly, any gift of any kind to any nonelected public official or any employee of a governmental agency involved with the administration of justice, including but not limited to law-enforcement personnel, magistrates, judges, jail employees, and attorneys. De minimis gifts, not to exceed \$50 per year per recipient, are acceptable provided the purpose of the gift is not to directly solicit business or would otherwise be a violation of department regulations or the laws of the Commonwealth.

7. Knowingly violate, advise, encourage, or assist in the violation of any statute, local jurisdictional law, court order, or injunction in the course of conducting activities regulated under this chapter.

8. Solicit business for an attorney in return for compensation.

9. Willfully neglect to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties, but if the bail enforcement agent chooses to withdraw from the case and returns the funds for work not yet done, no violation of this section exists.

10. Fail to comply with any of the statutory or regulatory requirements governing licensed bail enforcement agents.

11. Fail or refuse to cooperate with any investigation by the department.

12. Fail to comply with any subpoena issued by the department.

13. Employ or contract with any unlicensed or improperly licensed person or agency to conduct activities pertaining to bail enforcement services regulated in the Code of Virginia or this regulation, if the licensure status was known or could have been ascertained by reasonable inquiry.

14. Solicit or receive a bribe or other consideration in exchange for failing to recover or detain a bailee.

15. Provide false or misleading information to representatives of the department.

C. The department shall have the authority to place on probation, suspend or revoke a bail enforcement agent's license if an agent is arrested or issued a summons for a criminal offense, or becomes the subject of a protective order.

6VAC20-260-260. Recovery of bailees; methods of capture; standards and requirements; limitations.

A. During the recovery of a bailee, a bail enforcement agent shall have a copy of the relevant recognizance for the bailee. He shall also have written authorization from the bailee's bondsman, obtained prior to effecting the capture. The department shall develop the written authorization form to be used in such circumstances.

B. A bail enforcement agent shall not enter a residential structure without first verbally notifying the occupants who are present at the time of the entry.

C. Absent exigent circumstances, a bail enforcement agent shall give prior notification of at least 24 hours to local law enforcement or state police of the intent to apprehend a bailee. In all cases, a bail enforcement agent shall inform local law enforcement within 60 minutes of capturing a bailee.

D. In the apprehension of a bailee, the bail enforcement agent shall provide a written inventory of items taken into possession to both the bailee as well as the legal detainment facility.

E. A bail enforcement agent shall not utilize a canine or security rifle in the performance of bail recovery.

F. A bail enforcement agent may not transfer a bailee to an unlicensed bail bondsman or bail enforcement agent within the Commonwealth of Virginia.

G. A bail enforcement agent shall not break any laws of the Commonwealth in the act of apprehending a bailee.

H. A bail enforcement agent shall adhere to the recovery requirements pursuant to § 19.2-149 of the Code of Virginia.

I. A bail enforcement agent must complete and maintain the information on the recovery of a bailee on a form prescribed by the department.

6VAC20-260-270. Uniforms and identification; standards and restrictions.

A. A bail enforcement agent shall not wear, carry, or display any uniform, badge, shield, or other insignia or emblem that implies he is an agent of state, local, or federal government.

B. A bail enforcement agent shall wear or display only identification issued by, or whose design has been approved by, the department.

Part VII

Complaints, Department Actions, Adjudication

Article 1

Complaints

6VAC20-260-280. Submittal requirements.

A. Any aggrieved or interested person may file a complaint against any person whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing bail enforcement services or this regulation.

B. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;

2. In writing, submitted anonymously, that provide sufficient detailed information for the department to conduct an investigation; or

3. Telephonically, providing the complaint alleges activities that constitute a life-threatening situation, have resulted in personal injury or loss to the public or to a consumer, or may result in imminent harm or personal injury, and that provide sufficient detailed information for the department to conduct an investigation.

6VAC20-260-290. Department investigation.

A. The department may initiate or conduct an investigation based on any information received or action taken by the department to determine compliance with the Code of Virginia and this regulation.

Regulations

B. Documentation.

1. Persons regulated or required to be regulated by this regulation pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this regulation.

a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.

b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this regulation.

2. The department shall endeavor to keep any documentation, evidence or information on an investigation confidential until such time as adjudication has been completed, at which time information may be released upon request pursuant to applicable federal and state laws, rules or regulations.

Article 2 Department Actions

6VAC20-260-300. Penalties: criminal and monetary.

A. Any person who engages in bail recovery in the Commonwealth without a valid license issued by the department is guilty of a Class 1 misdemeanor. A third conviction under this section is a Class 6 felony.

B. Any person who violates any statute or board regulation who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If the board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.

6VAC20-260-310. Disciplinary action; sanctions; publication of records.

A. Each person subject to jurisdiction of this regulation who violates any statute or regulation pertaining to bail enforcement services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation or in noncompliance of the Code of Virginia or of this regulation:

1. Letter of reprimand or censure;
2. Probation for any period of time;

3. Suspension of license or approval granted, for any period of time;

4. Revocation;

5. Refusal to issue or renew a license or approval;

6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted; or

7. Remedial training.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this regulation but do not hold a valid license, certification or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director (chief administrative officer of the department) may summarily suspend a license under this regulation without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm, personal injury or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all licensees whose conduct and activities are subject to this regulation and have been sanctioned or denied licensure or approval.

6VAC20-260-320. Fines: administrative and investigative costs.

The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation or denial of any license. Such costs shall be in addition to any monetary penalty that may be imposed.

Article 3 Adjudication

6VAC20-260-330. Hearing process.

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this regulation. Pursuant to the authority conferred in § 9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed in this regulation, the department is empowered to receive, review, investigate and adjudicate complaints concerning the conduct of any person whose activities are regulated by the

board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

6VAC20-260-340. Informal fact-finding conference.

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with § 2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

6VAC20-260-350. Formal hearing.

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine, or to suspend, revoke or deny issuance or renewal of any license or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such license, registration, certification or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

6VAC20-260-360. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the hearing decision was served or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

6VAC20-260-370. Court review; appeal of final agency order.

A. The final administrative decision may be appealed pursuant to § 2.2-4026 of the Code of Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, in writing within 30 days of the date notification of the board decision was served or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect unless the court issues a stay of the order.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS (6VAC20-260)

Initial Bail Enforcement Agent License Application, ORA EA (rev. 04/09)

Renewal Bail Enforcement Agent License Application, ORA ER (rev. 04/09)

Fingerprint Processing Application, ORA FP (rev. 04/09)

Criminal History Supplemental Form, ORA CHS (rev. 04/09)

Bail Enforcement Agent Firearms Endorsement Application, BEA RF (rev. 04/09)

Bail Enforcement Agent Recovery Form, ORA BRF (rev. 04/09)

Bail Enforcement Recovery Authorization Form, OAR RAF (rev. 04/09)

Bail Enforcement Agent Replacement Photo ID Application, BEA RPI (rev. 04/09)

Bail Enforcement Agent Firearms Endorsement Replacement/Additional Firearms Category Application, BEA RF2 (rev.04/09)]

VA.R. Doc. No. R06-182; Filed August 26, 2009, 9:45 a.m.

Regulations

DEPARTMENT (BOARD) OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: 6VAC35-30. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs (amending 6VAC35-30-10, 6VAC35-30-20, 6VAC35-30-40, 6VAC35-30-60 through 6VAC35-30-190; adding 6VAC35-30-35, 6VAC35-30-45, 6VAC35-30-65; repealing 6VAC35-30-30, 6VAC35-30-50).

Statutory Authority: §§ 16.1-309.5, 16.1-322.7, and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 13, 2009.

Agency Contact: Janet VanCuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Basis: The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which states the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

Additionally, the legal authority of the Board of Juvenile Justice to promulgate regulations governing reimbursement of construction costs for local juvenile residential facilities is found in § 16.1-309.5 C of the Code of Virginia. This section states that "the Board shall promulgate regulations to include criteria to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds for such purpose."

Moreover, § 16.1-322.7 of the Code of Virginia requires the Board of Juvenile Justice to promulgate regulations governing the schedule for and manner of state reimbursement to the cities or counties or any combination thereof for costs of construction of local or regional detention homes. It further requires regulations regarding the minimum standards for the construction, equipment, administration, and operation of the facilities.

Purpose: The Regulations Governing State Reimbursement of Local Juvenile Residential Facility Costs, 6VAC35-30, sets forth the process by which the department and the Board of Juvenile Justice will approve the Commonwealth's reimbursement of a portion of a locality's cost of constructing a juvenile residential facility. It establishes the process for evaluating requests from localities for state reimbursement of local juvenile residential facility construction costs, including criteria to assess need, priorities for construction projects, and a methodology for determining appropriate costs. The regulation also provides the basis for the department's

"Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities," which addresses technical matters of construction and furnishings.

The last comprehensive review of the Regulations Governing State Reimbursement of Local Juvenile Residential Facility Costs was completed on September 9, 1992. Since that time, there has been a restructuring, both in the Department of Juvenile Justice and in localities. Additionally, many of the terms used in the regulation are outdated. Thus, the regulation was reviewed in light of current practices, and it was determined that a comprehensive review of and substantive changes to the regulation are necessary to streamline the process for localities requesting reimbursement that keeps with the goals of enhancing the clarity of the regulation and achieving improvements that will be reasonable, prudent, and will not impose any unnecessary burden on its regulants or the public.

Substance: The following changes have been proposed for the Regulations Governing State Reimbursement of Local Juvenile Residential Facility Costs:

1. 6VAC35-30-10: Updated referenced statutes, regulations, and documents.
2. 6VAC35-30-20:
 - a. Updated the definitions section and terms used, including (i) removing unused terms and (ii) clearly defining components of the needs assessment and planning study and detailing what constitutes a substantive change.
 - b. Removed square footage reference in the definition of area; this is addressed in 6VAC35-30-65.
 - c. Added definitions for (i) board-approved funding formula; (ii) efficiency ratio; (iii) project; and (iv) sponsor.
3. 6VAC35-30-30: Deleted this section as the statutory references are provided in the regulatory footnotes.
4. 6VAC35-30-35 (new): Added a prescreening step to the process to ensure that all projects subject to the regulation are identified early in the planning process.
5. 6VAC35-30-40: Added language to clarify the distinct phases of the process and the responsibilities of each party during these phases.
6. 6VAC35-30-45 (new): Added a section to clarify the sponsor/locality's responsibilities in the event of a legislative moratorium on construction/reimbursement.
7. 6VAC35-30-50: Deleted this section as it was not in the correct order of the process and was duplicative of other parts of the regulation.
8. 6VAC35-30-60:

- a. Moved the board-approved funding formula to its own section.
 - b. Added an additional component of the board's review - review of efficiency.
 - c. Added a provision to allow the board to adjust the amount being requested for reimbursement when (i) functional areas are not included or are planned at a nonconforming size; (ii) support service areas are at a nonconforming size; (iii) the efficiency ratio is not appropriate; and (iv) the facility includes areas for extraordinary program activity. This section replaces a statewide average absolute limitation (from footnote i in appendix 2e of the Step-by-Step Procedures for Approval and Reimbursement for Local Facility Construction, Enlargement, and Renovation).
 - d. Clarified that phased reimbursements may be utilized.
9. 6VAC35-30-65 (new):
- a. Moved the funding formula currently in this section from 6VAC35-30-60.
 - b. Made the following changes from the previous formula:
 - (1) Removed the requirement to convert the per-bed costs using per-bed area allowances based on the average gross square footage of actual and proposed local facilities in Virginia. The cost per square footage is already regionally accounted for using the R.S. Means location factor, and the proposed language will increase board oversight for efficiency in 6VAC35-30-60.
 - (2) Changed the contingency percentage from 3.0% to 10%. Since this formula governs the Schematic Design Document, the 10% would impose the same standard used for state construction at this stage of design.
 - (3) Added an inflation factor into the calculation for consistency with the practices of the Department of Corrections.
 - (4) Changed the maximum square footage requirement from 600 square feet per bed for all facilities to (i) 700 for facilities up to 35 residents; (ii) 650 for facilities of 36 to 79 residents; and (iii) 550 for facilities with 80 or more residents.
10. 6VAC35-30-70: Removed funding priorities as the Code of Virginia requires priority to multijurisdictional facilities. The current regulation requires a needs assessment, and the proposed regulation allows the board to conduct efficiency analyses.
11. 6VAC35-30-80: Included timeframes for communications.
12. 6VAC35-30-90: Made technical changes to update the references and clarify the steps in the process.
13. 6VAC35-30-100: Made technical changes including clarifying the documents required at this stage.
14. 6VAC35-30-110: Made technical change to the title.
15. 6VAC35-30-120: Amended and provided the timeframes for communications between the department and the sponsor.
- Added a provision that the department's failure to respond would serve as acceptance of the recommendation.
16. 6VAC35-30-130: Stated the timeframe for submission of inspection and progress reports.
- Added a provision that the department's failure to respond would serve as acceptance of the inspection and progress report.
- Added a provision that the sponsor's failure to timely submit the inspection or progress reports may constitute grounds to deny reimbursement.
- Added a provision that the sponsor's failure to obtain approval of a substantive change may constitute grounds to deny reimbursement.
17. 6VAC35-30-140: Clarified the required components of the schedule for final inspection.
18. 6VAC35-30-150 through 6VAC35-30-180: Made technical changes.
19. 6VAC35-30-190: Added a provision that a failure to comply with the regulation may result in the failure to obtain board certification or department approval to house juveniles in the facility.
20. Documents Incorporated by Reference: Updated the title of the document.
- Issues: The proposed amendments have been vetted through an advisory committee consisting of individuals representing detention homes across the Commonwealth who would be affected by the changes in reimbursement for juvenile residential facilities. Having clear, concise, and consistent requirements for localities seeking reimbursement for construction of local facilities fosters improved communication between the department, the Commonwealth, and localities.
- The proposed amendments should pose no disadvantage to the public or the Commonwealth. In fact, providing the board with additional authority to review requests for space efficiency and appropriate use of space will promote improved functionality in future construction projects.
- The Department of Planning and Budget's Economic Impact Analysis:
- Summary of the Proposed Amendments to Regulation. As a part of a periodic review process, the Board of Juvenile Justice (Board) proposes to amend its Regulations for State

Regulations

Reimbursement of Local Juvenile Facility Costs. Specifically, the Board proposes to:

- Enumerate phases of the reimbursement process and the responsibilities of each party during these phases,
- Clarify communication and submission timeframes for acceptance of bids for construction and add language that stipulates the Department of Juvenile Justice's (DJJ's) failure to respond to bid information will serve as acceptance of the locality's recommendation,
- Specify that failure to submit the inspection or progress reports in a timely fashion or failure to obtain approval of a substantive change could constitute grounds to deny reimbursement,
- Clarify the required components of the final inspection schedule,
- Clarify and add structure to pre-screening step to ensure that all projects subject to the regulation are identified early in the planning process,
- Incorporate a review of efficiency as one component of the reimbursement process and specify that the Board may adjust the costs of construction approved for reimbursement subject to the outcome of that efficiency review and a needs assessment already in current regulations,
- Increase the contingency percentage from 3.0% to 10%,
- Allow for a state-set inflation (deflation) factor to be applied to reimbursements, and
- Replace a 600 square feet per bed reimbursement cap with a three tiered cap.

Result of Analysis. The benefits likely exceed the costs for most proposed changes. There is insufficient evidence to decide whether benefits exceed costs for several other proposed changes.

Estimated Economic Impact. The Board last updated the regulations that govern reimbursement to localities for construction of juvenile facilities in 1992. Pursuant to periodic review requirements, the Board is now proposing many changes to these regulations. Most of these changes are intended to clarify existing regulatory language or recognize Board policy/current practice. Regulated entities are very unlikely to incur any costs on account of proposed changes that fall into this category. Regulated entities will receive a benefit to the extent that these changes allow them to better understand the rules to which they must adhere. The Board also proposes several substantive changes to portions of these regulations that govern inflation and contingency adjustments to reimbursements as well as per bed reimbursement rates.

Current regulations allow the Board to adjust reimbursement payments on a contingency basis by up to 3.0% of the initial

estimate of construction costs. This contingency percentage can be added to account for changes in construction cost that occur between the time plans are submitted and the time (sometimes years later) when the planned facility is actually built. The Board is also currently allowed to adjust reimbursements by a "change order" amount at the end of construction.

The Board proposes to increase the contingency percentage to 10% and add a new inflation factor. The inflation factor is set by the state and is "a yearly market inflation rate applied from January 1 of the year of the submitted design through the midpoint of construction, compounded."

These two changes may increase the state's share of construction costs for local juvenile detention facilities while reducing locality expenditures on these projects (since localities currently must cover any increased costs over the current 3.0% contingency amount plus the "change order"). This will likely benefit localities that will have to use fewer local dollars to build required facilities but will also likely cost the state more general revenue dollars. To the extent that DJJ can make these building projects more efficient through their review process, fewer tax dollars overall will likely be spent on these facilities. If, however, localities are already building as efficiently as the state would require, then these regulatory changes will only serve to shift the costs of these facilities from the specific localities where they will be located to state taxpayers who likely will not directly benefit from the building of any given facility because they do not live in the affected locality.

Current regulations impose a 600 square feet per bed reimbursement cap on all planned facility construction no matter how many beds the facility will be built for. This cap does not, however, account for economies of scale that may allow larger facilities to be built more cheaply. A large facility will not, for instance, require twice as many offices or kitchens as a facility half its size.

To account for these economies of scale, the Board proposes to institute a three tiered per bed cap. Facilities that will house 35 or fewer juveniles will have an area allowance cap of 700 square feet per bed. Facilities that will house between 36 and 79 juveniles will have a cap of 650 square feet per bed. Facilities that will house 80 or more juveniles will have a cap of 550 square feet per bed.

This change will increase reimbursement for smaller facilities and decrease reimbursement for larger facilities. Comparing two recently built facilities will give a rough idea of the reimbursement changes. The Piedmont detention facility was built to house 20 juveniles and has 669 square feet per bed. Under the existing allowance, the locality had to cover all costs for the additional 69 feet per bed. Under the new allowance, all square footage would have been subject to the reimbursement formula. The Virginia Beach detention home was built to house 90 juveniles and has 594 square feet per

bed. Under the existing allowance, all square footage was subject to the reimbursement formula. Under the new allowance, the cost of 44 square feet per bed would be purely the responsibility of the building locality. DJJ reports, based on bed size of recently built facilities, that total state costs under the proposed formulas would have been reduced by roughly \$63,000 for the last seven facilities built. The new maximum allowances are likely more reflective of the actual square footage needs for facilities and may encourage larger facilities to be built with an eye toward greater efficiency.

Businesses and Entities Affected. These proposed regulations will affect localities that intend to build juvenile detention facilities. DJJ reports that there are 24 detention facilities in the state currently. One locality has recently submitted a needs assessment for a new building project.

Localities Particularly Affected. Localities that want to build or expand juvenile detention facilities will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs that are directly attributable to this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs that are directly attributable to this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's economic impact analysis of 6VAC35-30, Regulations Governing State Reimbursement of Local Juvenile Residential Facility Costs. The agency has no comment regarding DPB's analysis.

Summary:

The proposed amendments (i) enumerate phases of the reimbursement process and the responsibilities of each party during these phases; (ii) clarify communication and submission timeframes for acceptance of bids for construction and add language that stipulates the Department of Juvenile Justice's failure to respond to bid information will serve as acceptance of the locality's recommendation; (iii) specify that failure to submit the inspection or progress reports in a timely fashion or failure to obtain approval of a substantive change could constitute grounds to deny reimbursement; (iv) clarify the required components of the final inspection schedule; (v) clarify and add structure to the prescreening step to ensure that all projects subject to the regulation are identified early in the planning process; (vi) incorporate a review of efficiency as one component of the reimbursement process and specify that the board may adjust the costs of construction approved for reimbursement subject to the outcome of that efficiency review and a needs assessment already in current regulations; (vii) increase the contingency percentage used to calculate estimated construction costs from 3.0% to 10%; (viii) allow for a state-set inflation (deflation) factor to be applied to reimbursements; and (ix) replace a 600 square feet per bed reimbursement cap with a three-tiered cap based on the number of residents.

CHAPTER 30
REGULATIONS FOR GOVERNING STATE
REIMBURSEMENT OF LOCAL JUVENILE
RESIDENTIAL FACILITY COSTS

Part I
General Information

6VAC35-30-10. Introduction.

~~The state Board of Youth and Family Services is charged with the responsibility for approving all requests from~~

Regulations

~~localities for financial assistance relative to the development and operation of new programs and services; for purchase of property; and for construction, enlargement, or renovation of detention homes, group homes or other residential care facilities for children; whether publicly or privately constructed.~~

~~The Department of Youth and Family Services exercises oversight responsibility in the establishment and maintenance of programs, services and residential care facilities for children.~~

~~The Office of Capital Outlay Management within the Department of Youth and Family Services is responsible for architectural and engineering review of residential care facilities which are constructed, enlarged or renovated, and reimbursed with state funds.~~

Section 16.1-309.5 of the Code of Virginia requires the Board of Juvenile Justice and the Governor to evaluate all plans for, specifications of, and requests for reimbursement from a locality or localities for the construction, enlargement, purchase, or renovation of projects governed by this chapter. No reimbursements for costs and construction for such projects shall be made unless the plans, specifications, and construction are approved by the board and the Governor in accordance with the provisions contained herein.

Section 16.1-309.9 of the Code of Virginia further mandates the board to approve minimum standards for the construction and equipment of detention homes and other facilities governed by this chapter. Any such project shall be subject to this regulation and all applicable statutes, regulations, and guidance documents, including, but not limited to, the following:

1. The Virginia Public Procurement Act, Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia;

2. The Construction and Professional Services Manual (CPSM), October 2004, issued by the Department of General Services, Division of Engineering and Building;

3. The Step-by-Step Procedures for Approval and Reimbursement for Local Facility Construction, Enlargement, and Renovation, March 2001, issued by the Department of Juvenile Justice; and

4. The Agency Procurement and Surplus Property Manual (IVAC30-130), issued by the Department of General Services, Division of Purchases and Supply.

~~Approval of projects for which state funding is requested is vested by the Governor in the Office of the Secretary of Public Safety. Such projects are best accomplished as a cooperative venture between a locality or localities and the Department of Youth and Family Services Juvenile Justice. Using Board of Youth and Family Services (BYFS) approved and American Correctional Association (ACA) standards regulations promulgated by the board and by working~~

~~together as partners from project planning to through project construction and program implementation, the locality or localities and the department ensure that an the optimum number of children are provided high quality services at a minimum cost to the locality or localities and to the Commonwealth.~~

~~As a basis for this regulation:~~

~~1. The Virginia Public Procurement Act applies generally to every public body in the Commonwealth which § 11-37 of the Code of Virginia defines to include any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty. Therefore, the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, current edition, will apply when construction of juvenile facilities is reimbursed by state funds.~~

~~2. The Agency Procurement and Surplus Property manual incorporates the Commonwealth of Virginia Capital Outlay manual for policy and guidelines for Capital Outlay Projects. Generally, construction or renovation of juvenile facilities would constitute Capital Outlay. The Department of Youth and Family Services shall therefore apply the Commonwealth of Virginia Capital Outlay manual, current edition, whenever reimbursement with state funds is requested. Special emphasis on Chapters V, VIII, and X shall be considered whenever reimbursement is requested.~~

~~3. The Department of Youth and Family Services does not intend to replace or relieve responsibilities of the architectural and engineering firms and applicable regulatory authorities (i.e., Building Official, State Fire Marshal, etc.).~~

~~For the purposes of this chapter and reimbursement recommendations to the Secretary and the Governor, the Department of Youth and Family Services (DYFS) or its designee shall be the reviewing authority.~~

Part II

Definitions and Legal Basis

6VAC35-30-20. Definitions.

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

~~"ACA" means American Correctional Association.~~

"Area allowance per bed" means the gross square footage of the facility divided by the facility's design capacity as provided herein.

~~"Architectural/Engineering (A/E) services" means an individual or firm that is licensed by the Virginia Department of Commerce to provide professional services appropriate for~~

the specific project, and is hired by the owner to provide those specific services for the project.

"Board" means the Virginia Board of Youth and Family Services Juvenile Justice.

"Board-approved funding formula" means the method by which construction costs are calculated as provided for in 6VAC35-30-60.

"~~Board approved standards regulation~~" means ~~standards a regulation or section or subsections thereof promulgated and approved by the Board of Youth and Family Services board. These standards include:~~

- ~~1. Chapter 50 of Title 6 (6VAC35-50-10 et seq.), Standards for Interdepartmental Regulation of Residential Facilities for Children;~~
- ~~2. Chapter 100 of Title 6 (6VAC35-100-10 et seq.), Standards for Secure Detention; and~~
- ~~3. Chapter 40 of Title 6 (6VAC35-40-10 et seq.), Standards for Predispositional and Post Dispositional Group Homes.~~

"Department" or DYFS "DJJ" means the Department of Youth and Family Services Juvenile Justice.

"Efficiency ratio" means the proportion of a building's net usable area to its gross floor area.

"Enlargement" or "Expansion" means to expand an existing local facility by constructing additional areas.

"Furnishings and equipment" means built in equipment or fixtures normally included in a structure at the time of construction.

"Local facility" means a juvenile residential facility which that is or may be regulated by the board and is owned, maintained, or operated by any political subdivision or combination of political subdivisions of the Commonwealth, or a privately owned or operated juvenile residential facility which that has contracted with any political subdivision or combination of political subdivisions of the Commonwealth and is or may be regulated by the board.

"Locality's representative" means an individual who is licensed by the Virginia Department of Commerce as an architect or engineer.

"Needs assessment" means an evaluation of trends and factors at the local or regional level which that may affect current and future local facility needs, and the assessment of local facilities and nonresidential programs available to meet such needs. The needs assessment for each proposed project shall identify the target population, the specific need of the target population the project is seeking to address, why the specific need cannot be met with existing resources, all alternatives considered to meet identified need, and the reason for rejecting the alternatives.

"New construction" means to erect a new local facility or replace an outdated existing local facility.

"Operating capacity" means operating capacity as established by the Department of Youth and Family Services, based on "per bed area allowances." 6VAC35-30-60 C 2.

"Planning study" means an overall description of a proposed project consisting of new construction, renovation of existing facilities, or both. The planning study shall include a program description and a program design as detailed in approved department procedures, architectural and engineering drawings at the Schematic Design Document level, the relationship of the project to existing facilities or structures, the project's schedule, a detail of the project's total projected design, construction, operation, maintenance costs, and a cost/benefit analysis.

"Procedures" means the Department of Youth and Family Services Procedures for Receiving State Reimbursement for Local Facility Construction, Enlargement, Renovation, and Operating Funds, and for the Development and Operation of New Programs.

"Project" means any proposed or actual new construction, renovation, enlargement, or expansion of a juvenile residential facility that is or will be subject to approval by the department or regulation by the board.

"Renovation" means altering or otherwise modifying an existing local facility or piece of stationary equipment for the purpose of modernizing or changing its use or capability. Renovation does not include routine maintenance. Renovation renders the facility, item or area superior to the original.

"Replacement" means ~~constructing a local facility in place of a like local facility or purchasing equipment to replace stationary equipment which cannot be economically renovated or repaired.~~

"Reviewing authority" means the department, division or agency to which the Governor has delegated authority to act in his behalf in reviewing local facility construction projects for reimbursement approval.

"Routine maintenance" means the normal and usual type of repair or replacement necessary as the result of periodic maintenance inspections or normal wear and tear of a local facility or equipment.

"Sponsor" means a city, county, commission, or any combination thereof, or any private entity under contract or arrangement with any city, county, commission, or any combination thereof, that is actually or proposing to build, renovate, expand, or operate a local facility.

"Substantive change" means user generated design changes affecting any deviation from an approved plan or design that will affect the operational and functional performance of the

Regulations

facility, that potentially impacts the facility's compliance with any board regulation, that would result in a change in capacity, or that would result in the sponsor seeking additional reimbursement, as detailed in approved department procedures.

6VAC35-30-30. Legal basis. (Repealed.)

~~A. This chapter has been promulgated by the board to carry out the provisions of §§ 16.1-313 and 16.1-322.5 through 16.1-322.7 of the Code of Virginia. This chapter:~~

- ~~1. Serves as a guideline in evaluating requests for reimbursement of local facility construction costs;~~
- ~~2. Includes criteria to assess need and establish priorities;~~
- ~~3. Ensures the fair and equitable distribution of state funds provided for reimbursing local facility construction costs; and~~
- ~~4. Provides criteria for private construction of detention or other residential facilities.~~

~~B. The board is authorized to promulgate regulations pursuant to § 66-10 of the Code of Virginia.~~

Part III Procedures

6VAC35-30-35. Prescreening.

A. Any sponsor planning any construction, renovation, enlargement, or expansion of a local facility shall submit an initial writing to the department that shall include a graphic showing any proposed structural changes and a brief description of all operating capacity or programmatic changes to be accommodated by the structure. The department shall review the initial writing and inform the sponsor in writing whether the project is subject to this regulation as soon as practicable but no later than 30 days from the receipt of the initial writing from the sponsor. If the department fails to respond in the required time frame, the sponsor may proceed with the reimbursement request in accordance with this chapter.

B. Any request shall be determined to be in one of the following categories:

1. For any new construction, change, or modification of an existing local facility or piece of stationary equipment, including security related upgrades, that will affect the facility's compliance with a board regulation, result in a change in certification or licensure status, or result in increased square footage, bed space, or capacity shall be subject to this regulation.
2. For any facility enhancements not provided for in subdivision 1 of this subsection for which the sponsor seeks reimbursement, the sponsor shall submit a project overview and cost estimates to the board for approval and shall be subject to the requirements of 6VAC35-30-180.

The department and board may require additional documentation.

3. Minor changes, such as routine maintenance, shall not be subject to this regulation and shall be managed informally in accordance with department procedures.

Part III Reimbursement Request Procedures

6VAC35-30-40. Reimbursement request.

~~A. Requests for reimbursement shall be submitted as follows: 1. Requests for reimbursement shall be approved by the board by June 1 of each year for inclusion in the department's budget request to the Governor and consideration during the next General Assembly session. Incomplete submissions, or submissions not received by the department prior to or on April 1 will not be submitted to the board for inclusion in the department's budget request. For all projects subject to this regulation, the department shall advise the sponsor of the deadline for submissions necessary to obtain approval, for inclusion in the department's budget request to the Governor, and for consideration during the next General Assembly session.~~

~~2. B. Needs assessment. The locality sponsor shall direct a letter to the department requesting the board to recommend to the Governor reimbursement for construction, enlargement or renovation. The letter shall be accompanied by the information required by subsection B-, prior to the applicable deadline, submit a needs assessment that shall demonstrate the need for the particular service, program, or facility. The board shall consider the needs assessment at its next regularly scheduled meeting and shall approve, reject, or return the needs assessment.~~

1. If the needs assessment is approved by the board, the department shall advise the sponsor of the board's decision and of the deadline for submitting the planning study for the project.

2. If the needs assessment is returned to the sponsor, the board shall provide the sponsor with additional factors to be considered prior to resubmission.

3. The department shall advise the sponsor of the board's decision, in writing, within seven business days of the board's decision.

~~3. C. Planning study. The department shall submit the completed request for reimbursement to the board for review and approval by the second board meeting or within 60 days following submission by the locality sponsor shall, upon approval of the needs assessment by the board and prior to the applicable deadline, submit a complete planning study that shall explain how the proposed project is the most appropriate and cost-effective response to the specific need identified in the needs assessment.~~

1. The planning study shall be accompanied by an estimate of the total amount of reimbursement to be requested and a resolution from the governing body of the sponsor or sponsors requesting reimbursement.

2. The board shall consider the planning study at its next regularly scheduled meeting and shall utilize the criteria outlined in 6VAC35-30-60 when reviewing a sponsor's planning study and accompanying materials. Upon approval of a planning study, the board shall recommend the amount of state reimbursement for the project and shall forward the sponsor's submissions and the board's recommendation to the Governor or the Governor's designee for approval.

B. Requests for reimbursement of local facility construction, enlargement or renovation costs shall be accompanied by:

1. A needs assessment as specified in the procedures;
2. A resolution from the locality or localities requesting reimbursement;
3. An estimate of the reimbursement amount being requested;
4. A planning study as specified in the procedures; and
5. 3. Requests for regional facilities shall also include a copy of the agreement between the participating localities including the allocation of financial and operational responsibilities.

6VAC35-30-45. Effect of legislative moratorium.

A. In such times when the Virginia General Assembly has imposed a moratorium on construction and reimbursement of construction costs, the sponsor shall follow the requirements of this chapter.

B. To obtain any reimbursement thereafter, the sponsor shall:

1. Pursue a legislative exception to the moratorium on construction and reimbursement of construction costs; or
2. Request reimbursement at such time as the Virginia General Assembly authorizes funding for such projects.

6VAC35-30-50. Preliminary review. (Repealed.)

Localities wishing a review of their needs assessment prior to formally submitting a reimbursement request may submit only the needs assessment as specified in 6VAC35-30-40 B. Upon review of the needs assessment, the board will notify the locality or localities as to whether it appears to the board that they are ready to proceed with the formal reimbursement request.

6VAC35-30-60. Criteria for board funding recommendation.

A. Demonstrated need. The board ~~will~~ shall evaluate the need for the project as demonstrated by the information provided in the Needs Assessment and Planning Study.

B. Operational cost efficiency. The board shall take into consideration the operational cost efficiency of the interior design of the facility with special concern for the number of staff required, functional layout, material selection, and energy efficiency, with special emphasis on meeting the needs of youth and the mission of the facility. ~~Design of the program facility shall meet the standards of the board and ACA.~~

C. Construction cost. All sponsors shall calculate construction costs in accordance with the funding formula provided in 6VAC35-30-65. Construction economy shall be reviewed in relation to the adjusted median cost of local facilities. ~~The adjusted median cost of local facilities will be calculated by the department as a per bed cost using the following procedure:~~

~~1. A cost per square foot base figure will be the national median square foot cost for jails (location factor applied), published in the latest edition of "Means Facilities Cost Data" published by R. S. Means Company, Inc. The "Means Facilities Cost Data" takes into consideration the "location factor" which is the materials and labor cost differential specific to a geographical location;~~

~~2. The adjusted square foot costs will be converted to per bed costs using per bed area allowances based on the average gross square footage of actual and proposed local facilities in Virginia; the area allowances must be in accordance with all applicable codes and standards according to the following formula:~~

~~National cost per square foot (Means)~~

~~X Location Factor (Means)~~

~~X Area allowance per bed (maximum 900 sq. ft. per bed)~~

~~= Adjusted median construction cost of local facility;~~

~~3. The total project cost will include:~~

~~a. Construction (subdivision C 2 above);~~

~~b. Site and utilities (Means);~~

~~c. Architectural and engineering (Virginia Capital Outlay Manual);~~

~~d. Furnishings and equipment (as itemized);~~

~~e. Project inspection (Virginia Capital Outlay Manual);~~

~~f. Contingency (3.0%);~~

~~g. Property purchased specifically for this facility; and~~

Regulations

~~h. Other.~~

D. Board review of construction costs. The economy of construction cost is necessary and shall be reviewed as follows:

1. Review for efficiency.

a. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the efficiency of the renovated spaces, the appropriateness of the proposed changes, and the relationship of the changes to the project of a whole.

b. Projects of new construction shall be reviewed for the building's appropriate efficiency ratio. The board may request further information from the sponsor on projects with a building's efficiency ratio of less than 65%.

2. The board may adjust the amount being requested for reimbursement funding as follows:

a. A reduction in funding when functional areas of the facility, such as the kitchen, recreation area, educational facilities, visiting area, and laundry facilities are not included or are included at a size not in conformance with applicable regulations or normal practice;

b. An increase in funding when support services areas are proposed at sizes larger than necessary in anticipation of future enlargements or expansions of the facility;

c. A decrease in funding when the building's efficiency ratio is less than 65%; and

d. An increase in funding when the facility includes areas for extraordinary program activities.

3. Any adjustments made by the board in funding shall be based upon the gross square footage of the various conditions multiplied by a cost equal to the adjusted median cost or the proposed gross square foot cost of the facility, whichever is less.

~~D. E. Phased reimbursement of projects. When localities wish A sponsor may request, when submitting the planning study for review, to meet the requirements outlined in the needs assessment receive portions of the total project reimbursement based upon the completion of the project in phases. In response to such requests, the board may approve reimbursement based on the total estimated cost of the project as if it were to be completed as a single endeavor; however, reimbursement will be in amounts proportional to the phases of construction and payment will be made only as each approved phase is completed and that portion of the building is ready to be placed in service.~~

6VAC35-30-65. Funding formula.

A. The following funding formula shall be used to calculate estimated construction costs at the Schematic Design Documents level in the planning study phase:

1. A cost per square foot base figure shall be the national median square-foot cost for jails published in the 24th annual edition of R. S. Means Facilities Construction Cost Data 2009 (Means) with consideration taken of the "location factor," which is the materials and labor cost differential specific to the project's geographical location.

2. The cost per square foot, adjusted using the location factor, must be in accordance with all applicable codes and standards and in accordance with the following formula:

National cost per square foot (from Means)

X Location Factor (from Means)

X Area allowance per bed (as provided for in subsection B of this section)

= Adjusted median construction cost of local facility.

3. The total project cost shall include:

a. Construction cost;

b. Site and utilities (from Means);

c. Architectural and Engineering services (services as defined in the Construction and Professional Services Manual (CPSM));

d. Furnishing and equipment (as itemized by the sponsor);

e. Project inspection (services as defined in the CPSM);

f. Contingency (10.0%);

g. Inflation factor (yearly market inflation rate applied from January 1 of the year of the submitted design through the midpoint of construction, compounded;

h. Property purchased specifically for this facility; and

i. Other.

B. The following area allowances per bed shall be used to calculate the adjusted median construction cost of a local facility:

1. A maximum of 700 square feet per bed for facilities up to 35 residents;

2. A maximum of 650 square feet per bed for facilities of 36 to 79 residents; and

3. A maximum of 550 square feet per bed for facilities with 80 or more residents.

6VAC35-30-70. Funding priorities.

~~A. The following criteria, as determined by the needs assessment shall serve as a guide for determining the level of priority given to requests for reimbursement:~~

~~1. New construction or renovation is needed because the existing facility is closed by the court, Board of Youth and~~

~~Family Services or local governing authority due to its failure to meet state or local operating standards;~~

~~2. An unsafe physical plant which fails to meet life, health, safety standards, or a court ordered renovation, expansion, or new construction;~~

~~3. Replacement or renovation of bedspace lost due to fire, earthquake or other disaster;~~

~~4. An existing local facility is experiencing overcrowding which is expected to continue based on population forecasts;~~

~~5. A locality with no existing local facility;~~

~~6. An addition to or renovation of support facilities;~~

~~7. Phased projects; and~~

~~8. Cost overruns.~~

~~B. Regional projects. The board will shall prioritize reimbursement requests in a manner to ensure an equitable distribution of state funds across the Commonwealth; and, absent a health, safety, or welfare risk requiring priority, the board shall ordinarily give preference to requests for reimbursement for regionalized local facilities. Regionalized local facilities shall normally serve three or more localities as determined by the needs assessment.~~

6VAC35-30-80. Board recommendations to the Governor.

~~A. The department will direct a letter to the locality notifying the governing body shall notify the sponsor in writing within seven business days of the board's decision to recommend or not to recommend a project for reimbursement, and, If the recommendation is not to recommend reimbursement, the department shall briefly explain the rationale for the decision.~~

~~B. The board shall submit to the Governor, or his designee (i) its recommendations with respect to reimbursement requests and the rationale therefor; and (ii) such information as the Governor may require with respect to a request for approval of reimbursements.~~

~~C. Final appropriations are subject to the Governor's approval and legislative enactment.~~

~~Sections 16.1-313 and 16.1-322.7 of the Code of Virginia establish the rate of reimbursement to localities for construction, enlargement or renovation.~~

Part IV
Project Development

6VAC35-30-90. Preliminary design.

~~A. The locality sponsor shall submit preliminary design documents to the department as specified in the defined in the CPSM and required by approved department procedures and the Virginia Capital Outlay manual. The locality may also be~~

~~required to submit preliminary design documents to other regulatory agencies.~~

~~B. Preliminary design documents shall be approved reviewed by the department for compliance with applicable statutes, regulations, and any guidance documents that are incorporated herein.~~

~~1. If the department requires changes to the preliminary design documents, all such required changes will shall be communicated in writing to the locality sponsor.~~

~~2. The locality's representative, or its A/E, sponsor shall respond in writing to the department to all comments received from the department in the preliminary design review. Necessary revisions to the project documents may be incorporated in the submission of the construction documents (referred to as the "working drawings" in the CPSM); however, all issues in question between the locality's representative, or A/E, and the department detailed in these writings shall be resolved before the project is advanced to the construction document phase is begun (referred to as the "working drawings phase" in the CPSM).~~

~~C. When all review comments have been addressed and resolved, the department shall notify the sponsor that the project has progressed to the construction documents phase.~~

6VAC35-30-100. Construction documents.

~~A. Localities The sponsor shall submit construction documents to the department as specified in the defined in the CPSM and required by approved department procedures and the Virginia Capital Outlay manual. The locality may also be required to submit construction documents to other regulatory agencies. The fire official of the authority having jurisdiction over the proposed facility shall conduct a plans review and approve the construction. The construction documents shall include 100% complete working drawings, 100% complete specifications, and all required review approvals from local building, health, and fire officials.~~

~~B. The department will review construction documents shall be reviewed by the department for compliance with board standards, Code requirements, applicable statutes, regulations, and any guidance documents incorporated herein, and for incorporation of all changes required by the department at the preliminary document review stage. This review in no way releases the A/E sponsor from his other applicable responsibilities and requirements.~~

~~1. If the department requires changes to the construction documents, all such required changes will shall be communicated in writing to the locality sponsor.~~

~~2. The locality's representative, or its A/E, sponsor shall respond in writing to the department to all comments received from the department in the construction document review. All issues in question between the architect, the~~

Regulations

~~locality and the department detailed in these writings shall be resolved before the project is bid advanced to the bidding phase.~~

~~C. Upon satisfactory resolution of When all review comments have been addressed and resolved, the department shall approve the construction documents and advise the locality sponsor in writing within 10 working days, as required in approved department procedures, that the project may progress to the bidding phase (referred to as the "bid documents phase" in the CPSM).~~

6VAC35-30-110. ~~Changes during project development~~ Change order process.

If, during the project development stage, any substantive change in the scope of the project, any increase in the estimated cost of construction, or any change in the operational staff requirements occurs, the review process will be suspended until the project is resubmitted to the board for further review and possible change in the status of reimbursement recommendation.

Part V Project Construction

6VAC35-30-120. Bids Bidding.

After bids for construction have been received and opened, and the locality sponsor has determined to proceed with the project, the locality sponsor shall ~~require its A/E to~~ submit to the department a bid tabulation, analysis, and recommendation as to the award of the contract. Any comments by the department shall be forwarded to the locality sponsor ~~within 10 working days~~ five business days of receipt; and the sponsor shall respond to the comments in writing within 10 business days of receipt of the department's comments. The department's failure to respond in the required timeframe shall serve as acceptance of the sponsor's recommendation as to the award of the contract.

6VAC35-30-130. Construction.

A. During the construction of all projects, the locality sponsor shall ~~require its architect to~~ submit monthly inspection or progress reports to the department. The sponsor shall submit the reports to the department no later than the 15th day of the month following the inspection or when the progress report became due. The department ~~must respond~~ shall notify the sponsor in writing within 10 ~~working~~ business days after receipt ~~if there are~~ of any issues or problems with the project or the reports. ~~Failure to do so serves~~ The department's failure to respond in the required timeframe shall serve as acceptance of the inspection and progress report. Any failure to timely submit the monthly inspection or progress reports may constitute grounds to deny the requested reimbursement, in whole or in part.

B. Any substantive changes, single change orders of \$10,000 or more, and accumulative change orders exceeding

~~the project contingency change during the construction phase shall be submitted in writing to the department for review and approval before any such change is executed. Only those changes that are approved through this the approved department procedure shall be eligible for reimbursement. Any failure to seek and obtain approval of a substantive change may constitute grounds to deny the requested reimbursement, in whole or in part.~~

~~C. A representative of the department may visit the project site during the construction period to observe the work in progress. Any observed deviations from approved documents having the effect of voiding or reducing compliance with board standards or Code requirements shall be reported in writing to the locality within 10 working days and shall be corrected.~~

6VAC35-30-140. Final inspection.

A. Upon construction completion, the locality's representative, or the A/E, sponsor shall establish a schedule for final inspection of the project ~~as follows~~. This schedule shall include: 1. The locality shall notify (i) notification to the department and all regulatory agencies ~~which that~~ reviewed preliminary design or construction documents of the schedule for final inspection. The fire official of the authority having jurisdiction shall conduct a plan review and approve the construction; 2. The locality shall (ii) a request to the personnel or agencies involved in the final inspection to submit comments or recommendations in writing to the locality sponsor and forward copies to the department.; 3. The locality shall require its architect to take necessary corrective action on (iii) documentation of the correction of all deficiencies noted in the comments; and submit (iv) the submission of a report of completed actions to the appropriate reviewing agencies and forward a copy of the report to the department.

B. Upon completion of the final inspection and corrective actions as required, the locality sponsor shall provide to the department copies of all required regulatory agency letters verifying approval of the completed project. ~~The A/E and~~ shall certify to the department the completion of the project.

6VAC35-30-150. Record documents.

The locality sponsor shall require its architect to modify original drawings and specifications to reflect the condition of the project as actually constructed, and such documents shall be marked "Record." The record documents shall be prepared as defined in the CPSM and in accordance with approved department procedures.

Part VI
Private Construction of Juvenile Facilities

6VAC35-30-160. Legal basis Private construction of juvenile facilities.

Section 16.1-322.5 of the Code of Virginia ~~provides for~~ allows the ~~Board of Youth and Family Services board~~ to authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 of the Code of Virginia to contract with a private entity for the financing, site selection, acquisition, or design and construction of a local or regional detention home or other secure facility. Localities authorized to contract for private construction of a juvenile detention facility shall receive state reimbursement authorized by § ~~46.1-343~~, 16.1-309.5 of the Code of Virginia, in accordance with Parts I through VI of this chapter.

6VAC35-30-170. Contract Requirements for contract authorization.

Prior to receiving the ~~Board of Youth and Family Services board's~~ authorization to enter into a contract for private construction, ~~localities~~ sponsors shall certify and submit documentation demonstrating that all requirements mandated by § 16.1-322.5 of the Code of Virginia have been met by both the ~~locality~~ sponsor and the contractor.

Part VII
Final Reimbursement

6VAC35-30-180. Request for final reimbursement for all projects.

A. Upon completion of the project, the ~~locality~~ sponsor shall submit the documentation specified by ~~the~~ approved department procedures to the department.

B. If the final amount of reimbursement requested is ~~no more not greater~~ than the reimbursement amount initially recommended, including the contingency, the department ~~will~~ shall authorize reimbursement within 90 days of receiving a complete reimbursement request. The reimbursement request shall be in the form specified by the department.

C. If the final amount of reimbursement requested is ~~more~~ greater than the reimbursement amount initially recommended, the sponsor shall justify the cost increase ~~shall be justified by the locality and resubmitted~~ submit the adjusted reimbursement request to the board and the Governor, or his designee, for approval.

6VAC35-30-190. Compliance.

Failure to comply with these regulations will delay the review process and recommendation for disbursement of funds, ~~and~~ may result in the denial of reimbursement, and may result in the failure to obtain board certification or department approval to house juveniles in the facility as provided for in 6VAC35-20-69.

DOCUMENTS INCORPORATED BY REFERENCE
(6VAC35-30)

~~Procedures for Receiving State Reimbursement for Local Facility Construction, Enlargement, Renovation, and Operating Funds, and for the Development and Operation of New Programs.~~

The Step-by-Step Procedures for Approval and Reimbursement for Local Facility Construction, Enlargement, and Renovation, revised March 2001, Department of Juvenile Justice.

Construction and Professional Services Manual, revision 1, October 2004, Department of General Services, Division of Engineering and Buildings (<http://www.dgs.virginia.gov/LinkClick.aspx?fileticket=kn4ZKoyodZc%3d&tabid=404&mid=1128>).

R.S. Means Facilities Construction Cost Data 2009, 24th Annual Edition, R.S. Means-Reed Construction Data (<http://rsmeans.reedconstructiondata.com>)

VA.R. Doc. No. R08-1330; Filed August 21, 2009, 10:46 a.m.

◆ ————— ◆
TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Titles of Regulations: 8VAC20-150. Management of the Student's Scholastic Record in the Public Schools of Virginia (repealing 8VAC20-150-10 through 8VAC20-150-30).

8VAC20-180. Regulations Governing School Community Programs (repealing 8VAC20-180-10).

8VAC20-210. Classifications of Expenditures (repealing 8VAC20-210-10).

8VAC20-240. Regulations Governing School Activity Funds (repealing 8VAC20-240-10 through 8VAC20-240-50).

8VAC20-250. Regulations Governing the Testing of Sight and Hearing of Pupils (repealing 8VAC20-250-10).

8VAC20-310. Rules Governing Instructions Concerning Drugs and Substance Abuse (repealing 8VAC20-310-10).

8VAC20-320. Regulations Governing Physical and Health Education (repealing 8VAC20-320-10).

8VAC20-390. Rules Governing Division Superintendent of Schools (repealing 8VAC20-390-10 through 8VAC20-390-110).

8VAC20-410. Regulations Governing Allowable Credit for Teaching Experience (repealing 8VAC20-410-10).

Regulations

8VAC20-420. Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards (repealing 8VAC20-420-10).

8VAC20-460. Regulations Governing Sick Leave Plan for Teachers (repealing 8VAC20-460-10 through 8VAC20-460-60).

8VAC20-490. Regulations Governing School Boards Local (repealing 8VAC20-490-10 through 8VAC20-490-60).

8VAC20-565. Regulations for the Protection of Students As Participants in Human Research (repealing 8VAC20-565-10 through 8VAC20-565-50).

8VAC20-720. Regulations Governing Local Boards and School Divisions (adding 8VAC20-720-10 through 8VAC20-720-170).

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

Public Hearing Information:

November 17, 2009 - 11 a.m. - Jefferson Conference Room, James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, VA

Public Comment Deadline: November 17, 2009.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia authorizes the Board of Education to "...adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." These regulations are already in effect, but they are out of date. Therefore, in order for the board to properly carry out its duties, the regulations must be updated.

Additionally, Item 140 C 5 k 4 of Chapter 781 of the 2009 Acts of Assembly requires the Department of Education to "review state laws, regulations, and procedures that could be modified, reduced, or eliminated in an effort to minimize the administrative burden on local school divisions and the Department of Education. The findings from this review shall be submitted to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2009."

These regulations are also being revised and consolidated in order to reduce the administrative burden on local school divisions and the Department of Education.

Purpose: This regulation is needed because the Regulations Governing School Boards Local, 8VAC20-490 were adopted on or before September 1, 1980. These regulations have not

been amended since that time and are out of date. Additionally, several other regulations have been promulgated that address regulatory requirements for local school boards and school divisions. Some of these regulations were adopted on or about September 1, 1980, as well. They all lend themselves to consolidation with the Regulations Governing School Boards Local. This proposal is to promulgate new regulations governing local school boards that will include many of the provisions of the current regulation, along with incorporating the applicable regulatory requirements from these other regulations.

Substance: There are no real substantive changes from the regulations that are currently in effect to the consolidated regulation. Some of the provisions of the current regulations are not included in the consolidated regulation because they are out of date or otherwise no longer applicable. Additionally, some of the very detailed requirements in the current regulations have been changed in the new regulation in order to give local school divisions more flexibility in the development of their own plans and procedures.

The regulations are already in effect. The purpose of this proposal is to consolidate them in such a way that school divisions will be able to access and implement them more effectively and efficiently for the management of the public schools in Virginia, thus better serving the students and their families. This will also help fulfill the purpose of Chapter 781 of the 2009 Acts of Assembly as noted above.

Issues: The consolidation of the regulations is beneficial to the public as well as local school divisions in that the provisions will be up to date and will, in some cases, provide local school divisions with more flexibility without having a negative impact on the provision of educational services. The new regulation will also provide local school boards and superintendents with one regulation with current regulatory requirements that are in 14 different regulations, thus making it easier for them to determine the necessary requirements. Additionally, since the regulations have been updated in the new regulation, they provide requirements for today's educational programs rather than those programs that existed in 1980.

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

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to consolidate thirteen current short chapters (regulations) into one chapter, Regulations Governing Local School Boards and School Divisions. The thirteen current chapters that would be repealed as part of this action are: 1) Regulations Governing Management of the Student's Scholastic Record in the Public Schools of Virginia, 2) Regulations Governing School Community Programs, 3) Classification of Expenditures, 4) Regulations Governing School Activity Funds, 5) Regulations Governing Testing Sight and Hearing of Pupils,

6) Rules Governing Instruction Concerning Drugs and Substance Abuse, 7) Regulations Governing Physical and Health Education, 8) Rules Governing Division Superintendent of Schools, 9) Rules Governing Allowable Credit for Teaching Experience, 10) Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards, 11) Regulations Governing Sick Leave Plan for Teachers, 12) Regulations Governing School Boards Local, and 13) Regulations for the Protection of Students as Participants in Human Research. For the most part requirements in the proposed Regulations Governing Local School Boards and School Divisions are consistent with the requirements in the current thirteen chapters. In the process of consolidation a small number of changes are made largely for clarification.

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

Estimated Economic Impact. Most of the proposed regulations simply reflect current language in the thirteen chapters to be repealed and changes in the Code of Virginia (Code) since the thirteen chapters were last revised. Since when there are conflicts between the Code and regulation the Code prevails, the new language to reflect the Code will have no impact on requirements. Changing regulatory language to reflect the current Code is beneficial in that it reduces the likelihood of the public becoming misled by out-of-date regulations. The Board also proposes to add and amend definitions for clarity. Increased clarity will of course be beneficial for the public.

The proposed new regulations explicitly state that "In order to be appointed a division superintendent, applicants must hold an active Virginia division superintendent's license ..." Current regulations do not explicitly state that school division superintendents must be licensed in order to hold the position of division superintendent; nor is this stated in the Code of Virginia. Licensure Regulations for School Personnel do delineate the requirements in order to obtain the division superintendent license, but do not explicitly state that school division superintendents must be licensed in order to hold the position of division superintendent. According to the Department of Education, the regulations have been interpreted to require licensure for many years and all division superintendents in Virginia have been licensed for many years. Thus, the proposal to explicitly state the licensure requirement will not likely have a large impact, but is a significant clarification that will help public understanding.

Businesses and Entities Affected. The proposed amendments affect the 132 school divisions in the Commonwealth.

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

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

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

The Board of Education proposes to consolidate 13 separate chapters into one chapter, Regulations Governing Local School Boards and School Divisions. The 13 current chapters that are repealed as part of this action are (i)

Regulations

Management of the Student's Scholastic Record in the Public Schools of Virginia; (ii) Regulations Governing School Community Programs; (iii) Classification of Expenditures; (iv) Regulations Governing School Activity Funds; (v) Regulations Governing the Testing of Sight and Hearing of Pupils; (vi) Rules Governing Instruction Concerning Drugs and Substance Abuse; (vii) Regulations Governing Physical and Health Education; (viii) Rules Governing Division Superintendent of Schools; (ix) Regulations Governing Allowable Credit for Teaching Experience; (x) Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards; (xi) Regulations Governing Sick Leave Plan for Teachers; (xii) Regulations Governing School Boards Local; and (xiii) Regulations for the Protection of Students as Participants in Human Research. For the most part, requirements in the proposed Regulations Governing Local School Boards and School Divisions are consistent with the requirements in the current 13 chapters. In the process of consolidation a small number of changes are made largely for clarification.

CHAPTER 720

REGULATIONS GOVERNING LOCAL SCHOOL BOARDS AND SCHOOL DIVISIONS

8VAC20-720-10. Definitions.

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

"Administrative working day" means any day that the relevant school board office is open.

"Board" means the Virginia Board of Education.

"Days" mean calendar days unless a different meaning is clearly expressed. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or legal holiday, the period of time for taking action under this chapter shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

"Department" means the Virginia Department of Education.

"Facilities fees" means any fees charged by a school board or an individual school for the use of its school buildings or grounds.

"Instructional materials" means all materials, other than textbooks, used to support instruction in the classroom, including, but not limited to, books, workbooks, and electronic media.

"Instructional personnel" means all school personnel regularly employed by the local school board or paid from public funds who are required to hold a license issued by the Virginia Board of Education.

"School activity funds" means all funds derived from extracurricular school activities, including, but not limited to, entertainment, athletic contests, facilities fees, club dues, vending machine proceeds that are not deposited in the school nutrition program account, and from any and all activities of the school involving personnel, students, or property.

"Standards of Learning" means the educational objectives established by the Virginia Board of Education that form the core of Virginia's educational program.

"Teacher" means a person (i) who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian, and (ii) who holds a valid teaching license.

"Teaching day" means a standard school day, as required by the Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-50, when the school is in regular session for the instruction of pupils.

Part I Administration

8VAC20-720-20. Policy manual.

Each local school board shall maintain and follow up-to-date policies in accordance with the Standards of Quality, § 22.1-253.13:7 of the Code of Virginia.

8VAC20-720-30. Reports.

A. Each local school board and division superintendent shall submit all reports and certifications required by the Virginia Department of Education by the dates requested.

B. Failure to submit the required reports in a timely manner may result in reporting such failure to the Board of Education for the public record.

C. The reports shall be submitted not later than the due date; however, the Superintendent of Public Instruction may grant, for good cause, an extension of time not to exceed 15 calendar days for making such reports.

8VAC20-720-40. Divisionwide plan.

A. Each local school board shall develop a divisionwide, comprehensive, unified, long-range plan in accordance with the Standards of Quality, § 22.1-253.13:6 of the Code of Virginia.

B. The local board shall review such plan biennially and adopt any necessary revisions.

C. Prior to the adoption of the plan or any revisions to the plan, each local school board shall notify the public of the adoption or revision, post the plan or revisions on its website if practicable, make a hard copy available for public inspection and copying, and conduct at least one public hearing to solicit comments.

8VAC20-720-50. School laws and regulations.

A. All school board employees shall be familiar with the school laws and regulations related to their duties and responsibilities and ensure that they are implemented.

B. In addition to this chapter, local school divisions and school boards shall adhere to Title 22.1 of the Code of Virginia and the applicable Board of Education regulations in Title 8 of the Virginia Administrative Code.

Part II
Finance

8VAC20-720-60. Classification of expenditures.

A. Pursuant to § 22.1-115 of the Code of Virginia, local school boards shall use the following major classifications of expenditures when the division superintendent, with the approval of the local school board, prepares the estimate of funds needed for public schools:

1. Instruction;
2. Administration, attendance, and health;
3. Pupil transportation;
4. Operation and maintenance;
5. School food services and other noninstructional operations;
6. Facilities;
7. Debt and fund transfers;
8. Technology; and
9. Contingency reserves.

B. Nothing in this regulation shall prohibit the preparation and use of line item budgeting within these categories.

8VAC20-720-70. School activity funds.

A. Local school boards shall be responsible for the administration of this subsection in the schools under their control.

B. Records and bonds.

1. Each school shall keep an accurate record of all receipts and disbursements so that a clear and concise statement of the condition of each fund may be determined at all times.
2. It shall be the duty of the school division official designated by the local school board to perform such duties to ensure that such records are maintained in accordance with this subsection and rules promulgated by the local school board.
3. The designated school division official shall perform the duties prescribed by this subsection.

4. The designated school division official shall be bonded, and the local school board shall prescribe rules governing such funds for employees who are responsible for these funds.

5. All records shall be subject to public disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

C. The basic information required by the accounting principles for governmental accounting and reporting established by the Governmental Accounting Standards Board must be incorporated into any system used by the local school division.

D. Audit, examination, or review; monthly and annual reports.

1. At least once a year, a duly qualified accountant, accounting firm, or internal auditor shall perform an audit, examination, or review of school activity funds to ensure funds are being managed in accordance with these regulations and all funds are properly accounted for. The type of engagement (audit, examination, or review) and the accountant, accounting firm, or internal auditor shall be approved by the local school board.

2. A copy of the report resulting from the audit, examination, or review (and the completed corrective action plan, if suggestions for improvement are made) shall be reviewed by the division superintendent and the local school board and filed in the office of the clerk of the school board, the division superintendent, and the principal.

3. The cost of such an audit, examination, or review may be paid from the school operating fund or school activity funds.

4. Monthly reports of such funds shall be prepared by the designated school division official and filed in the principal's office.

E. Nothing in this chapter shall be construed as superseding or modifying the federal-state plan for operation of cafeterias under the Richard B. Russell National School Lunch Act, 42 USC § 1751 et seq., as amended effective October 1, 2008, and the Child Nutrition Act of 1966, 42 USC § 1771 et seq., as amended effective October 1, 2008.

8VAC20-720-80. (Reserved.)

Part III
Instruction

8VAC20-720-90. Health education program.

A. Elementary, middle, and secondary schools shall provide a comprehensive health education program focusing on instruction related to alcohol and drug abuse, smoking and health, personal growth and personal health, nutrition,

Regulations

prevention and control of disease, physical fitness, accident prevention, personal and family survival, environmental health, mental health, and consumer education.

B. The health education program shall include instruction in drugs and substance abuse prevention. As part of the program, school divisions shall:

1. Encourage and support organizations and activities that will develop a positive peer influence concerning substance abuse.

2. Create a climate whereby students may seek and receive counseling about substance abuse and related problems without fear or reprisal.

C. The health education program shall be developed in accordance with the Board of Education's Health Education Standards of Learning for Virginia Public Schools, January 2008.

Part IV Personnel

8VAC20-720-100. Division superintendent of schools.

A. In order to be appointed a division superintendent, applicants must hold an active Virginia division superintendent's license prescribed by the Board of Education's Licensure Regulations for School Personnel, 8VAC20-22.

B. In case of a division superintendent vacancy, the local school board shall appoint a new superintendent in accordance with § 22.1-60 of the Code of Virginia.

C. If a new superintendent is not appointed within the time prescribed by § 22.1-60, the Virginia Board of Education shall appoint the superintendent in accordance with the board's Procedure for Appointment of a School Division Superintendent by the Virginia Board of Education, March 22, 2006.

D. The division superintendent shall perform such duties as may be prescribed by law, by the local school board, and by the Board of Education. In addition, the division superintendent shall:

1. Observe such directions and regulations as the Superintendent of Public Instruction or Board of Education may prescribe and make special reports whenever required.

2. Ensure strict enforcement of all school laws and regulations and compliance with the decisions of the Superintendent of Public Instruction and Board of Education.

3. Visit and cause to be inspected each school on a regular basis and inquire into all matters relating to the management of the school, the course of study, method of instruction, use of textbooks, and condition of the school buildings.

4. Ensure that teachers faithfully discharge the duties assigned to them, and report promptly to the local school board any neglect or violation of any of the laws or regulations by teachers along with recommendations for appropriate action.

5. Close public school buildings that appear to be unfit for occupancy in accordance with § 22.1-136 of the Code of Virginia.

6. Ensure timely submission of all reports and certifications required by the Virginia Department of Education by the dates requested.

8VAC20-720-110. Teacher contracts and licenses.

A. All teachers shall be licensed and endorsed in accordance with the Board of Education's Virginia Licensure Regulations for School Personnel, 8VAC20-22.

B. No teacher shall be regularly employed by a local school board or paid from public funds unless such teacher holds a license issued by the Board of Education or a three-year local eligibility license issued by a local school board pursuant to § 22.1-299.3 of the Code of Virginia.

C. The local school board shall enter into written contracts with teachers prior to the commencement of their duties. Such contracts shall be executed on behalf of the local school board by the chairman and the clerk.

D. Such contracts shall be in accordance with the Code of Virginia and the Board of Education's Regulations Governing the Employment of Professional Personnel, 8VAC20-440.

8VAC20-720-120. Sick leave plan for teachers.

A. Allowances.

1. Each full-time teacher in the public schools shall earn a minimum of 10 days of sick leave each year.

2. Earnings for sick leave for less than a full year of full-time employment shall be at the rate of one day per month, or major fraction thereof. This provision applies to teachers who do not begin employment at the start of the school term and to those who do not complete the full year.

3. A teacher cannot claim any portion of earned sick leave unless he has actually reported for duty for the regular school term in accordance with the terms of the teacher's contract. If a teacher is unable, because of illness, to begin employment when school opens in the fall, such teacher may be allowed to use accumulated leave not to exceed the balance credited to him as of June 30 of the immediate preceding school year.

4. School boards may, by resolution, permit teachers to anticipate sick leave earnings for the current school year, provided adequate provision is made for a refund in the event the teacher terminates employment before such credit is earned.

5. Teachers who leave the profession to enter military service, or who are activated or deployed for military service, do not forfeit accumulated leave earnings unless they fail to return to the teaching profession immediately upon discharge from military service or return from deployment or activation.

B. Local policies.

1. Each local school board shall adopt policies providing for the accumulation, termination, and transfer of sick leave.

2. Each local school board shall adopt policies providing for leave without pay for school board employees with debilitating or life-threatening illness or injury, without regard to the employee's length of service with the school board.

Part V
Student Records

8VAC20-720-130. Management of student records.

Local education agencies shall manage the scholastic records of all students in compliance with applicable law and regulations, including the Family Educational Rights and Privacy Act and regulations, 20 USC § 1232g and 34 CFR Part 99; the Protection of Pupil Rights Amendment and regulations, 20 USC § 1232h and 34 CFR Part 98; the Individuals with Disabilities Education Improvement Act and regulations, 30 USC §§ 1400-1485 and 34 CFR Part 300; the No Child Left Behind Act of 2001 and regulations, P.L. 107-110 and 34 CFR Part 200; and the Code of Virginia.

Part VI
Students

8VAC20-720-140. Students as participants in human research.

A. No human research involving students shall be conducted or authorized by the Virginia Department of Education or any public school of the Commonwealth, unless in compliance with this chapter and other applicable law.

B. No such research shall be conducted or authorized unless the student and the student's parents or legally authorized representative give their informed consent. Such informed consent shall be evidenced by a signed and witnessed informed consent form that complies with § 32.1-162.18 of the Code of Virginia.

C. Any such research shall be approved and conducted under the review of a human research committee, which shall be established by the agency or school conducting or authorizing the research. Any such committee shall comply with the provisions of § 32.1-162.19 of the Code of Virginia. The committee shall submit to the Governor, the General Assembly, and the Superintendent of Public Instruction or his designee at least annually a report on the student projects

reviewed and approved by the committee, which shall state the significant deviations from the proposals as approved.

D. There shall be excluded from the operations of this chapter those categories of research as set forth in § 32.1-162.17 of the Code of Virginia.

E. Research shall be conducted in accordance with the provisions of the Protection of Pupil Rights Amendment, 20 USC § 1232h, and its implementing regulations, 34 CFR Part 98.

8VAC20-720-150. Testing sight and hearing of students.

A. The sight and hearing of students in grades K, 3, 7, and 10 shall be screened within 60 administrative working days of the opening of school in accordance with the requirements of § 22.1-273 of the Code of Virginia.

B. Whenever a student is found to have any impairment of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing, of such impairment or disease.

C. This screening of all students shall be monitored through the Department of Education's review of special education and related services in local school divisions.

Part VII
Instructional Materials and Textbooks

8VAC20-720-160. (Reserved.)

8VAC20-720-170. (Reserved.)

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-720).

Health Education Standards of Learning for Virginia Public Schools, January 2008, Board of Education, Commonwealth of Virginia.

Procedure for Appointment of a School Division Superintendent by the Virginia Board of Education, approved by the Board of Education on March 22, 2006.

VA.R. Doc. No. R08-1332; Filed August 25, 2009, 9:24 a.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Final Regulation

REGISTRAR'S NOTICE: The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Council of Higher Education for Virginia will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulations

Title of Regulation: 8VAC40-120. **Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates (repealing 8VAC40-120-10 through 8VAC40-120-280).**

Statutory Authority: § 23-7.4:3 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: Linda H. Woodley, Regulatory Coordinator, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 786-2027, or email lindawoodley@schev.edu.

Summary:

The Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates are repealed because the Office of the Attorney General has indicated that the regulations were promulgated erroneously and should be removed from the Virginia Administrative Code.

VA.R. Doc. No. R10-2093; Filed August 24, 2009, 4:20 p.m.

◆ ————— ◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 b of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-550. **Board of Health Regulations Governing Vital Records (amending 12VAC5-550-330).**

Statutory Authority: § 32.1-12 and Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: Janet Rainey, Director and State Registrar, Department of Health, 1601 Willow Lawn Drive, Suite 275, Richmond, VA 23230, telephone (804) 662-6207, FAX (804) 662-7262, or email janet.rainey@vdh.virginia.gov.

Summary:

The amendment changes the birth certification form to permit the parents' designations to be "Name of Parent" for a child adopted by a same-sex couple rather than "Mother" and "Father."

12VAC5-550-330. New certificate.

The new certificate of birth prepared after adopting, legitimation, court determination of paternity, or acknowledgement of paternity shall be on the form in use at the time of birth; however, a same-sex adoption new certificate of birth shall be on the form that shows the parents' designation as "Name of Parent," and shall include the following items and such other information necessary to complete the certificate:

1. The name of the child;
2. The date and place of birth as transcribed from the original certificate;
3. The names and personal particulars of the adoptive parents or of the natural parents, whichever is appropriate;
4. The name of the attendant, printed or typed;
5. The birth number assigned to the original birth certificate;
6. The original filing date. The information necessary to locate the existing certificate and to complete the new certificate shall be submitted on forms prescribed by the State Registrar.

VA.R. Doc. No. R10-2043; Filed August 21, 2009, 9:36 a.m.

◆ ————— ◆

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

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

Title of Regulation: 13VAC5-112. **Enterprise Zone Grant Program Regulation (amending 13VAC5-112-10, 13VAC5-112-270, 13VAC5-112-340, 13VAC5-112-350, 13VAC5-112-400, 13VAC5-112-520, 13VAC5-112-540; repealing 13VAC5-112-200 through 13VAC5-112-250).**

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community

Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The amendments conform the regulations to the changes in the Virginia Enterprise Zone statutes by the 2009 Session of the General Assembly. The revisions (i) update 13VAC5-112-340, Computation of the Real Property Investment Grant; (ii) increase from \$50,000 to \$100,000 the minimum eligibility investment for rehabilitation or expansion of a building; (iii) increase from \$250,000 to \$500,000 the minimum eligibility investment for new construction; (iv) calculate grants at a rate of 20% of the amount of qualified real property investment in excess of the appropriate minimum investment threshold; (v) adjust grant caps to \$100,000 for investors making \$5 million or less in qualified real property investment (down from \$125,000); (vi) adjust grant caps to \$200,000 for investors making more than \$5 million in qualified real property investment (down from \$250,000); (vii) delete definitions and language related to the obsolete pre-2005 enterprise zone incentive grants; (viii) clarify the definition of "qualified real property investment" as it relates to acquisition costs; (ix) clarify the definition of "qualified zone investor" as it relates to horizontal property regimes and what constitutes a building; and (x) delete obsolete definitions and language related to tax credits for high investment/limited job creation firms (i.e., power plant provisions).

Part I
Definitions

13VAC5-112-10. Definitions.

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

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.
2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

Regulations

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

~~"Enterprise zone incentive grant" or "grant" means a grant provided for creating permanent full-time positions pursuant to § 59.1-282.1 of the Code of Virginia. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-200.~~

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and

Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under ~~13VAC5-112-200 and 13VAC5-112-260~~. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant-eligible positions.

~~"Grant year" means the calendar year for which a business firm applies for an enterprise zone incentive grant pursuant to § 59.1-282.1 of the Code of Virginia. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-200.~~

"Health benefits" means that at a minimum medical insurance is offered to employees and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members over the age of 16 from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);
2. Net self-employment income (gross receipts minus operating expenses);
3. Interest and dividend earnings; and
4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;
2. Public assistance payments;

3. Disability payments;
4. Unemployment and employment training benefits;
5. Capital gains and losses; and
6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Jurisdiction" means the city or county which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his

designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location or locations is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land of a nonresidential structure built on the site/parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time

Regulations

positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to ~~13VAC5-112-200~~ and 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work either (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

~~"Permanent full time position" (for purposes of qualifying for grants pursuant to § 59.1-282.1 of the Code of Virginia) means a job of indefinite duration at a business firm located in an enterprise zone, requiring the employee to report to work within the enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal, temporary, leased or contract labor positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full time positions. This definition only applies to for the purpose of qualifying for job grants pursuant to 13VAC5-112-200.~~

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the

calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; or pursuant to 13VAC5-112-110 the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) ~~\$50,000~~ \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) ~~\$250,000~~ \$500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other ~~acquisition~~ costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.
2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids

insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control, as defined by Internal Revenue Code § 52(b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited

Regulations

liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

~~"Redetermined base year" means the base year for calculation of the number of eligible permanent full-time positions in a second or subsequent three-year grant period. If a second or subsequent three-year grant period is requested within two years after the previous three-year period, the redetermined base year will be the last grant year. The calculation of the redetermined base year employment will be determined by the number of positions in the preceding base year, plus the number of threshold positions, plus the number of permanent full-time positions receiving grants in the final year of the previous grant period. If a business firm applies for subsequent three-year periods beyond the two years immediately following the completion of a three-year grant period, the firm shall use one of the two preceding calendar years as the base year, at the choice of the business firm. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-200.~~

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company or related companies or companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three-month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

~~"Threshold number" means 110% of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for an enterprise zone incentive grant. For a second and any subsequent three-year period of eligibility, the threshold means 120% of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer. Where there are no permanent full-time positions in the base year, the threshold will be zero. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-200.~~

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use(s) of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor(s).

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,680 hours. Bonuses, overtime and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-200.

Part IV

Procedures for Qualifying for Zone Incentive Grants

13VAC5-112-200. Effective dates. (Repealed.)

~~Beginning on July 1, 2005, a business firm shall be eligible to receive enterprise zone incentive grants for the creation of new permanent full time positions. This section shall apply only to those businesses that have initiated use of three year grant period for creating permanent full time positions pursuant to §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia on or before July 1, 2005. This part shall govern those businesses only for the duration of such three year grant period. Businesses may not begin any three year grant periods after July 1, 2005.~~

13VAC5-112-210. Computation of grant amount. (Repealed.)

~~A. For any eligible business firm, the amount of any grant earned shall be equal to (i) \$1,000 multiplied by the number of eligible permanent full time positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible permanent full time positions filled by employees whose permanent place of residence is outside the enterprise zone.~~

~~1. The number of eligible permanent full time positions filled by employees whose permanent place of residence is within the enterprise zone shall be determined for any grant year by multiplying the number of eligible permanent full time positions by a fraction, the numerator of which shall be the number of employees hired for permanent full time positions from January 1 of the applicable base year through December 31 of the grant year whose permanent place of residence is within the enterprise zone, and the denominator of which shall be the total number of employees hired for permanent full time positions by the business firm during the same period. Zone residency is subject to annual verification and if an employee moves outside the zone his permanent place of residence cannot be considered within the enterprise zone for the remaining grant period.~~

~~2. The number of eligible permanent full time positions filled by employees whose permanent place of residence is outside the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, as determined in subdivision 1 of this subsection, from the number of eligible positions.~~

~~B. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than 12 full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is 12.~~

~~C. The maximum grant that may be earned by a business firm in one grant year is limited to \$100,000. Each member of an affiliated group of corporations shall be eligible to receive up to a maximum grant of \$100,000 in a single grant year.~~

13VAC5-112-220. Eligibility. (Repealed.)

~~A. A business firm shall be eligible to receive job grants for three consecutive calendar years beginning with the first year of grant eligibility. Business firms in their first three year period shall demonstrate that they have increased the business firm's enterprise zone permanent full time positions by 10% over the base year. Permanent full time positions created during the second or third year of the grant period are eligible for additional grant funding over the previous year level at the~~

Regulations

option of the business firm, but only during the three year grant period.

B. Business firms in their second or any subsequent three-year period of grant eligibility must demonstrate that it has increased employment by 20% over a redetermined base year.

13VAC5-112-230. Application submittal and processing. (Repealed.)

A. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided for in § 59.1-282.2 of the Code of Virginia.

B. In order to claim the grant an application must be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall be made on form or forms as prescribed by the department and may include other documentation as requested by the local zone administrator or department. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the eligibility requirements. These applications must be signed by an independent certified public accountant licensed by the Commonwealth.

C. The local zone administrator shall review applications and determine the completeness of each application and the requested documentation, and forward applications for grants to the department by no later than April 30 of the year following the grant year. Applications forwarded to the department by the local zone administrator must be either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section. If the April 30 due date falls on a weekend or holiday, applications are due the next business day.

D. The department shall review all applications for completeness and notify business firms of any errors no later than June 1 of the year following the grant year. Business firms must respond to any unresolved issues by no later than June 15 of the year following the grant year. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

E. The department shall notify all businesses by June 30 as to the amount of applicable zone incentive grant it is eligible for in the calendar year the request was made.

F. Any business firm receiving an enterprise zone incentive grant under § 59.1-282.1 of the Code of Virginia shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia with respect to any

enterprise zone location that is receiving an enterprise zone incentive grant.

13VAC5-112-240. Qualification in zones whose designation period is ending. (Repealed.)

Business firms located in a zone whose designation period is ending that have qualified by or before the zone expiration date may receive the balance of their three consecutive year incentive period provided they continue to qualify under 13VAC5-112-200. Business firms may not begin a three year grant period after the zone expiration date.

13VAC5-112-250. Anti-churning. (Repealed.)

No grant shall be allowed for any permanent full time position:

1. That a grant under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267(b), or a trade or business under common control;
2. Where an employee filling that position was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. That was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. That previously qualified for a grant in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or
5. That was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

13VAC5-112-270. Computation of grant amount.

A. For any qualified business the grant amount is calculated as follows:

1. \$800 per year for up to five consecutive years for each grant-eligible position that is paid a wage rate during the qualification year that is at least of 200% of the federal minimum wage in place during the qualification year, and that is provided with health benefits, or
2. \$500 per year for up to five years for each grant-eligible position that is paid a wage rate during such year that is less than 200% of the federal minimum wage, but at least 175% of the federal minimum wage, and that is provided with health benefits.

B. A business firm may receive grants for up to a maximum of 350 grant-eligible jobs annually.

C. Job creation grants are based on a calendar year. The grant amount for any permanent full-time position that is filled for less than a full calendar year must be prorated based on the number of full months worked.

1. In cases where a position is grant eligible for only a portion of a qualification year the grant amount will be prorated based on the number of full months the position was grant eligible. This shall include cases where changes in wage rate, health benefits, or the federal minimum wage rate change a position's grant eligibility.

2. In cases where a change in a grant-eligible position's wage rate or the federal minimum wage rate during a qualification year changes the per position maximum grant amount available for that position, the grant amount shall be prorated based on the period the position was paid a minimum of 200% of the federal minimum wage rate and the period the position was paid a minimum of 175% of the federal minimum wage but less than 200%.

D. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant-eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

E. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 of the Code of Virginia shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

1. Large qualified business firms and large qualified zone residents may qualify for job creation grants pursuant to this section for permanent full-time positions that have been created above the permanent full-time positions as required by their documented negotiation agreement with the department pursuant to subdivision 2 of 13VAC5-112-20.

2. Small qualified business firms may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time employees in the most recently reported qualification year.

3. Business firms that have previously qualified for department enterprise zone job grants ~~to pursuant to §§ 59.1-282.1 and 59.1-282.2 of the Code of Virginia~~ may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time positions in the most recently reported qualification year.

13VAC5-112-340. Computation of grant amount.

A. For any qualified zone investor, the amount of the grant shall be equal to 20% of the ~~qualified zone investments, as defined below:~~ amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility. In the case of the rehabilitation or expansion of an existing building or facility grants shall be

equal to 20% of the amount of qualified real property investment in excess of \$100,000. Qualified zone investments are defined as below:

1. Qualified zone investments include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (ii) excavations; (iii) grading and paving; (iv) installing driveways; and (v) landscaping or land improvements. These can include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

2. Qualified real property investments do not include:

- a. The cost of acquiring any real property or building.
- b. Other ~~acquisition~~ costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
- c. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined by § 52(b) of the Internal Revenue Code; or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or § 1014(a) of the Internal Revenue Code.

B. For any qualified zone investor making less than \$5 million in qualified real property investment, the cumulative grant will not exceed ~~\$125,000~~ \$100,000 within any five-year period for any building or facility.

1. In cases where subsequent qualified real property investment within the five-year period results in the total qualified real property investment equaling \$5 million or more then the qualified investor(s) shall be eligible to receive a grant(s) provided that the total of all grants received within the five-year period does not exceed a maximum of ~~\$250,000~~ \$200,000 per building or facility.

Regulations

2. In such cases the grant will be available to the qualified zone investor or investors whose qualified real property investment application(s) results in the total qualified real property investment for the building or facility to equal \$5 million or more for the calendar year in which the \$5 million threshold is met. The grant will be equal to ~~20% of that investor(s) real property investment~~ 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000 notwithstanding the ~~\$250,000~~ \$200,000 cap per building or facility pursuant to 13VAC5-112-340 D.

C. For any qualified zone investor making \$5 million or more in qualified real property investments, the cumulative grant will not exceed ~~\$250,000~~ \$200,000 within any five-year period for any building or facility.

D. Notwithstanding subsection E of this section, in the case of a building with multiple tenants and/or owners, the maximum amount of the real property investment grant to each tenant and/or owner shall relate to the proportion of the property for the tenant holds a valid lease or the owner has a deed of trust.

1. This maximum shall be determined by the cumulative level of qualified real property investment made within the five consecutive year period. The first five consecutive year period starts with the first real property investment grant issued pursuant to § 59.1-548 of the Code of Virginia.

2. If the total of all qualified real property investments up to and including those made in the current grant year are less than \$5 million then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal to the qualified zone investor's proportion of the building or facility's useable floor space times ~~\$125,000~~ \$100,000 or ~~20% of the qualified real property investment~~ 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

3. If the total of all qualified real property investments up to and including those made in the current grant year are \$5 million or more then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal the qualified zone investor's proportion of the building or facility's useable floor space times ~~\$250,000~~ \$200,000 or ~~20% of the qualified real property investment~~ 20% of the amount of qualified real property investment in excess of \$500,000 in the case of

the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

E. The total grant amount per building or facility within a five-year period shall not exceed ~~\$250,000~~ \$200,000.

13VAC5-112-350. Eligibility.

A. Only office, commercial or industrial or mixed use real property is eligible. A mixed-use building where the office, commercial or industrial use is less than 30% shall not be eligible for this grant.

B. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service provided that:

1. The total amount of the rehabilitation or expansion of depreciable office, commercial or industrial or mixed use real property placed in service during the calendar year within the enterprise zone equals or exceeds ~~\$50,000~~ \$100,000 with respect to a building or facility.

2. The cost of any newly constructed depreciable office, commercial or industrial or mixed-use real property (as opposed to rehabilitation or expansion) is at least ~~\$250,000~~ \$500,000 with respect to a building or facility.

C. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease.

D. In the case of buildings with a tenant or multiple tenants, such tenant(s) shall request written consent from the owner to apply for the grant.

E. In the case of buildings with a tenant or multiple tenants, such tenants shall coordinate with the owner and all other tenants under this section. Unless other coordination and agreements have been reached by the owner and all tenants, the department will automatically determine the amount of each tenant's real property investment pursuant to 13VAC5-112-340 D.

F. In the case of buildings with multiple owners, such owners shall have written coordination from all other owners. Unless other coordination and agreements have been reached by all owners, the department will automatically determine the amount of each owner's real property investment pursuant to 13VAC5-112-340 D.

G. Units of local, state and federal government or political subdivisions are not eligible to apply for this grant.

Part ~~VII~~ VI

Policies and Procedures for Enterprise Zone Grants

13VAC5-112-400. Allocating enterprise zone grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone grants provided for in ~~13VAC5-112-200~~, 13VAC5-112-260 and 13VAC5-112-330 to the extent that they apply for and are approved for grant allocations through the department.

B. Upon receiving applications for grants provided for under ~~13VAC5-112-200~~, 13VAC5-112-260; and 13VAC5-112-330, the department shall determine the amount of the grant to be allocated to each eligible business firm and zone investor.

C. If the total amount of grants for which qualified business firms are eligible under ~~13VAC5-112-200~~ and 13VAC5-112-260 and for which qualified zone investors are eligible under 13VAC5-112-330 exceeds the annual appropriation for such grants, then the amount of grant that each qualified business firm and qualified zone investor will receive for shall be prorated in a proportional manner.

13VAC5-112-520. Failure to qualify for state incentives.

If no business firms, large zone residents or zone investors have qualified for incentives as provided for in ~~13VAC5-112-20~~, ~~13VAC5-112-110~~, ~~13VAC5-112-200~~, ~~13VAC5-112-260~~ and ~~13VAC5-112-330~~ the Enterprise Zone Grant Act within any five-year period, the department shall terminate that enterprise zone designation.

Part ~~XIV~~ XIII

Zone Termination and Incentive Qualification

13VAC5-112-540. Zone termination and incentive qualification.

A. A zone shall be terminated in accordance with the procedures set forth in 13VAC5-112-510, 13VAC5-112-520 and 13VAC5-112-530 D upon written notice to a local governing body. The date of such notice is considered to be the date of zone termination.

B. Qualified business firms, large qualified zone residents and qualified zone investors located in a terminated zone may continue to request state enterprise zone incentives for any remaining years in the incentive period for which they are eligible as provided for in 13VAC5-112-20, 13VAC5-112-110, ~~13VAC5-112-200~~, 13VAC5-112-260 and 13VAC5-112-330.

C. In the case of qualified business firms and large qualified zone residents qualified under 13VAC5-112-20; and 13VAC5-112-110 and ~~13VAC5-112-200~~, the incentive period shall not go beyond 2019.

VA.R. Doc. No. R10-1819; Filed August 24, 2009, 10:42 a.m.

VIRGINIA MANUFACTURED HOUSING BOARD

Proposed Regulation

Title of Regulation: **13VAC6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (amending 13VAC6-20-10, 13VAC6-20-20, 13VAC6-20-30, 13VAC6-20-50, 13VAC6-20-60, 13VAC6-20-80, 13VAC6-20-90, 13VAC6-20-100, 13VAC6-20-120, 13VAC6-20-130, 13VAC6-20-140, 13VAC6-20-170, 13VAC6-20-180, 13VAC6-20-190, 13VAC6-20-200, 13VAC6-20-350, 13VAC6-20-460; adding 13VAC6-20-201, 13VAC6-20-202, 13VAC6-20-203, 13VAC6-20-204; repealing 13VAC6-20-250).**

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Public Hearing Information:

September 17, 2009 - 10 a.m. - Perimeter Center, 9960 Mayland Drive, Richmond, VA

Public Comment Deadline: November 14, 2009.

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-85.18 of the Code of Virginia authorizes the board to promulgate regulations as necessary to issue licenses to manufacturers, dealers, brokers, and salespersons and to levy and collect fees that are sufficient to cover the expenses for the administration of these regulations. Section 36-85.36 of the Code of Virginia authorizes the board to promulgate regulations for the administration of the Manufactured Housing Transaction Recovery Fund to assure the satisfaction of claims.

Purpose: The Manufactured Housing Board, with feedback from industry representatives, consumers, and input from staff of the Department of Housing and Community Development, determined that licensure fees to support staff activities (inspecting manufacturing plants, investigating consumer complaints, conducting informal fact-finding conferences, preparing and transcribing reports, conducting dealer lot inspections statewide) is not sufficient to cover these activities by tens of thousands of dollars. It is further determined that legislative fees and assessments set at the time of inception of these regulations has not kept pace with inflation. In addition, delivery of required services to industry members needs to be expanded by providing annual training, certification standards, and educational programs. Also, means are proposed to find new methods and opportunities to advise consumers of their rights regarding warranties, installation responsibilities for manufactured homes, filing complaints and claims, as well as information to file appeals.

Regulations

One change in regulations is to increase licensing fees for regulants of the Manufactured Housing Board. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations. The Manufactured Housing Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest regulant, waiting for action to be taken by the board, to continue to work, harming additional citizens. Other proposed amendments were made to add new definitions and clarify other sections that have been identified as confusing based on comments from licensees and other interested parties that we have received on a day-to-day basis. This clarification of the regulations makes them easier to understand and serves both the regulant population and the public by making it easier to determine if a regulant is in compliance with the regulations that were promulgated to protect the health, safety, and welfare of citizens.

Substance: The term "controlling financial interest" is defined to comport with 2008 legislative changes. At the recommendation of the Attorney General's office, the terms "imminent safety hazard," "substantial identity of interest," and "responsible management" are defined. In addition, the definition of "manufactured home dealer" is amended to reduce the number of new manufactured homes that an unlicensed individual may sell in a 12-month period, and new definitions of "reinstatement" and "renewal" are added. Other changes are as follows: the renewal process is rewritten; language is added to indicate where a license should be posted; fee increases are proposed to make the program self-funding; language is added to require payment of Department of Motor Vehicles fees within 30 days and to increase such fees; amendments provide that license applications may be submitted by electronic means and clarify that failure to receive a notice of renewal from the department does not relieve the licensee of the obligation to renew; amendments clarify that a salesperson can still be considered licensed while obtaining licensure within the prescribed time period; language is added to prevent issuance of a license to a person who circumvents the regulation by opening a new business and clarifies penalties; to conform to Chapter 350 of the 2008 Acts of Assembly, a provision is added that states the board may revoke a license if the licensee has a substantial identity of interest with a licensee whose license has been revoked; and new sections relating to license reinstatement are added. The reinstatement fee includes the renewal cost plus a \$100 penalty that was moved from 13VAC6-20-20. 13VAC6-20-

250, which disallows a manufacturer the right to operate a dealership, is deleted as unnecessary.

Issues: The 2008 General Assembly passed legislation that requires the Manufactured Housing Licensing and Transaction Recovery Fund Regulations be amended to comport with the legislation. The new legislation prevents a licensee from circumventing the regulations by opening a new business if the licensee maintained a substantial identity of interest in another business whose license was revoked. This legislation is an advantage to the public because it provides more assurance to consumers that a licensee will not have his license revoked and open another business with another name in the Commonwealth. The requirement to increase fees is due in part to the increased cost to manage the HUD programs. Two new programs have been added to the HUD program; Dispute Resolution and the Home Installation Program. To increase fees related to these programs requires legislative changes. The advantages of the enforcement of the programs is that consumers in the Commonwealth will be afforded added protection and additional venues to resolve disputes and complaints as well as added protection in the installation and set-up of their manufactured homes. An additional issue regarding fee increases is the result of increased costs and additional services by the department with no increase having been applied since the inception of the program. These fees have not kept pace with inflation and have required costs for delivery of services to consumers or industry representatives. The advantages for fee increases allows required annual training for industry representatives and installers, development of certification standards for installers, as well as development of educational programs for the public to be administered by the regulatory agency. It is proposed that new methods and opportunities be devised to advise consumers of their rights regarding warranties, installation responsibilities for manufactured homes, filing complaints, and claims as well as information to file appeals.

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

Summary of the Proposed Amendments to Regulation. The Manufactured Housing Board (Board) proposes to amend its Manufactured Housing Licensing and Transaction Recovery Fund Regulation. Specifically, the Board proposes to:

- Add several definitions to clarify regulatory text,
- Specify that Board notices and correspondence will be sent to a licensee's last known address of record,
- Modify the time frame in which regulated entities may renew their licenses and add a reinstatement period for licensees that fail to renew in a timely manner,
- Increase all licensure fees,
- Increase the inspection fee that is collected by the Department of Motor Vehicles from \$10 to \$30,

- Reduce the number of new manufactured homes that an unlicensed individual may sell in a 12 month period, and
- Prohibit regulated entities whose licenses have been revoked, or not renewed for cause, from being licensed under a different name.

Result of Analysis. The benefits likely exceed the costs for several proposed changes. There is insufficient data to determine if benefits outweigh costs for several other proposed changes.

Estimated Economic Impact. The Board proposes to add several definitions to explain language in other parts of the proposed regulatory text; the Board also proposes to add text that explicitly states that renewal notices (and presumably other correspondence) will be sent to a licensee's last address of record. Neither defining terms that appear in other regulatory sections nor specifying where Board notices will be sent will actually change Board policy or the responsibilities of licensees. Therefore, no regulated entity is likely to incur any costs on account of these proposed changes. Regulated entities will, however, benefit from the additional clarity these changes bring to rules that they must abide by.

Current regulations allow a licensee, who fails to renew his license before its expiration date, 60 days to renew his license without Board review. Licensees who renew within 60 days must pay the renewal fee plus a \$100 late penalty. After that 60 day period, but less than one year after expiration, a licensee may renew (by paying the renewal fee and the \$100 late fee) only with Board permission. The Board proposes to only allow late renewal for 30 days after license expiration. After 30 days, but before a year, licensees will have to reinstate their licenses by paying a reinstatement fee. The reinstatement fee will be:

- \$750 for manufacturers,
- \$300 for dealers,
- \$300 for brokers, and
- \$225 for salespeople.

Under both current and proposed regulations, individuals whose licenses have been expired for a year or more will have to reapply for initial licensure.

Limiting the renewal period and adding a reinstatement period for these licensure programs may encourage licensees to renew their licenses in a more timely fashion. This will provide a benefit for both Board staff, and the public that pays for Board operations, if the time that the staff spends enforcing licensure renewal rules is reduced because more people are renewing on time. Licensees who fail to renew on time, or within 30 days of license expiration, will pay higher fees to reinstate their licenses than they currently pay for late renewal. For instance, a manufacturer who renews late under

current regulations would have to pay a total of \$600 (\$500 renewal fee plus \$100 late fee). Dealers and brokers who renew late under current regulations have to pay \$250; salespeople who renew late now have to pay \$150. Some licensees may choose to seek employment in other fields rather than paying the higher fees and, so, total employment in areas that require Board licensure may fall slightly. Proposed reinstatement fees that are higher than current late renewal fees, as well as other fee increases that are proposed in this regulatory action, will likely help to close the persistent budget deficits for these programs.

In addition to modifying the renewal structure and introducing a reinstatement structure, the Board proposes to increase all licensure fees represented in the table below:

Licensure Program	Current Fees		Proposed Fees	
	Initial Licensure	Renewal	Initial Licensure	Renewal
Manufacturers	\$600	\$500	\$700	\$600
Dealers	\$150	\$100	\$200	\$150
Brokers	\$150	\$100	\$200	\$150
Salespeople	\$50	\$50	\$100	\$100

The Board also proposes to increase its special licensure fees. For manufacturers, dealers and brokers, this fee will increase from \$25 to \$40. The salesperson special license fee will increase from \$10 to \$30.

Department of Community and Housing Development (DHCD) staff reports that these licensure programs suffer from persistent budget deficits. Additionally, DHCD reports that the Board has explored and/or implemented several cost cutting measures to try and mitigate the need for fee increases. The Board has, for instance, cut one staff position and cut the number of times the Board will meet each year. The Board has also reduced services, and reduced and prioritized lot inspections, where they felt they safely could. In the near future the Board will bring software online that will allow automated license application and payment of fees which will further reduce staff time spent on these programs. Despite all steps that have been taken to make these programs more efficient, DHCD reports that fee increases are still needed to maintain services.

These proposed fee increases will increase the cost of working in jobs that require Board licensure. As a consequence, some individuals who are currently licensed may choose not to continue working at their jobs and some individuals who otherwise would be interested will not pursue licensure. Since manufactured housing has been particularly and disproportionately affected by the recent downturn in housing markets, more licensees may choose to not renew their licenses than would have had these fee increases occurred several years ago. There is insufficient data to

Regulations

accurately measure whether benefits will outweigh costs for these, and other, proposed fee increases.

Currently, dealers are required to collect certain fees and taxes on each home sale which they must forward to the Department of Motor Vehicles (DMV). Amongst these fees and taxes is a \$10 inspection fee that DMV collects for the Board. The Board proposes to raise this fee to \$30. DHCD reports that this fee increase will, again, help offset persistent budget shortfalls for these licensure programs. Although this proposed change will very slightly increase the cost of buying and registering a manufactured home, the \$20 fee increase when measured against the total cost of a manufacture home is unlikely to cause anyone to change their purchasing decision.

Current regulations allow individuals to sell up to two manufactured homes in any 12 month period without being licensed. In order to account for the Department of Housing and Urban Development's (HUD) definitions of a manufactured home dealer, the Board proposes to reduce to one the number of new homes that may be sold in a 12 month period by an unlicensed individual. Any individuals who are unlicensed but who might wish to take advantage of their ability to sell limited numbers of manufactured homes will be adversely affected by this proposed regulatory change. These individuals will see their potential profits cut roughly in half.

Current regulations allow the Board to revoke, suspend or fail to renew licenses of regulated entities that have engaged in prohibited conduct (working without a license, lying in a license application, failing to comply with home warranty obligations, etc.) but does not specifically prohibit individuals from changing the name under which they are incorporated and applying for a new license. Pursuant to legislation passed in 2008, the Board now proposes to amend these regulations to prevent licensees from circumvent Board revocation actions. The Board proposes to specify that it may "revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the Board." Further the proposed regulations prohibit individuals whose licenses have been revoked or not renewed for cause from ever being eligible for licensure. This proposed change will likely benefit purchasers of manufactured homes as they will be less likely to inadvertently do business with someone who has proven untrustworthy in the past.

Businesses and Entities Affected. DHCD reports that the Board currently licenses 42 manufacturers, 238 dealers, 3 brokers and 699 salespeople. All of these entities, plus any individuals who may seek licensure in the future, will be affected by these proposed regulations.

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

Projected Impact on Employment. Employment in the professions that the Board licenses may decrease on account of the fee increases in these proposed regulations.

Effects on the Use and Value of Private Property. Businesses that are subject to fee increases will likely see their profits decrease. This will, in turn, decrease the value of their businesses.

Small Businesses: Costs and Other Effects. Affected small businesses will have to pay additional licensure fees.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board has already implemented several cost cutting measures that would tend to mitigate the perceived need for fee increases. The need for fee increases may be further mitigated by further staff reductions that are under consideration as well as efficiency measures that are planned.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed amendments:

1. Add several definitions to clarify regulatory text;
2. Specify that board notices and correspondence will be sent to a licensee's last known address of record;
3. Modify the time frame in which regulated entities may renew their licenses and add a reinstatement period for licensees that fail to renew in a timely manner;
4. Increase all licensure fees;
5. Increase the inspection fee that is collected by the Department of Motor Vehicles from \$10 to \$30;
6. Reduce the number of new manufactured homes that an unlicensed individual may sell in a 12-month period; and
7. Prohibit regulated entities whose licenses have been revoked, or not renewed for cause, from being licensed under a different name.

Part I
General

13VAC6-20-10. Definitions.

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

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under Chapter 4.2 (§§ (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC § 5401 et seq.) for manufactured homes.

"Controlling financial interest" means the direct or indirect ownership or control of a firm.

"Dealer/manufacture sales agreement" means a written contract or agreement between a manufactured housing manufacturer and a manufactured housing dealer whereby the dealer is granted the right to engage in the business of offering, selling, and servicing new manufactured homes of a particular line or make of the stated manufacturer of such line or make. The term shall include any severable part or parts of

such sales agreement which separately provides for selling or servicing different lines or makes of the manufacturer.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Licensed" means the regulant has met all applicable requirements of this chapter, paid all required fees, and been authorized by the board to manufacture or offer for sale or sell manufactured homes in accordance with this chapter.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode is eight feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in ~~three or more~~ than one new manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer"

Regulations

does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer to sell or offer to sell; or to buy or offer to buy; or to negotiate the purchase, sale or exchange; or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by Chapter 4.2 (§§ (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia to be licensed by the board.

"Regulations" or "these regulations" means the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed or license has been revoked or not renewed by the board.

"Relevant market area" means the geographical area established in the dealer/manufacturer sales agreement and agreed to by both the dealer and the manufacturer in the agreement.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Standards" means the Federal Manufactured Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development.

"Statement of Compliance" means the statement found on the initial license application and on the renewal application, that the regulant licensed by the board will comply with the Manufactured Housing Licensing and Transaction Recovery Fund Law, this chapter and the orders of the board.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board.

"Supplier" means the original producers of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling~~ paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

"Warranty" means any written assurance of the manufacturer, dealer or supplier or any promise made by a regulant in connection with the sale of a manufactured home

that becomes part of the basis of the sale. The term "warranty" pertains to the obligations of the regulant in relation to materials, workmanship, and fitness of a manufactured home for ordinary and reasonable use of the home for the term of the promise or assurance.

Part II
Licenses

Article 1
Manufacturers

13VAC6-20-20. License required; annual renewal.

A. Each manufacturer located in or outside of the Commonwealth delivering in or shipping into the Commonwealth manufactured homes for sale, shall apply to the board for a license. The license shall be displayed at the place of business in a conspicuous place accessible to the public. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed manufacturer shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for the new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a manufacturer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a manufacturer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed manufacturer's renewal form and appropriate fee within 30 days of the license expiration date, the manufacturer shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. For licensing purposes, a manufacturer operating more than one manufacturing facility shall have each location treated as a separate entity and shall adhere to all

requirements for manufacturer licensing at each location, including posting a license at each location. Multiple production lines at one site shall be considered as a single facility for licensing purposes under the following conditions:

1. All production lines at that site are identified by the parent company with the same name, address and plant number.
2. All production lines at that site are under the same general and production management.
3. All production lines at that site are identified by the same Federal Identification Number (FIN) for tax purposes.

13VAC6-20-30. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 1.
2. Licensing fee required by 13VAC6-20-200 A 1.
3. Copy of the manufacturer's homeowner and installation manual or manuals.
4. Statement of Compliance.
5. List of salespeople licensed in Virginia with the following biographical information for each:

Date of birth

Sex

Weight

Height

Eye/hair color

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 2.
2. If revised, a copy of the revised homeowner and installation manual or manuals.

Regulations

3. Statement of Compliance.
4. Updated list of salespeople employed.

Article 2
Dealers

13VAC6-20-50. License required; annual renewal.

A. Any person located in or outside of the Commonwealth buying or selling or offering or displaying manufactured homes for sale in Virginia and meeting the definition of a dealer in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed dealer shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a dealer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a dealer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed dealer's renewal form and appropriate fee within 30 days of the license expiration date, the dealer shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. For licensing purposes, a dealer operating more than one retail location shall have each location treated as a separate entity and shall adhere to all requirements for dealer licensing including posting a license at each location.

E. Each dealer licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia Department

of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the dealer is licensed under this chapter.

13VAC6-20-60. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 2.
2. Licensing fee required by 13VAC6-20-200 A 3.
3. Statement of Compliance.
4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.
5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.
6. List of salespeople employed with the following biographical information for each:
 - Date of Birth
 - Sex
 - Weight
 - Height
 - Eye/hair color
7. Name of the owner, principal, manager, agent or other person designated as the holder of the dealer's license for the specific location and the names of other partners or principals in the dealership.

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 4.
2. Statement of Compliance.

3. Notification of any significant changes to the office or the business sign.
4. Updated list of salespeople employed.
5. Any changes of officers or directors of the company or corporation.
6. A copy of the dealer's current certificate of registration from the Department of Motor Vehicles.

D. Any change in the form of ownership of the dealer or any changes (deletions or additions) in the partners or principals of the dealer shall be submitted to the board with an application and fee for a new license. If the new owner or owners assume the liabilities of the previous owner or owners, then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner or owners do not assume the liabilities of the previous owner or owners. The board shall be notified immediately by the dealer of any change in the operating name of the dealer. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the dealer of any change in the location of the dealer. The dealer shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

13VAC6-20-80. Dealer responsibility for inspections; other items.

A. The dealer shall inspect every new manufactured home unit upon delivery from a manufacturer. If a dealer becomes aware of a noncompliance or an imminent safety hazard, ~~as defined in 13VAC5-95-10 of the Manufactured Home Safety Regulations~~, in a manufactured home, the dealer shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer. No dealer shall sell a new manufactured home if he becomes aware that it contains a noncompliance or an imminent safety hazard.

B. The dealer shall inspect every new manufactured home unit prior to selling to determine that all items of furniture, appliances, fixtures and devices are not damaged and are in place and operable.

C. A dealer shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

D. If the dealer provides for the installation of any manufactured home he sells, the dealer shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

E. On each home sold by the dealer, the dealer shall collect the applicable title fees and title tax for the manufactured

home, to include an additional \$30 inspection/administrative fee, and forward such fees and taxes to the Virginia Department of Motor Vehicles.

The above fees shall be submitted to the Virginia Department of Motor Vehicles within 30 days from the completion date of the sale.

F. On each home sold by the dealer, the dealer shall provide the owner with information to file a claim supplied by the department.

Article 3 Brokers

13VAC6-20-90. License required; annual renewal.

A. Any person located in or outside of the Commonwealth buying or selling, negotiating the purchase or sale or exchange of, or leasing used manufactured homes and meeting the definition of broker in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed broker shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a broker, the board may review an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a broker in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed broker's renewal form and appropriate fee within 30 days of the license expiration date, the broker shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

Regulations

D. For licensing purposes, a broker operating more than one business location shall have each location treated as a separate entity and shall adhere to all requirements for broker licensing, including posting a license, at each location.

E. Each broker licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia Department of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the broker is licensed under this chapter.

13VAC6-20-100. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 3.
2. Licensing fee required by 13VAC6-20-200 A 5.
3. Statement of Compliance.
4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.
5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.
6. Name of the owner, principal, manager, agent or other person designated as the holder of the broker's license for the specific location and the names of the partners or principals in the broker's firm.
7. List of salespeople employed with the following biographical information for each:

Date of birth

Sex

Weight

Height

Eye/hair color

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 6.
2. Statement of Compliance.
3. Notification of any significant changes to the office or the business sign.
4. Any changes of officers or directors of the company or corporation.
5. A copy of the broker's current certificate of registration from the Department of Motor Vehicles.
6. Updated list of salespeople employed.

D. Any change in the form of ownership of the broker or any changes (deletions or additions) in the partners or principals of the broker shall be submitted to the board with an application and fee for a new license. If the new owner(s) assume the liabilities of the previous owner(s), then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner(s) do not assume the liabilities of the previous owner(s).

The board shall be notified immediately by the broker of any change in the operating name of the broker. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the broker of any change in location of the broker. The broker shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

13VAC6-20-120. Broker responsibility for inspections; other items.

A. The broker shall inspect every used manufactured home unit prior to completion of sale. No broker shall sell a used manufactured home, if he becomes aware that it contains an imminent safety hazard ~~as defined in 13VAC5-95-10 of the Manufactured Home Safety Regulations~~.

Exception: A broker may sell a used manufactured home in which he is aware of an imminent safety hazard if the buyer is advised of the imminent safety hazard in writing by the broker and is further advised that building permits may be required from the local building official for repair of the imminent safety hazard.

B. A broker shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

C. If the broker provides for the installation of any manufactured home he sells, the broker shall be responsible

for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

D. On each home sold by the broker, the broker shall collect the applicable title tax and title fees for the manufactured home, to include an additional \$30 inspection/administrative fee, and forward such fees and taxes to the Virginia Department of Motor Vehicles.

The above fees shall be submitted to the Virginia Department of Motor Vehicles within 30 days from the completion date of the sale.

Article 4
Salespeople

13VAC6-20-130. License required; annual renewal.

A. Any person employed by a dealer, broker or manufacturer buying or selling or negotiating the purchase, sale or exchange of new or used manufactured homes and meeting the definition of a salesperson in 13VAC6-20-10 shall apply to the board for a license. The salesperson's license shall be displayed in the company's business office in a conspicuous place accessible to the public in public view. The license shall be issued for a term of one year from the date of issuance. A salesperson shall be ~~allowed to engage in business as a licensed salesperson~~ authorized by the board to sell manufactured homes after applying for a license, accompanied by the required fees, but prior to receiving the license back from the board, and shall not be considered to be an "unlicensed salesperson" during such time.

B. Each licensed salesperson shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a salesperson, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a salesperson in Virginia after~~

~~expiration of the license and prior to application for renewal or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed salesperson's renewal form and appropriate fee within 30 days of the license expiration date, the salesperson shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. When employed by a dealer, broker or manufacturer having more than one licensed retail location or business office, a licensed salesperson may transfer or be temporarily assigned from one location to the other as long as he is working for the same company under the same ownership. Such transfer or assignment shall not require an additional license or Transaction Recovery Fund assessment. If a salesperson works for more than one company or at locations with different owners, he shall be licensed separately for each and pay a separate Transaction Recovery Fund assessment for each such license.

13VAC6-20-140. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be supplied by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 4.
2. Licensing fee required by 13VAC6-20-200 A 7.
3. Statement of Compliance.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 8.
2. Statement of Compliance.

Article 6
Violations and Hearings

13VAC6-20-170. Prohibited conduct; grounds for denying, suspending or revoking license.

A. The following acts by regulants are prohibited and may be considered by the board as grounds for action against the regulant:

Regulations

1. Engaging in business as a manufactured home manufacturer, dealer or broker without first obtaining a license from the board.
2. Engaging in business as a manufactured home salesperson without first applying to the board for a license.
3. Making a material misstatement in an application for license.
4. Failing to pay a required assessment to the Transaction Recovery Fund.
5. Failing to comply with the warranty service obligations and claims procedures required by this chapter.
6. Failing to comply with the set-up and tie-down requirements of the Code.
7. Knowingly failing or refusing to account for or pay over money or other valuables belonging to others which have come into the regulant's possession due to the sale of a manufactured home.
8. Using unfair methods of competition or unfair or deceptive commercial acts or practices.
9. Failing to comply with the advertising provisions in Part IV of this chapter (13VAC6-20-270 et seq.).
10. Defrauding any buyer to the buyer's damage, and any other person in the conduct of the regulant's business.
11. Employing an unlicensed salesperson.
12. Knowingly offering for sale a manufactured home produced by a manufacturer which is not licensed as a manufacturer under this chapter.
13. Knowingly selling a manufactured home to a dealer who is not licensed as a dealer under this chapter.
14. Failing to appear before the board upon due notice.
15. Failing to comply with orders issued by the board pursuant to this chapter.
16. Failing to renew a license and continuing to engage in business as a manufacturer, dealer, broker or salesperson after the expiration of any license.
17. A salesperson selling, exchanging or offering to sell or exchange a manufactured home for any dealer or broker other than the licensed dealer or broker employing the salesperson.
18. A salesperson offering, transferring or assigning any negotiated sale or exchange of a manufactured home to another dealer, broker, manufacturer or salesperson.
19. Failing to comply with the Statement of Compliance.
20. Failing to notify the board of a change of location or address of the business office.

21. Failing to comply with any provisions of this chapter.

a. The board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer, or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the board.

b. Any person whose license is revoked or not renewed for cause by the board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the board pursuant to § 36-85.18 of the Code of Virginia.

22. Failing to comply with the regulations of state or federal agencies regarding the financing, titling, taxation or transporting of manufactured homes.

B. The board may deny, suspend, revoke or refuse to renew or reinstate the license of a regulant because of, but not limited to, one or more of the following grounds:

1. Having had a license previously denied, revoked or suspended under this chapter.
2. Having a license denied, suspended or revoked by a similar licensing entity in another state.
3. Engaging in conduct in another state which would have been a violation of this chapter if the actions were committed in Virginia.
4. Failing to obtain a required certification of registration from the Department of Motor Vehicles, failing to renew the annual certificate of registration, or having the certificate of registration suspended or revoked by the Department of Motor Vehicles.
5. Having been convicted or found guilty in any jurisdiction of a felony.

13VAC6-20-180. Penalties; notice to regulant.

A. The board shall have the power to deny, suspend, revoke, or refuse to renew or reinstate the license of a regulant found to be engaging in prohibited conduct or otherwise failing to comply with this chapter or orders of the board.

B. The board shall have the authority to levy ~~assessments~~ monetary penalties in addition to or instead of denying, suspending, revoking, or refusing to renew or reinstate a regulant's license. Such ~~assessments~~ monetary penalties shall include the following:

1. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a manufacturer.

2. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a dealer or broker.

3. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a salesperson.

C. The board shall notify the regulant, in writing, of any complaint directed against him. The notice shall include the time and place of a conference or hearing on the complaint. No penalties shall be imposed by the board until after the conference or hearing.

13VAC6-20-190. Conference; hearing; service of notice.

A. The board, or department acting on the board's behalf, shall send notice of the conference or hearing to the regulant at least 15 calendar days prior to the date of the conference or hearing. The notice shall be sent by certified mail to the address of the regulant, as shown on the license or other record of information in possession of the board.

B. The conference or hearing shall be conducted by the board according to the applicable provision of the Administrative Process Act and shall be open to the public. The regulant or applicant shall have the right to be heard in person or by counsel, and to provide evidence and witnesses on his behalf.

C. After the conference or hearing has been completed, if the board determines that the regulant or applicant has engaged in prohibited conduct, or is in violation of this chapter or orders of the board, or otherwise determines that it has grounds to impose any penalties under 13VAC6-20-180, the board shall immediately notify the regulant or applicant in writing, by certified mail, of the action imposed by the board. The department shall be responsible for carrying out the board's decision. The department shall also notify the Department of Motor Vehicles of the suspension or revocation of any dealer's or broker's license under this chapter.

~~D. The decision of the board shall be final if no appeal is made. An appeal from the decision of the board may be filed with a court in accordance with the Administrative Process Act.~~

Article 7
License Fees

13VAC6-20-200. Fee schedules.

A. The following fees are set by the board for annual licenses and renewals issued in accordance with this chapter. Checks, money orders, credit cards and other approved electronic fee payments shall be made payable to the Treasurer of Virginia or applicable state agency. In the event that a check, money draft, credit card, or similar instrument for payment of a required fee is not honored by the bank or

financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee plus an additional processing charge set by the department.

1. The manufacturer's original license fee shall be ~~\$600~~ \$700.

2. The manufacturer's renewal license fee shall be ~~\$500~~ \$600.

3. The dealer's original license fee shall be ~~\$150 to be submitted with the application for licensure plus \$10 per home sold by the dealer to be submitted at the completion of the sale~~ \$200.

4. The dealer's renewal license fee shall be ~~\$100 to be submitted with the application for renewal plus \$10 per home sold by the dealer to be submitted at the completion of the sale~~ \$150.

5. The broker's original license fee shall be ~~\$150 to be submitted with the application for licensure plus \$10 per home sold by the broker to be submitted at the completion of the sale~~ \$200.

6. The broker's renewal license fee shall be ~~\$100 to be submitted with the application for renewal plus \$10 per home sold by the broker to be submitted at the completion of the sale~~ \$150.

7. The salesperson's original license fee shall be ~~\$50~~ \$100.

8. The salesperson's renewal license fee shall be ~~\$50~~ \$100.

B. The following fees apply to special licenses issued by the board in accordance with Article 5 (13VAC6-20-160) of this part of this chapter:

1. Manufacturer's special license fee shall be ~~\$25~~ \$40.

2. Dealer's special license fee shall be ~~\$25~~ \$40.

3. Broker's special license fee shall be ~~\$25~~ \$40.

4. Salesperson's special license fee shall be ~~\$40~~ \$30.

Article 8
Reinstatement

13VAC6-20-201. Reinstatement required.

Should the board fail to receive a license holder's renewal form and appropriate fee within 30 days of the license expiration date, or if the license has been revoked or not renewed by the board the applicant shall be required to reinstate the license. Applicants for reinstatement of a manufacturer's license shall continue to meet all the qualifications for licensure set forth in Article 1 (13VAC6-20-20 et seq.) of this part. Applicants for reinstatement of a dealer's license shall continue to meet all the qualifications for licensure set forth in Article 2 (13VAC6-20-50 et seq.) of this part. Applicants for reinstatement of a broker's license shall continue to meet all qualifications for licensure set forth

Regulations

in Article 3 (13VAC6-20-90 et seq.) of this part. Applicants for reinstatement of a salesperson's license shall continue to meet all qualifications for licensure set forth in Article 4 (13VAC6-20-130 et seq.) of this part.

13VAC6-20-202. Reinstatement fees.

Each check, money order, credit card, and other approved electronic payment of fee shall be made payable to the "Treasurer of Virginia" or applicable state agency. In the event that a check, money draft, credit card, or similar instrument for payment of a required fee is not honored by the bank or financial institution named, the applicant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department. The following reinstatement fees shall be submitted by the applicant with the reinstatement application:

<u>1. Manufacturer's fee</u>	<u>\$750*</u>
<u>2. Dealer's fee</u>	<u>\$300*</u>
<u>3. Broker's fee</u>	<u>\$300*</u>
<u>4. Salesperson's fee</u>	<u>\$225*</u>

*Includes the renewal fee listed in 13VAC6-20-200.

The date on which the reinstatement application and fee is received by the department shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the license requirements in place at the time of that application. Licenses that have been expired for a year or more from date of expiration are not eligible for reinstatement. An application for a new license must be submitted.

13VAC6-20-203. Status of the license during the period prior to reinstatement.

A manufacturer, dealer, broker, or salesperson who reinstates his license shall be regarded as having been continuously licensed without interruption, shall remain under the full disciplinary authority of the board during this period, and may be held accountable for his activities during this period. Any person who suffers a loss or damage by an act of a regulant that constitutes a violation of this chapter during the period between the expiration of the license and the reinstatement of the license shall not be prohibited from filing a claim for recovery from the Manufactured Housing Transaction Recovery Fund.

A regulant who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter shall divest the board of its authority to discipline a regulant for a violation of the law or regulations during the period of time for which the regulant was licensed.

13VAC6-20-204. Board discretion to deny reinstatement.

Failure to timely pay any monetary penalty, reimbursement of costs or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, or processing of a new application. The board may deny reinstatement of a license for the same reasons as it may refuse initial or renewal licensure or to discipline a regulant.

13VAC6-20-250. ~~Operation of dealership by manufacturer. (Repealed.)~~

A manufacturer shall not own, operate or control a dealership in the Commonwealth except under the following conditions:

1. A manufacturer may operate a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;
2. A manufacturer may own or control a dealership while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or
3. A manufacturer may own, operate, or control a dealership if the board determines, after a conference or hearing at the request of any party, that there is no dealer independent of the manufacturer available in the relevant market area to own and operate the dealer or manufacturer sales agreement in a manner consistent with the public interest.

13VAC6-20-350. Warranty service; time limits; rejection of claim.

A. Any defect which is determined to be an imminent safety hazard as defined in 13VAC5-95-10 of the Manufactured Home Safety Regulations to life and health shall be remedied within three days of receipt of the written notice of the warranty claim. Defects which may be considered as imminent safety hazards to life and health include, but are not limited to, any of the following:

1. Inadequate heating in freezing weather.
2. Failure of sanitary facilities.
3. Electrical shock hazards.
4. Leaking gas.
5. Major structural failure.

The board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural disasters.

B. All other defects shall be remedied within 45 days of receipt of the written notice of the warranty claim unless a bona fide reason exists for not remedying the defect within the time period. If the responsible party has a bona fide

reason for not meeting the 45-day time period, he shall respond to the claimant in writing, with a copy to the board, explaining the reason or reasons and stating what further action is contemplated regarding the warranty service.

C. Department staff handling consumer complaints under the Code shall also review the complaints for warranty service obligations under this part, and shall make initial determinations of defects and imminent safety hazards to life and health as defined by the Code. Any disagreements between department staff and regulants or responsible parties regarding these determinations shall be resolved by the board. If a regulant or responsible party disputes the determination of an imminent safety hazard to life or health by the staff and asks for a ruling by the board, the three-day time period for remedying the hazard shall not be enforced unless the board agrees to the determination. If the board determines that the defect is an imminent safety hazard, it shall immediately notify the responsible party of the determination. The responsible party shall have three days from receipt of this notice to remedy the hazard.

D. Within the time limits specified in subsections A and B of this section, the responsible party shall either resolve the claim or determine that it is not justified. Whenever a regulant determines that a claim for warranty service is not justified, in whole or in part, he shall immediately notify the claimant in writing that the claim or a part of the claim is rejected. This notice shall explain to the claimant why the claim or specific parts of the claim are rejected and that the claimant is entitled to complain or file an appeal to the board. The notice shall provide the claimant with the complete address of the board.

13VAC6-20-460. Revocation of license.

Upon payment to a claimant from the fund, the board shall immediately revoke the license of the regulant whose conduct resulted in the payment from the fund. Any regulant whose license is revoked under this section shall not be eligible to apply for a new license ~~or~~ renewal, or reinstatement of license until he has repaid the fund the full amount of the payments from the fund on his amount, plus interest, calculated at the rate of interest the recovery fund was earning at the time of the payment from the fund.

VA.R. Doc. No. R09-1572; Filed August 21, 2009, 9:59 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10 through 18VAC50-22-70, 18VAC50-22-210, 18VAC50-22-230, 18VAC50-22-260).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

October 1, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: November 13, 2009.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose: Recent statutory changes, regulatory amendments, and policy changes made by other state agencies that directly affect the regulant population of the board, as well as changes in the industry, warrant review and promulgation of regulations to ensure that they accurately reflect current requirements and standards, and that they are consistent and clear. Ensuring that the regulations are as clear as possible will facilitate the regulations' compliance with the statutes and board's requirements, which will better protect the health, safety, and welfare of the public. Other changes that may be necessary may also be considered.

Substance: General clarifying changes are made to the regulations. Also, the board is amending its regulations as they relate to water well contractors to incorporate statutory changes that established water well systems provider certification. The board will also amend the renewal and reinstatement requirements to address issues related to individual license and certification and trades-related contractors whose qualified individuals no longer have current licenses. In addition, the following amendments are proposed:

18VAC50-22-10 (General definitions), 18VAC50-22-20 (Definitions of license classification) and 18 VAC 50-22-30 (Definitions of specialty services): Amending general definitions and definitions of classifications and specialties to

Regulations

reflect changes in the industry and amendments and policy changes made by other state agencies that directly affect the regulant population of the board.

18VAC50-22-40 B, 18VAC50-22-50 C, and 18VAC50-22-60 C: Amending the eligibility criteria for the qualified individual requiring a written examination that determines whether the individual has a knowledge of the specialty reasonable for the qualification of the person completing the work and the risks associated with the work being performed.

18VAC50-22-50 D and 18VAC50-22-60 D: Increasing the net worth requirement for Class A and Class B contractors.

18VAC50-22-70: Amending the regulations to include substantial equivalency as a means of determining that eligibility criteria has been met.

18VAC50-22-210: Amending the regulations to require specific actions are taken by a company upon termination or dissolution of the business.

18VAC50-22-230: Amending the regulations to clarify the principal place of business.

18VAC50-22-260: Amending the prohibited acts to specifically include failure of a contractor to obtain a building permit or inspection, to fail to respond to an agent of the board and allows the board to determine improper and dishonest conduct as a violation.

Issues: In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements, respond to statutory changes, and respond to changes in the industry. Currently the board's staff spends a considerable amount of time processing applications and providing guidance to both the regulant population and the general public in those areas impacted by these proposed amendments. Promulgation of these changes will decrease the contact required with the regulants, which should have an increase in the amount of time staff can dedicate to application processing, subsequently reducing the current waiting time experienced by all applicants.

The Board for Contractors must promulgate regulations that provide an adequate level of protection to the public, while simultaneously ensuring that individuals and businesses are not given unnecessary burdens to licensure. Amendments to the eligibility requirements for licensure are intended to further strengthen that protection and, while these amendments may raise some concerns within the regulated community, and thus become a matter of interest, they will not likely be looked at as being overly burdensome to most of the regulant population or the industry

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

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to amend its regulations to account for several statutory changes, to clarify current requirements and to respond to changes in affected industries. Specifically, the Board proposes to:

- Separate the current manufactured/modular home contractor specialty license into two licenses: one for manufactured home contractors and one for industrial building (modular home) contractors,
- Require applicants for a specialty classifications to pass a qualifying exam,
- Increase the net worth or equity that firms must prove to qualify for licensure as Class B or Class A contractors,
- Amend the requirements for licensure by reciprocity to allow individuals to gain licensure in Virginia if they were originally licensed in a state with licensure eligibility criteria that are substantially equivalent to Virginia's and
- Require legal business entities that dissolve and reform under another business name to return their old, invalid, license to the Board within 30 days of the change.

Result of Analysis. The benefits likely exceed the costs for several of these proposed changes. There is insufficient data to determine if the benefits will outweigh the costs for several other proposed changes.

Estimated Economic Impact. Current regulations allow for one specialty services license that covers both manufactured home contractors and modular home contractors. The Board proposes to split this specialty license into its component parts so that contractors may choose to be licensed in manufactured home contracting or in industrial building contracting or in both. The Board is proposing this change as a response to new standards set by the Department of Housing and Urban Development (HUD) for those who install manufactured homes. These new standards add costs that the Board feels would be overly burdensome for individuals who only install and remove modular home.

This change will likely benefit contractors who install (or remove) modular homes and do not work with manufactured housing as they will not have to adhere to the additional standards set by HUD. Individuals who install both modular and manufactured housing will incur some extra costs because they will now need to obtain two specialty designations rather than one. These costs under current regulations would be minimal and would mainly be accrued for the time the contractor spends meeting Board paperwork requirements. Once these proposed regulations are promulgated, these costs will be higher because the Board proposes to require that all applicants for specialty

designations take a Board approved exam. Although the costs associated with having to take two exams under this new requirement are not negligible, they are still likely smaller than costs that would be incurred should all modular home and manufactured home contractors be forced to meet HUD requirements for manufactured home installers.

Current regulations only require that contractors pass qualifying examinations for nine of the more than 40 specialty designations for which they may apply. The nine specialty designations that currently require contractors to take an exam are:

- 1) Blast/explosives contracting
- 2) Electrical contracting
- 3) Fire sprinkler contracting
- 4) Gas fitting
- 5) HVAC contracting
- 6) Plumbing
- 7) Radon mitigation,
- 8) Water well drilling and
- 9) Elevator/escalator mechanics contracting.

Elevator/escalator mechanics contractors may substitute certification from either the National Elevator Industry Education Program (NEIEP) or the National Association of Elevator Contractors (NAEC) for the Board required exam (and education). Additionally, three specialty designations require contractors to meet the qualifying criteria of another state agency, federal regulatory agency or national certifying organization. Contractors who are seeking to obtain blast/explosives designation must get the Department of Fire Programs' explosive use certification. Contractors who want the fire sprinkler designation must get National Institute for Certification in Engineering Technology's (NICET) sprinkler III certification. Contractors who are applying for a radon mitigation specialty designation need to get either federal Environmental Protection Agency (EPA) or state Department of Environmental Quality (DEQ) accepted radon certification.

The Department of Professional and Occupational Regulation (DPOR) reports that the Board has, in the past six years, adjudicated approximately 2400 disciplinary cases involving competency issues. These cases have cost the Board a total of almost \$7 million over that time span. To help limit the number of competency issues that will have to be dealt with in the future, the Board proposes to require a qualifying examination for all specialty designations. This change will only affect contractors who apply for specialty designation after the effective date of these proposed regulations. DPOR reports that there are approximately 8,000 applicants for licensure each year and that the vast majority of these would be applying for designation in areas that would be newly

required to pass a qualifying examination. DPOR further reports that the fee to take qualifying examinations will range between \$40 and \$60.

Applicants for specialty examination will incur explicit costs that include the exam fee plus any costs for traveling to where the examination will be given. They will also incur implicit opportunity costs for the time they spend studying for and taking the qualifying examination. Assuming that 7,000 of the 8,000 new applicants each year would not be required to take an exam under current regulations, but would be required to under the proposed regulations, and assuming applicants incur total costs (explicit + implicit costs) of approximately \$100 per exam taken, the total costs associated with new examinations over a six year period would be approximately \$4.2 million. Comparing this rough approximation to the ~\$7 million cost of adjudicating competency cases over the last six years, benefits accrued to the Board for this proposed change would only outweigh costs if over half of competency issues severe enough to warrant a Board hearing were eliminated on account of the required exams. There are other benefits (and costs) associated with this proposed change that may accrue to consumers of contractor services that are harder to even roughly quantify. These individuals would likely benefit from any increase in the average competency of contractors that might happen on account of requiring a qualifying examination. They would also incur costs if the institution of an exam requirement causes the pool of available contractors to shrink and, consequently, increases the cost of those services. There is insufficient data to decide if total benefits will outweigh total costs for this proposed change.

Currently, the Board requires applicants for Class B and Class A contractor licenses to prove that they have at least a set dollar amount of assets as a condition of licensure. Class B licensees currently must be able to show assets worth \$15,000 and Class A licensees must prove assets of \$45,000. These net worth requirements have been in place since before these regulations were first promulgated in 1995. In 2003, the General Assembly increased the maximum per job/per year dollar caps for Class B. The caps for Class B contractors were raised to \$120,000 per job/\$750,000 per year. DPOR reports that the Board has seen a significant increase in the number of disciplinary cases involving violations directly related to the financial stability of involved Class B licensees since this legislative change.

To address this problem, and the fact that construction costs for construction have steadily increased over the last number of years, the Board proposes to increase the assets required of Class B contractors to \$50,000 and the assets required of Class A contractors to \$100,000. These proposed changes will benefit consumers of contractor services in that it will likely decrease the chance of the work they hire going unfinished because their contractors run out of money. The Board also believes that these changes will likely reduce the

Regulations

number of claims on the Board administered recovery fund: currently 22% of claims to this fund arise from work done (or not done, as the case may be) by Class B contractors and 37.7% of claims involve Class A contractors. To the extent that Class B and A contractors are finishing work in a shoddy manner, or not finishing it at all, specifically because they lack the assets to do so, these regulatory changes may help decrease the 59.7% of claims made against these entities. These proposed changes will likely cause some contractors to change the type of license they apply for or go out of business altogether. Some Class B contractors, for instance, will likely not have assets sufficient to meet the requirements of the proposed regulations and will have to apply for a Class C contractor license or give up their license altogether. The deleterious effects of these proposed changes for contractors will likely be worse now, given that many businesses are likely drawing down assets to meet current expense needs, than they would be if implemented when housing markets weren't so depressed. That said, there is insufficient data to accurately gauge whether the benefits of these proposed changes for consumers will outweigh the costs for contractors.

Current regulations allow contractors from other states to gain licensure without meeting the requirements for initial licensure by examination so long as the states where they are licensed have reciprocal agreements with Virginia. The Board proposes to amend the section that deals with licensure by reciprocity to allow contractors who come from states that do not have reciprocal agreements with Virginia, but that do have licensure eligibility criteria that are substantially equivalent to Virginia's, to be licensed by reciprocity. This proposed change will likely not have any costs attached since all affected contractors will substantially meet Virginia's standards (which should ensure that these individuals are at least as minimally competent as other Board licensees). Affected contractors will benefit from being able to gain Virginia licensure without having to meet the more expensive and time consuming criteria for initial licensure by examination. The public may benefit if this proposed change increases the pool of contractors in the state from which they may hire.

Current regulations require legal business entity licensees that dissolve and reform under a new business name to reapply for licensure under the new name within 30 days of the change. DPOR reports, however, that some licensees are confused about this rule and either continue using the old license (even though they have the new license) or think they have to continue renewing the old license. To address these misunderstandings, the Board proposes to add language to these regulations that explicitly states that the old license is void and needs to be returned to the Board within 30 days. Affected licensees will incur the cost of the postage and the envelope that they would need to use to mail their old license back to the Board. These costs will very likely be outweighed

by the money saved by not renewing void licenses as well as benefit of clarity that this change brings to the regulations.

Businesses and Entities Affected. DPOR reports that the Board currently licenses approximately 68,000 entities and receives approximately 8,000 new applications for licensure each year. All of these entities, as well as the public who hires their services, will be affected by the proposed regulations.

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

Projected Impact on Employment. To the extent that these proposed regulations lead to a net decrease in the number of contractors licensed in the Commonwealth, they will likely decrease total employment in contracting fields.

Effects on the Use and Value of Private Property. Any contractors who end up reducing the Class of license they apply for, or go out of business altogether, on account of changes in these proposed regulations will see the value of their businesses reduced or completely eliminated.

Small Businesses: Costs and Other Effects. Small business contractors in the Commonwealth will incur costs for new examination requirements in these proposed regulations and will have to prove greater net worth in order to qualify for licensure as Class B or Class A contractors. Most contractors that are licensed by the Board likely qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board may wish to reexamine whether the costs of requiring examinations for all specialty designations are worth incurring and whether they could get most of the expected benefit by requiring exams for some but not all of the affected specialty designations.

Real Estate Development Costs. This regulatory action will likely increase building costs in the Commonwealth.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The Board of Contractors proposes to amend its regulations to account for several statutory changes, clarify current requirements, and respond to changes in affected industries. Specifically, the proposed amendments:

- 1. Separate the current manufactured/modular home contractor specialty license into two licenses: one for manufactured home contractors and one for industrial building (modular home) contractors;*
- 2. Require applicants for a specialty classification to pass a qualifying exam;*
- 3. Increase the net worth or equity that firms must prove to qualify for licensure as Class B or Class A contractors;*
- 4. Amend the requirements for licensure by reciprocity to allow individuals to gain licensure in Virginia if they were originally licensed in a state with licensure eligibility criteria that are substantially equivalent to Virginia; and*
- 5. Require legal business entities that dissolve and reform under another business name to return their old, invalid, license to the board within 30 days of the change.*

Part I
Definitions

18VAC50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract including, but not limited to, the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;

Regulations

5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance or use of structures, and building and installation of equipment therein.

18VAC50-22-20. Definitions of license classifications.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Building contractors" (Abbr: BLD) means those individuals whose contracts include construction on real property owned, controlled or leased by another person of commercial, industrial, institutional, governmental, residential (single-family, two-family or multifamily) and accessory use buildings or structures. This classification also provides for remodeling, repair, improvement or demolition of these buildings and structures. ~~A holder of this license can do general contracting.~~

If the BLD contractor performs specialty services other than those listed below, all required specialty designations shall be obtained. The BLD contractor may act as a prime contractor

and contract with subcontractors to perform work not permitted by the BLD license. The building classification includes but is not limited to the functions carried out by the following specialties:

- Billboard/sign contracting
- Commercial improvement contracting
- Concrete contracting
- Farm improvement contracting
- Home improvement contracting
- Industrialized building contracting
- Landscape service contracting
- Marine facility contracting
- Masonry contracting
- ~~Modular manufactured building contracting~~
- Recreational facility contracting
- Roofing contracting

"Electrical contractors" (Abbr: ELE) means those individuals whose contracts include the construction, repair, maintenance, alteration, or removal of electrical systems ~~under the National Electrical Code~~. This classification provides for all work covered by the ~~National Electrical Code~~ electrical provisions of the USBC including ~~electrical work covered by the alarm/security systems contracting (ALS),~~ electronic/communication service contracting (ESC) and fire alarm systems contracting (FAS) specialties. A firm holding an ~~electrical~~ ELE license is responsible for meeting all applicable ~~tradesman licensing standards~~ individual license and certification regulations.

"Highway/heavy contractors" (Abbr: H/H) means those individuals whose contracts include construction, repair, improvement, or demolition of the following:

- Bridges
- Dams
- Drainage systems
- Foundations
- Parking lots
- Public transit systems
- Rail roads
- Roads
- Runways
- Streets
- Structural signs & lights

Tanks

The functions carried out by these contractors include but are not limited to the following:

- Building demolition
- Clearing
- Concrete work
- Excavating
- Grading
- Nonwater well drilling
- Paving
- Pile driving
- Road marking
- Steel erection

These contractors also install, maintain, or dismantle the following:

1. Power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
2. Pumping stations and treatment plants;
3. Telephone, telegraph, or signal systems for public utilities; and
4. Water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.

This classification may also install backflow prevention devices incidental to work in this classification when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"HVAC contractors" (Abbr: HVA) means those individuals whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system. This classification does not provide for fire suppression installations, sprinkler system installations, or gas piping. A firm holding a HVAC license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual license and certification regulations. This classification may install backflow prevention devices incidental to work in this classification.

"Plumbing contractors" (Abbr: PLB) means those individuals whose contracts include the installation, maintenance, extension, or alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

- Backflow prevention devices
- Boilers
- Hot water baseboard heating systems
- Hot water heaters
- Hydronic systems
- Limited area sprinklers (as defined by ~~BOCA~~ the USBC)
- Process piping
- Public/private water supply systems within or adjacent to any building, structure or conveyance
- Sanitary or storm drainage facilities
- Steam heating systems
- Storage tanks incidental to the installation of related systems
- Venting systems related to plumbing

These contractors also install, maintain, extend or alter the following:

- Liquid waste systems
- Sewerage systems
- Storm water systems
- Water supply systems

This classification does not provide for gas piping or the function of fire sprinkler contracting as noted above. A firm holding a ~~plumbing PLB~~ license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual license and certification regulations. The classification may install sprinkler systems permitted to be designed in accordance with the plumbing provisions of the USBC when the installer has received formal vocational training approved by the board that included instruction of installation of sprinkler systems.

"Specialty contractors" means those individuals whose contracts are for specialty services which do not generally fall within the scope of any other classification within this chapter.

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Alternative energy system contracting" (Abbr: AES) means that service which provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty

Regulations

service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means that service which provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means that service which provides for the installation of asphalt paving and/or sealcoating on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means that service which provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means that service which provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means that service which provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means that service which provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means that service which provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including

telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means that service which provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means that service which provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means that service which provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means that service which provides for the installation or removal of equipment or machinery including but not limited to conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means that service which provides for the installation, repair or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means that service which provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means that service which provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification

allows for the installation of ~~limited area sprinklers as defined by BOCA systems permitted to be designed in accordance with the plumbing provisions of the USBC.~~ This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means that service which provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means that service which provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm ~~with holding~~ a GFC license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual (tradesman) licensure standards regulations.

"Home improvement contracting" (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

"Industrial building contracting" (Abbr: IBC) means that service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations. This classification covers foundation work in accordance with the provisions of the USBC and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The BLD classification also provides for this function.

"Landscape irrigation contracting" (Abbr: ISC) means that service which provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational

training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means that service which provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The BLD ~~classification and H/H classifications~~ also provides provide for this function.

"Lead abatement contracting" (Abbr: LAC) means that service which provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means that service which includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require a HVA or PLB license. The GFC specialty also provides for this function. A firm holding a LPG license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means that service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations. This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The H/H and BLD classifications also provide for this function.

"Marine facility contracting" (Abbr: MCC) means that service which provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

"Masonry contracting" (Abbr: BRK) means that service which includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning

Regulations

and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function.

~~"Modular/manufactured building contracting" (Abbr: MBC) means that service which provides for the installation or removal of a modular or manufactured building manufactured under ANSI standards. This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie ins of plumbing, gas and electrical or HVAC equipment. It does not allow for installing additional plumbing, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The H/H and BLD classifications also provide for this function.~~

"Natural gas fitting provider contracting" (Abbr: NGF) means that service which provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires a HVA or PLB license. The GFC specialty also provides for this function. A firm holding a NGF license is responsible for meeting all applicable ~~tradesman licensure standards~~ individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means that service which provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means that service which provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be performed by a firm holding the BLD classification or CIC (for other than one-family and two-family dwellings), FIC (for nonresidential farm buildings) or HIC (for one-family and two-family dwellings) specialty services. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means that service which provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means that service which provides for installation, repair, or removal of any

refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means that service which provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means that service which provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means that service which provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means that service which provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means that service which provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction which involves the following activities or items or similar activities or items may fall under the CIC, HIC and/or FIC specialty services, or they may fall under the BLD classification.

Appliances	Fireplaces	Rubber linings
Awnings	Fireproofing	Sandblasting
Blinds	Fixtures	Scaffolding
Bulkheads	Floor coverings	Screens
Cabinetry	Flooring	Sheet metal
Carpentry	Floors	Shutters
Carpeting	Glass	Siding
Casework	Glazing	Skylights
Ceilings	Grouting	Storage bins and lockers
Chimneys	Grubbing	Stucco
Chutes	Guttering	Temperature controls
Conduit rodding	Insulation	Terrazzo
Curtains	Interior decorating	Tile
Curtain walls	Lubrication	Vaults
Decks	Metal work	Vinyl flooring
Doors	Millwrighting	Wall panels
Drapes	Mirrors	Wall tile
Drywall	Miscellaneous iron	Waterproofing
Epoxy	Ornamental iron	Weatherstripping
Exterior decoration	Partitions	Welding
Facings	Protective coatings	Windows
Fences	Railings	Wood floors
Fiberglass	Rigging	

Part II
Entry

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and
4. ~~Where appropriate, has passed the trade related examination or has completed an education and training program approved by the board and required for the specialties listed below:~~

~~Blast/explosive contracting~~

~~Electrical~~

~~Fire sprinkler~~

~~Gas fitting~~

~~HVAC~~

~~Plumbing~~

~~Radon mitigation~~

~~Water well drilling~~

~~5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.~~

4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its qualified

Regulations

individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

~~4. Where appropriate, has passed the trade related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:~~

~~Blast/explosive contracting~~

~~Electrical~~

~~Fire sprinkler~~

~~Gas fitting~~

~~HVAC~~

~~Plumbing~~

~~Radon mitigation~~

~~Water well drilling~~

~~5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.~~

4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of ~~\$15,000~~ \$50,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. ~~Where appropriate, has passed the trade related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:~~

~~Blast/explosive contracting~~

~~Electrical~~

~~Fire sprinkler~~

~~Gas fitting~~

~~HVAC~~

~~Plumbing~~

~~Radon mitigation~~

~~Water well drilling~~

5. ~~Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.~~

4. a. Has obtained the appropriate certification for the following specialties:

Regulations

Blast/explosive contracting (DHCD explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000 \$100,000 or more.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-70. Qualifications for licensure by reciprocity or substantial equivalency.

Firms originally licensed in a state with which the board has a reciprocal agreement or whose eligibility criteria are substantially equivalent may obtain a Virginia contractor's license in accordance with the terms of that agreement.

18VAC50-22-210. Change of business entity requires a new license.

Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, on a form provided by the board, within 30 days of the change in the business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. ~~Formation~~ Conversion, formation, or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

18VAC50-22-230. Change of name or address.

A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

B. Any change of ~~address~~ the address of record or principal place of business shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
5. Negligence and/or incompetence in the practice of contracting.
6. Misconduct in the practice of contracting.
7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.
8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.
9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;

- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
 - h. Contractor's name, address, license number, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.
10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.
 11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.
 12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.
 13. Failing to respond to an investigator agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.
 14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

Regulations

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC50-22)

Contractor Licensing Information, 27INTRO (~~8/07~~) (rev. 5/09).

Trade-Related Examinations and Qualifications Information, 27EXINFO (~~8/07~~) (rev. 5/09).

License Application, 27LIC (rev. ~~8/08~~ 5/09).

Class C License Application (Short Form), 27CSF (rev. ~~8/08~~ 8/09).

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. ~~8/07~~ 5/09).

Change of Qualified Individual Application, 27CHQI (rev. ~~8/07~~ 5/09).

Change of Designated Employee Application, 27CHDE (rev. ~~8/07~~ 5/09).

Changes of Responsible Management Form, 27CHRM (eff. ~~8/07~~ 5/09).

Experience Reference, 27EXP (8/07).

Certificate of License Termination, 27TERM (~~8/07~~) (rev. 5/09).

Education Provider Registration/Course Approval, 27CONTEDEG (eff. 4/08).

Education Provider Listing Form, 27EDLIST (~~eff. 4/08~~) (rev. 5/09).

Financial Statement, 27FINST (~~eff. 8/07~~) (rev. 5/09).

Additional Qualified Individual Experience Reference Form, 27QIEXP (eff. ~~8/07~~ 5/09).

Emergency Request for Use of Temporary Elevator Mechanic Application 27EMERELE (eff. 5/09).

VA.R. Doc. No. R08-1340; Filed August 14, 2009, 2:34 p.m.

Proposed Regulation

Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-40, 18VAC50-30-120, 18VAC50-30-185, 18VAC50-30-190; adding 18VAC50-30-75; repealing 18VAC50-30-110).

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

October 1, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: November 13, 2009.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides the general authority to regulatory boards to promulgate regulations.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of tradesman and certification of backflow prevention device workers, certified elevator mechanics, and certified water well system providers in the Commonwealth. The content of the regulations is determined at the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: Amending the definitions in these regulations is essential in order to maintain consistency in the administration of the statutory licensing requirements of tradesman and certified backflow prevention device workers assigned to the Board for Contractors. Many of these definitions have been in place since the promulgation of the original tradesman regulations in 1995 and duplicate language

was already contained in the statutes. Removing these duplicative sections of the regulations eliminates the confusion that can occur when the statutes and regulations conflict during that period of time after a statutory amendment becomes effective and the regulations "catch-up" through the regulatory review process. The confusion caused during this lag time can be detrimental to the health, safety, and welfare of citizens, as the two sources of authority (law and regulation) contain different provisions.

Amending the eligibility criteria for Certified Water Well System Providers to include other equivalent experience as a method for meeting those criteria was added to address an issue that has been brought to the board numerous times since the inclusion of the program under the board's authority. Without this language applicants from other states that do not have a individual licensing program like Virginia's, but have some sort of documented training and experience, can never meet the eligibility requirements, as the current language requires that all experience be under the supervision of a certified master water well systems provider. This language allows the board to consider other sources of education and experience in determining whether an individual is minimally competent to obtain certification.

Other proposed amendments were made to clarify definitions and other sections that have been identified as confusing based on comments from licensees and other interested parties that we have received on a day-to-day basis. This clarification of the regulations makes them easier to understand and serves both the regulant population and the public by making it easier to determine if a tradesman is in compliance with the regulations that were promulgated to protect the health, safety, and welfare of citizens.

The overall goal of this proposed package is to simplify existing regulations through the elimination of duplicative sections and clarification of sections that had been the subject of questions from the public and licensees, and to increase the level of protection afforded to the citizens of Virginia with the least amount of burden placed on the regulant population.

The implementation of an inactive license status was made at the request of several individuals after the continuing education regulatory amendment was promulgated. The Board for Contractors, through their administrative and licensing staff, has seen an increase in the number of telephone calls, emails, and other forms of correspondence, from citizens and government officials, regarding a large number of individuals who, for various reasons, are not able to practice their trade for compensation, but would like to maintain their license. Such instances include working for local government agencies, state agencies, and even some private companies. Additionally, the board has received numerous complaints from retired tradesmen that would like to keep their title as master or journeyman, although they have no intention of performing work. These individuals,

Regulations

many on a fixed income, are unable to afford the cost of continuing education and approached their General Assembly members and requested a statutory requirement that would mandate the availability of inactive tradesman licenses. The board reviewed the inactive license procedures and regulations currently in place with the Real Estate Board and determined that a similar status could be made available to tradesman and would address some of the issues presented by licensees and citizens.

Substance: General clarifying changes are made to the regulations as well as the removal of a fee for duplicate cards. These proposed regulations also create an inactive status for tradesmen licenses.

18VAC50-30-10 (General definitions): Adding a new definition for "inactive tradesman license" and clarifying two definitions.

18VAC50-30-40 F: Adding a provision to allow the board to use other equivalent experience as a way to meet the eligibility criteria for Certified Water Well System Providers.

18VAC50-30-75: Adding this section to provide a method for tradesmen with an inactive license to change that license status back to active.

18VAC50-30-110: Repealing this section that provides for fees for duplication.

18VAC50-30-120: Adding language to provide that tradesmen whose licenses are in an inactive status are not required to complete continuing education.

18VAC50-30-185: Clarifying language to include a fine as a method of sanction available to the board.

18VAC50-30-190: Amending prohibited acts to change the term gross negligence to just negligence and adding the term incompetency. Additionally, adding a prohibited act that would hold an individual license or certificate holder accountable for failing to obtain a building permit or scheduling an inspection when required.

Issues: In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements as well as address issues that have been brought before the board by private citizens, members of the General Assembly, and licensees. The advantages of these changes are an increased understanding of the regulations, the elimination of an obsolete fee, and a licensing option for individuals who, for whatever reason, want to maintain their license but not practice.

Since 2005 the board has received nearly 500,000 telephone calls and 20,000 emails. A large number of these emails and

telephone calls are from licensees and citizens requesting clarifications of the regulations. Since the implementation of the continuing education requirements, the board has also received a number of complaints and requests from individuals requesting that their license be placed in some sort of status that will allow them to keep the license, but not use it, while not being required to meet the continuing education requirements. These proposed regulations address each of these issues and will likely result in a decrease in telephone calls and emails, providing time for staff to process applications and provide other services in a timelier manner.

With the exception of education providers, who, if inactive licenses are available, may experience a minute decrease in class attendance, there are no other pertinent matters of interest that may be identified with this proposal.

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

Summary of the Proposed Amendments to Regulation. The Board of Contractors proposes to amend its Individual License and Certification Regulations to repeal license duplication fees for tradesmen, allow tradesmen to hold an inactive license which is not subject to continuing education requirements and to allow water well system providers to use equivalent experience to meet eligibility criteria for Board certification.

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

Estimated Economic Impact. Currently, tradesmen must pay a fee for each duplicate card that they request. For the first and second duplicate card, the fee is \$30; for the third duplicate card, the fee is \$45. If a licensee requests more than three duplicate cards, he may be referred to the Board for possible disciplinary action. The Department of Professional and Occupational Regulation (DPOR) reports that these fees, and possible disciplinary action, were put into regulation to discourage tradesmen who were getting multiple copies of their licenses and than allowing unlicensed individuals to use them. DPOR reports that duplicate license fees are no longer necessary because of online license verification and other electronic recordkeeping. Because of this, and because licenses are wallet-sized and printed with soy-based ink that are easily, and frequently, destroyed, the Board now proposes to repeal the fees and other language associated with license duplication. Tradesmen will benefit from this regulatory change as they will no longer have to pay a fee every time they manage to destroy a copy of their license.

Current regulations require all tradesmen to renew their licenses or certifications every two years. To renew, tradesmen must have completed continuing education (CE) that is required for their particular license or certification. Individuals who are licensed as liquefied gas fitters, for instance, must complete one hour of CE biennially; certified

elevator mechanics must complete eight hours of CE biennially. Currently, tradesmen who are retired but still wish to keep their licenses must meet all renewal criteria even though the information gained from CE would be of academic interest only and the cost of CE represents an unnecessary expense.

The Board proposes to amend these regulations to allow for inactive licensure for retired tradesmen who take pride in their license status but do not want to pay, or cannot afford, the cost of completing CE. The Board will allow individuals who want to keep, but not use, their licenses or certifications to renew without completing required CE. Individuals who allow their licenses (or certifications) to go into inactive status will be able to reactivate them within three years by completing the CE required for the current licensing cycle. If an individual whose license has been inactive for more than three years wishes to work in his field again, he will have to meet initial licensure requirements. Neither the Board nor any regulated entity is likely to incur any costs on account of this proposed change. Retired tradesmen will benefit from being able to keep their licenses or certifications without having to bear the expense of completing CE.

Currently, applicants for certification as trainee, journeyman or master water well system providers must prove that they have practical experience under the supervision of a master water well system provider. This requirement does not make provision for individuals who gained their experience in jurisdictions that do not require certification to do this work (jurisdictions where there are no certified master water well systems providers). The Board proposes to amend these provisions to allow other, equivalent, experience to be used to meet certification requirements. This change will benefit all applicants who gained their experience in states that do not have a certified water well systems provider classification and who would not otherwise meet certification requirements. This change will also particularly benefit master water well systems providers who already practice in Virginia but who will not be able to gain enough experience during the grandfather period allowed by 2005 legislation to keep their master status after 2012. These individuals will be able to use experience gained before Virginia required certification to keep their master certification. These individuals will be spared the costs that would be associated with losing their certifications which might include having to shut down their sole proprietor businesses.

Businesses and Entities Affected. DPOR reports that the Board currently licenses or certifies approximately 34,000 tradesmen and receives approximately 3,000 new applications each year. All of these individuals will be affected by these proposed regulations.

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

Projected Impact on Employment. A greater number of water well systems providers may apply for certification because of the Board's proposal to allow equivalent experience to count toward certification requirements. If this happens, more individuals will likely be employed as water well systems providers in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that this regulatory action will allow current master water well systems providers to keep their certifications, the businesses owned by these individuals are more likely to maintain their value.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action. Small business water well systems providers will likely benefit from proposed provisions that allow equivalent experience to count toward certification requirements.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Regulations

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

Summary:

The Board for Contractors proposes to amend its current regulations to clarify provisions of the current regulations and respond to changes in the industry and requests from current licensees. With the exception of regulations promulgated due to the statutory implementation of the Certified Elevator Mechanic program and the Certified Water Well System Provider program, the last nonfee related regulatory change was made in 2003.

The most substantive change is the creation of an inactive license status for tradesmen. Other changes include the deletion of language that is duplicated in the Code of Virginia, clarification of some sections, and the elimination of the fee for duplicate copies of a license.

Part I General

18VAC50-30-10. Definitions.

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect

hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the ~~department board~~, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Inactive tradesman license" means an individual who is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia.

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its

proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;

2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker, elevator mechanic, or water well systems provider.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

18VAC50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;
3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school

Regulations

as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129 D of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

18VAC50-30-75. Activation of license.

Any individual may activate an inactive tradesman license by completing a form provided by the board and completing the continuing education requirements for the current

licensing cycle. Any tradesman that has not had an active license for a period of greater than three years will be required to meet the current preclicensing eligibility criteria.

18VAC50-30-110. Fees for duplicate cards. (Repealed.)

The fee for a duplicate card shall be as follows:

First request	\$30
Second request	\$30
Third request	\$45

~~Any request for the issuance of such a card must be in writing to the board. Requests for a third or subsequent duplicate card may be referred for possible disciplinary action.~~

18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. Inactive tradesmen are not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	\$40
Liquefied petroleum gas fitter license	\$40
Natural gas fitter provider license	\$40
Backflow prevention device worker certification	\$40
Elevator mechanic certification	\$40
Water well systems provider certification	\$40

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part V
Standards of Conduct

18VAC50-30-185. Revocation of licensure or certification.

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers or elevator mechanics in the Commonwealth of Virginia.

Regulations

18VAC50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;
3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker or water well systems provider certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;
4. ~~Gross negligence~~ Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;
5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;
6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider by a court of competent jurisdiction;
7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under \$1,000, or backflow prevention device workers, elevator mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);
8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;
9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

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, 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;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Statewide Building Code, ~~as amended~~;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified; ~~and~~

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; ~~and~~

17. Failure to obtain a building permit or applicable inspection, where required.

VA.R. Doc. No. R08-1571; Filed August 14, 2009, 4:10 p.m.

BOARD OF COUNSELING

Final Regulation

REGISTRAR'S NOTICE: The Board of Counseling is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act pursuant to § 2.2-4007.2 of the Code of Virginia. Section 2.2-4007.2 provides that if an agency chooses to amend a regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 provided the amended regulation is (i) adopted by December 31, 2010, and (ii) consistent with federal and state law and regulations.

Titles of Regulations: 18VAC115-20. **Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-40, 18VAC115-20-45, 18VAC115-20-70, 18VAC115-20-90, 18VAC115-20-100).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-40, 18VAC115-30-45, 18VAC115-30-110).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-25, 18VAC115-40-30).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-30, 18VAC115-50-40, 18VAC115-50-90).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-40, 18VAC115-60-50, 18VAC115-60-90, 18VAC115-60-100, 18VAC115-60-110).

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

Effective Date: October 14, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The amendments facilitate electronic submissions of applications and renewals. References to a contracting agent are deleted since all applications now come directly to the board and requirements for all documents to be submitted in one package are eliminated to allow the application to be submitted electronically by the applicants and other documents (licensure verification, transcripts, exam scores, etc.) to be sent directly from the source. All references to a renewal application are amended to use the term renewal form, since renewal of a license or certificate can now be accomplished online by completion of an electronic form and submission of a fee.

Part II
Requirements for Licensure**18VAC115-20-40. Prerequisites for licensure by examination.**

Every applicant for licensure examination by the board shall:

1. Meet the degree program requirements prescribed in 18VAC115-20-49, the course work requirements prescribed in 18VAC115-20-50 or 18VAC115-20-51, and the experience requirements prescribed in 18VAC115-20-52; and
2. Submit the following to the board ~~or its contracting agent within the time frame established by the board or that agent:~~
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and coursework requirements prescribed in 18VAC115-20-49 and 18VAC115-20-50 or 18VAC115-20-51;
 - c. Verification of Supervision forms documenting fulfillment of the experience requirements of 18VAC115-20-52 and copies of all required evaluation forms;
 - d. Documentation of any other professional license or certificate ever held in another jurisdiction; and
 - e. The application processing and initial licensure fee.

18VAC115-20-45. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit ~~in one package~~ the following:

1. A completed application;
2. The application processing fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Documentation of having completed education and experience requirements as specified in subsection B of this section;
5. Verification of a passing score on a licensure examination in the jurisdiction in which licensure was obtained; and
6. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

Regulations

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; or
2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:
 - a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and
 - b. Evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.
3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

Part III Examinations

18VAC115-20-70. General examination requirements; schedules; time limits.

A. Every applicant for initial licensure by examination by the board as a professional counselor shall pass a written examination as prescribed by the board.

B. Every applicant for licensure by endorsement shall have passed a licensure examination in the jurisdiction in which licensure was obtained.

~~C. The contracting agent shall notify all approved candidates in writing of the time and place of the examination.~~

~~D. C.~~ A candidate approved to sit for the examination shall take the examination within two years from the date of such initial approval. If the candidate has not taken the examination by the end of the two-year period here prescribed:

1. The initial approval to sit for the examination shall then become invalid; and
2. In order to be considered for the examination later, the applicant shall file a new application with the ~~board's contracting agent~~ board.

~~E. D.~~ The board shall establish a passing score on the written examination.

18VAC115-20-90. Reexamination. (Repealed.)

~~A. After paying the written reexamination fee, a candidate may be reexamined for the written exam within an 18 month period without filing a new application.~~

~~B. A candidate who fails the examination two times shall reapply and pay the required application fee as prescribed by the board's contracting agent.~~

Part IV Licensure Renewal; Reinstatement

18VAC115-20-100. Annual renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each year.

B. ~~Beginning with the 2005 renewal, every~~ Every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed application form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-20-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-20-20. No person shall practice counseling in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-20-110 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

Part II Requirements for Certification

18VAC115-30-40. Prerequisites for certification by examination for substance abuse counselors.

A. A candidate for certification as a substance abuse counselor shall meet all the requirements of this section, including passing the examination prescribed in 18VAC115-30-90.

B. Every prospective applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18VAC115-30-50 and 18VAC115-30-60;
2. Submit the following to the board ~~or its contracting agent within the time frame established by the board or that agent~~:

- a. A completed application form;
- b. Official transcript documenting attainment of a bachelor's degree;
- c. Official transcripts or certificates verifying completion of the didactic training requirement set forth in subsection B of 18VAC115-30-50;
- d. Verification of supervisor's education and experience as required under 18VAC115-30-60;
- e. Verification of supervision forms documenting fulfillment of the experience requirements of 18VAC115-30-60;
- f. Documentation of any other professional license or certificate ever held in another jurisdiction; and
- g. The application processing and initial certification fee.

18VAC115-30-45. Prerequisites for certification by endorsement for substance abuse counselors.

Every applicant for certification by endorsement shall submit ~~in one package~~:

- 1. A completed application;
- 2. The application processing fee;
- 3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis. The board will also determine whether any or all other professional licenses or certificates held in another jurisdiction are substantially equivalent to those sought in Virginia;
- 4. Affidavit of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia; and
- 5. Further documentation of one of the following:
 - a. Licensure or certification as a substance abuse counselor in another jurisdiction in good standing obtained by standards substantially equivalent to the education and experience requirements set forth in this chapter as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency, or a copy of the regulations in effect at the time of initial licensure or certification and verification of a passing score on a licensure examination in the jurisdiction in which licensure or certification was obtained, and which is deemed substantially equivalent by the board; or
 - b. Verification of a current certification in good standing issued by NAADAC or other board-recognized national certification in substance abuse counseling obtained by

educational and experience standards substantially equivalent to those set forth in this chapter.

Part IV
Renewal and Reinstatement

18VAC115-30-110. Annual renewal of certificate.

- A. Every certificate issued by the board shall expire on June 30 of each year.
- B. Along with the renewal ~~application form~~, the certified substance abuse counselor or certified substance abuse counseling assistant shall submit the renewal fee prescribed in 18VAC115-30-30.
- C. Certified individuals shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor from the renewal requirement.

18VAC115-40-25. Application process.

The applicant shall submit to the ~~executive director of the board at least 90 days prior to the date of the written examination~~:

- 1. A completed application form;
- 2. The official transcript or transcripts ~~in the original sealed envelope~~ submitted from the appropriate institutions of higher education ~~directly to the applicant~~;
- 3. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirement of 18VAC115-40-26. Documentation of supervision obtained outside of Virginia must include verification of the supervisor's out-of-state license or certificate; and
- 4. Documentation of the applicant's national or out-of-state license or certificate in good standing where applicable.

Part IV
Renewal and Reinstatement

18VAC115-40-30. Annual renewal of certificate.

Every certificate issued by the board shall expire on January 31 of each year.

- 1. To renew certification, the certified rehabilitation provider shall submit a renewal ~~application~~ form and fee as prescribed in 18VAC115-40-20.
- 2. Failure to receive a renewal notice and ~~application~~ form shall not excuse the certified rehabilitation provider from the renewal requirement.

Regulations

18VAC115-50-30. Application for licensure by examination.

Every applicant for examination for licensure by the board shall:

1. Meet the education and experience requirements prescribed in 18VAC115-50-50, 18VAC115-50-55 and 18VAC115-50-60.
2. Submit to the board office ~~in one package~~, the following items, ~~not less than 90 days prior to the date of the examination~~:
 - a. A completed application;
 - b. The application processing and initial licensure fee prescribed in 18VAC115-50-20;
 - c. Documentation, on the appropriate forms, of the successful completion of the residency requirements of 18VAC115-50-60 along with documentation of the supervisor's out-of-state license where applicable;
 - d. Official transcript or transcripts in the original sealed envelope with the registrar's signature across the sealed envelope flap submitted from the appropriate institutions of higher education directly to the applicant, verifying satisfactory completion of the education requirements set forth in 18VAC115-50-50 and 18VAC115-50-55. Previously submitted transcripts for registration of supervision do not have to be resubmitted; and
 - e. Verification on a board-approved form that any out-of-state license, certification or registration is in good standing.

18VAC115-50-40. Application for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit ~~in one package~~:

1. A completed application;
2. The application processing and initial licensure fee prescribed in 18VAC115-50-20; and
3. Documentation of licensure as follows:
 - a. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis; and
 - b. Documentation of a marriage and family therapy license obtained by standards specified in subsection B of this section.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-50-50 and 18VAC115-50-55 and experience requirements consistent with those specified in 18VAC115-50-60; or
2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:
 - a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and
 - b. Evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.
3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18VAC115-50-90. Annual renewal of license.

A. All licensees shall renew licenses on or before June 30 of each year.

B. ~~Beginning with the 2005 renewal, all~~ All licensees who intend to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed ~~application form~~ application form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-50-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-50-20. No person shall practice marriage and family therapy in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-50-100 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

Part II
Requirements for Licensure

18VAC115-60-40. Application for licensure by examination.

Every applicant for examination for licensure by the board shall:

1. Meet the degree program, course work and experience requirements prescribed in 18VAC115-60-60, 18VAC115-60-70 and 18VAC115-60-80; and
2. Submit the following items to the board ~~office in one package not less than 90 days prior to the date of the examination:~~
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and course work requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70;
 - c. Verification of supervision forms documenting fulfillment of the experience requirements of 18VAC115-60-80 and copies of all required evaluation forms;
 - d. Documentation of any other professional license or certificate ever held in another jurisdiction; and
 - e. The application processing and initial licensure fee.

18VAC115-60-50. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit ~~in one package:~~

1. A completed application;
2. The application processing and initial licensure fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Further documentation of one of the following:
 - a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or
 - b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18VAC115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience;

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

5. Verification of a passing score on a licensure examination as established by the jurisdiction in which licensure was obtained;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70; and

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia.

B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

Part III
Examinations

18VAC115-60-90. General examination requirements; schedules; time limits.

A. Every applicant for initial licensure as a substance abuse treatment practitioner by examination shall pass a written examination as prescribed by the board.

B. Every applicant for licensure as a substance abuse treatment practitioner by endorsement shall have passed an examination deemed by the board to be substantially equivalent to the Virginia examination.

~~C. The board shall notify all approved candidates in writing of the time and place of the examination.~~

Regulations

~~D. C.~~ A candidate approved by the board to sit for the examination shall take the examination within two years from the date of such initial board approval. If the candidate has not taken the examination by the end of the two-year period prescribed in this subsection:

1. The initial board approval to sit for the examination shall then become invalid; and
2. In order to be considered for the examination later, the applicant shall file a complete new application with the board.

D. Applicants who fail the examination twice in succession shall document completion of 45 clock hours of additional education or training acceptable to the board, addressing the areas of deficiency as reported in the examination results prior to obtaining board approval for reexamination.

E. The board shall establish a passing score on the written examination.

18VAC115-60-100. Reexamination. (Repealed.)

~~A. After paying the examination fee, a candidate may be reexamined within an 18-month period without filing a new application.~~

~~B. Applicants who fail the examination twice in succession shall document completion of 45 clock hours of additional education or training acceptable to the board, addressing the areas of deficiency as reported in the examination results prior to obtaining board approval for reexamination.~~

Part IV

Licensure Renewal; Reinstatement

18VAC115-60-110. Renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each year.

B. ~~Beginning with the 2005 renewal, every~~ Every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed application form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-60-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-60-20. No person shall practice substance abuse treatment in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-60-120 C.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the

address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

VA.R. Doc. No. R10-2075; Filed August 26, 2009, 11:43 a.m.

REAL ESTATE BOARD

Final Regulation

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

Title of Regulation: **18VAC135-30. Condominium Regulations (repealing 18VAC135-30-10 through 18VAC135-30-800).**

Statutory Authority: § 55-79.98 of the Code of Virginia.

Effective Date: October 15, 2009.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Pursuant to Chapter 557 of the 2009 Acts of Assembly, this regulation is repealed because the powers and duties were transferred from the Real Estate Board to the Common Interest Community Board.

VA.R. Doc. No. R10-2111; Filed August 24, 2009, 3:14 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-317. Rates for Standby Service Furnished to Certain Renewable Cogeneration Facilities Pursuant to § 56-235.1:1 of the Code of Virginia (adding 20VAC5-317-10 through 20VAC5-317-50).**

Statutory Authority: §§ 12.1-13 and 56-235.1:1 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: October 2, 2009.

Agency Contact: Cody Walker, Assistant Director, Division of Public Utility Accounting, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9611, FAX (804) 371-9350, or email cody.walker@scc.virginia.gov.

Summary:

The State Corporation Commission has initiated a commission rulemaking required by the 2009 Session of the Virginia General Assembly. Chapter 745 of the 2009 Acts of Assembly, codified as § 56-235.1:1 of the Code of Virginia, directs the commission to establish a regulatory framework for electric utility standby service to customers that operate cogeneration facilities in the Commonwealth generating renewable energy, as defined in § 56-576 of the Code of Virginia. The legislation further states that such regulations must allow electric utilities to recover all of the costs that are identified by these utilities and determined by the commission to be related to the provision of standby service. Chapter 745 specifically states that these costs include, but are not limited to, the costs of transformers and other equipment required to provide standby service and the costs of capacity and generation, including but not limited to, fuel costs. Chapter 745 also directs that within 90 days of the effective date of regulations adopted pursuant to this legislation, each public utility providing electric service in the Commonwealth must submit to the commission a plan setting forth how the utility will comply with the regulations if it does not already have standby provisions approved by the commission that comply with the regulations. Thereafter, the commission will, after notice and an opportunity for a hearing, determine whether a utility's plan complies with the regulations. The commission's staff has prepared proposed rules implementing Chapter 745 rulemaking provisions. The proposed rules set forth costs that may be recovered by utilities under standby rates from utility customers operating cogeneration facilities generating renewable energy. The proposed rules also establish requirements for utilities' compliance plans to be submitted within 90 days of the regulations' effective date.

AT RICHMOND, AUGUST 19, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00080

Ex Parte: In the matter of establishing rules of the State Corporation Commission governing rates for stand-by service furnished to certain renewable cogeneration facilities

ORDER FOR NOTICE AND COMMENT

This Order initiates a rulemaking required by HB 2152 as enacted by the 2009 Session of the Virginia General Assembly.¹ HB 2152 directs the Commission to establish a regulatory framework for electric utility stand-by service to "customers that operate a cogeneration facility in the Commonwealth that generates renewable energy, as defined in § 56-576."² The legislation further states that such regulations must "allow the electric utility to recover all of the costs that are identified by the electric utility and determined by the Commission to be related to the provision of the stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs." *Id.*

Within 90 days of the effective date of regulations adopted pursuant to HB 2152, each public utility providing electric service in the Commonwealth is required to "submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations." *Id.* Thereafter, the Commission will, after notice and an opportunity for a hearing, "determine whether a utility's plan complies with the regulations." *Id.*

The Commission's Staff ("Staff") has prepared proposed rules implementing HB 2152's rulemaking provisions ("Proposed Rules"). The Proposed Rules, *inter alia*, set forth costs that may be recovered, under stand-by rates, by utilities from their customers operating cogeneration facilities generating renewable energy. The Proposed Rules also establish requirements for utilities' compliance plans to be submitted within 90 days of the regulations' effective date. The Proposed Rules are appended hereto.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a rulemaking proceeding should be initiated for the purpose of establishing rules of the Commission governing rates for stand-by service furnished to certain renewable cogeneration facilities under § 56-235.1:1 of the Code of Virginia. Accordingly, we will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file

Regulations

written comments on, propose modifications or supplements to, or request a hearing on these Proposed Rules.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2009-00080.

(2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.

(3) On or before September 11, 2009, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

**NOTICE TO THE PUBLIC
OF A PROCEEDING TO ESTABLISH RULES
OF THE STATE CORPORATION COMMISSION
GOVERNING RATES FOR STAND-BY SERVICE
FURNISHED TO CERTAIN RENEWABLE
COGENERATION FACILITIES UNDER § 56-235.1:1
OF THE CODE OF VIRGINIA
CASE NO. PUE-2009-00080**

The State Corporation Commission ("Commission") has initiated a proceeding in which it proposes to establish Commission rules governing rates for stand-by service furnished to certain renewable cogeneration facilities all as directed by the Virginia General Assembly in HB 2152 enacted in its 2009 Session.

HB 2152 (codified as § 56-235.1:1 of the Code of Virginia) directs the Commission to establish a regulatory framework for electric utility stand-by service to customers that operate cogeneration facilities in the Commonwealth generating renewable energy, as defined in § 56-576 of the Code of Virginia. The legislation further states that such regulations must allow electric utilities to recover all costs that are identified by electric utilities and determined by the Commission to be related to the provision of stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs.

Within 90 days of the effective date of regulations adopted by the Commission pursuant to HB 2152, each public utility providing electric service in the Commonwealth is required to submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations. Thereafter, the Commission will, after notice and opportunity for hearing, determine whether a utility's plan complies with the regulations.

The Commission's Staff has prepared proposed rules implementing the rulemaking directed by HB 2152 ("Proposed Rules"). The Proposed Rules set forth costs

that may be recovered, under stand-by rates, by utilities from their customers operating cogeneration facilities generating renewable energy. The Proposed Rules also establish requirements for utilities' compliance plans to be submitted within 90 days of the regulations' effective date.

The Commission has, by Order for Notice and Comment, directed that notice of the Proposed Rules (appended to that Order) be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on these Proposed Rules.

Interested persons are encouraged to obtain copies of this Commission Order for Notice and Comment and the Proposed Rules. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m. Copies may also be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before October 2, 2009, any interested person may comment on, or propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2009-00080. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed in this proceeding. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

All filings in this proceeding shall be directed to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2009-00080.

STATE CORPORATION COMMISSION

(4) On or before October 2, 2009, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2009-00080. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested persons desiring to submit comments electronically

may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Commission Staff may file a report with the Clerk of the Commission on or before October 28, 2009, concerning comments submitted to the Commission by interested persons addressing the Proposed Rules.

(6) This matter is continued for further Orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Pamela A. Walker, Deputy General Counsel, Dominion Virginia Power, Law Department PH-1, P.O. Box 26532, Richmond, Virginia 23261-6532; Barry L. Thomas, Director, Regulatory Affairs, Appalachian Power Company, 1051 East Cary Street, Suite 702, Richmond, Virginia 23219; Kendrick R. Riggs, Esquire, Stoll Keenon Ogden, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202; Jeffery P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Road, Greensburg, Pennsylvania 15601; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; all Virginia electric cooperatives as listed in Appendix A attached hereto; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Energy Regulation.

¹ Chapter 745 of the 2009 Acts of Assembly.

² Va. Code §56-235.1:1.

CHAPTER 317

RATES FOR STANDBY SERVICE FURNISHED TO CERTAIN RENEWABLE COGENERATION FACILITIES PURSUANT TO § 56-235.1:1 OF THE CODE OF VIRGINIA

20VAC5-317-10. Applicability and scope.

This chapter is promulgated pursuant to the provisions of § 56-235.1:1 of the Code of Virginia. It is applicable to (i) Virginia's electric utilities ("utilities" or "utility") subject to the provisions of § 56-235.1:1, and (ii) utilities' customers that operate cogeneration facilities that generate renewable energy, as that term is defined in § 56-576 of the Code of Virginia, and desire to obtain standby service from utilities.

20VAC5-317-20. Duty to provide rate for stand-by service.

Every utility subject to the provisions of § 56-235.1:1 of the Code of Virginia shall provide a rate for standby service to customers in its certificated territory that operate a cogeneration facility in the Commonwealth that generates renewable energy as defined in § 56-576 of the Code of Virginia.

20VAC5-317-30. Costs to be recovered in stand-by rates.

Costs to be recovered in utility rates for standby service provided to cogeneration facilities generating renewable energy shall include, but are not limited to, the following:

1. Metering charges to recover utility costs associated with metering facilities, meter reading (where appropriate), processing, communication equipment (where appropriate), and administration.

2. Distribution service charges to recover utility costs associated with distribution facilities including the costs of transformers and other distribution equipment necessary to provide standby service.

3. Transmission service charges to recover utility costs (i) for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms, and conditions approved by the Federal Energy Regulatory Commission, and (ii) charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member.

4. Electricity supply service charges to recover utility fixed costs and nonfuel-related operating and maintenance expenses associated with investments in generating units and capacity payments associated with power purchases including, but not limited to, a return on the undepreciated generating unit investments, associated income taxes, depreciation expenses, operations and maintenance expenses, and property taxes.

5. Fuel charges to recover utility fuel costs including purchased power costs.

20VAC5-317-40. Initial implementation of standby rates.

On or before [within 90 days of the effective date of these regulations], each utility shall submit to the State Corporation Commission (commission) a plan setting forth the utility's plan for compliance with this chapter. A utility may submit its existing standby provisions as its proposed plan for compliance with this chapter. Thereafter, following notice and an opportunity for hearing, the commission will determine whether a utility's plan complies with this chapter.

20VAC5-317-50. Waiver.

The commission may waive any or all parts of this chapter for good cause shown.

VA.R. Doc. No. R10-2091; Filed August 20, 2009, 9:29 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL 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 State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records (amending 22VAC40-910-100).**

Statutory Authority: §§ 63.2-102 and 63.2-217 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: L. Richard Martin, Jr., Manager, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7902, FAX (804) 726-7906, TTY (800) 828-1120, or email richard.martin@dss.virginia.gov.

Summary:

The Administration for Children and Families (ACF) advised the Department of Social Services that 22VAC40-910-100 B 3 b 2 does not make clear that local departments of social services do not have the discretion to withhold findings or information about a case of child abuse or neglect resulting in a child fatality or near fatality. ACF has directed the State Board of Social Services to make the regulatory language consistent with the Child Abuse and Prevention Treatment Act (CAPTA), which requires states to have procedures or provisions that allow the public to access findings or information about a child abuse or neglect case that results in the fatality or near fatality of a child.

This regulatory action clarifies that release of these findings or information is mandatory.

22VAC40-910-100. Confidential client information pertaining to social services programs.

A. Confidentiality of client information of social services programs is assured by §§ 63.2-104 and 63.2-105 of the Code of Virginia.

B. Releasing confidential social services information.

1. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have access to all social services client records pursuant to § 63.2-104 of the Code of Virginia.

2. Social services client records must be confidential and can only be released to persons having a legitimate interest in accordance with federal and state laws and regulations pursuant to § 63.2-104 of the Code of Virginia. Section 63.2-104 of the Code of Virginia does not apply to the disclosure of adoption records, reports and information. The disclosure of adoption records, reports and information is governed by § 63.2-1246 of the Code of Virginia.

3. The following statutory and regulatory provisions provide guidance on the definition of legitimate interest as applied to specific social services programs:

a. Adult Protective Services client records can be released to persons having a legitimate interest pursuant to 22VAC40-740-50 B.

b. Child Protective Services Client Records and Information Disclosure:

(1) Child protective services client records can be released to persons having a legitimate interest pursuant to § 63.2-105 A of the Code of Virginia.

(2) The public has a legitimate interest to limited information about child abuse or neglect cases that resulted in a child fatality or near fatality. Pursuant to the Child Abuse and Prevention Treatment Act (CAPTA), as amended (P.L. ~~104-235~~ 108-36 (42 USC § 5106a)) states must have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality. Accordingly, agencies ~~may~~ must release the following information to the public, providing that nothing disclosed would be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person; or that may compromise the integrity of a Child Protective Services investigation, or a civil or criminal investigation, or judicial proceeding:

(a) The fact that a report has been made concerning the alleged victim child or other children living in the same household;

(b) Whether an investigation has been initiated;

(c) The result of the completed investigation;

(d) Whether previous reports have been made concerning the alleged victim child or other children living in the same household and the dates thereof, a summary of those previous reports, and the dates and outcome of any investigations or actions taken by the agency in response to those previous reports of child abuse or neglect;

- (e) The agency's activities in handling the case.
- (3) Information regarding child protective services reports, complaints, investigation and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces as provided in 22VAC40-720, Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.
- (4) The agency must release child protective services client records in the instances of mandatory disclosure as provided in 22VAC40-705-160. The local department may release the information without written consent.

4. Foster care client records about children in foster care or their parents can be released upon order of the court. For instance, client records may be released to the guardian ad litem and the court appointed special advocate who are appointed for a child as a result of a court order or to attorneys representing the child or the child's parents.

VA.R. Doc. No. R10-2055; Filed August 21, 2009, 3:18 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Final Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-2032).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: October 19, 2009.

Agency Contact: Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

Summary:

The amendments reflect an administrative change allowing sales and use tax audit candidates an alternative method to calculate their use tax compliance to include sales taxes paid to vendors on taxable purchases. The amendments also define terms used in calculating the alternative use tax compliance. This change was instituted at the request of businesses and various industry groups.

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

23VAC10-210-2032. Penalties and interest; audits.

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

"Compliance ratio" means the percentage figure used by the department to determine a taxpayer's effort to comply with the retail sales and use tax laws of the Commonwealth.

"Measure found" means the dollar amounts of additional sales deficiency or dollar amounts of additional use deficiency disclosed by the audit. Separate compliance ratios for sales and use taxes will be necessary if the audit contains deficiencies in both areas.

"Measure paid to vendor" means the dollar amounts of purchases on which the purchaser paid the Virginia sales or use tax to the vendor.

"Measure reported" means the dollar amounts of taxable sales or the dollar amounts of purchases reported on a return for the entire audit period.

"Net underpayment" means use tax deficiency for each month determined by the audit.

"Net understatement" means sales tax deficiency determined by the audit less allowable credits, such as the sales price of tangible personal property returned by the purchaser, repossessed, or charged off as bad debts for each month during the period of the audit.

B. Penalty.

1. The application of penalty to audit deficiencies is mandatory and its application is generally based on the percentage of compliance determined by computing the dealer's compliance ratio. The compliance ratio for the sales or use tax may be computed by using the following ratio:

$$\frac{\text{Measure Reported}}{\text{Measure Reported} + \text{Measure Found}} = \text{Compliance Ratio}$$

This method is to be used by the auditor in separately computing the compliance ratio on both the sales portion of the audit and the purchases portion of the audit.

2. If the auditor's computation indicates that a taxpayer has failed to meet the required compliance ratio for the accrual of use tax on the purchases portion of the audit, the taxpayer may, at its option, compute a separate compliance ratio by including the measure on which tax was paid to its vendors, as follows:

Regulations

$$\frac{\text{Measure Reported + Measure Paid to Vendors}}{\text{Measure Reported + Measure Paid to Vendors + Measure Found}} = \text{Compliance Ratio}$$

It is the taxpayer's responsibility to compute the above compliance ratio (hereinafter referred to as the "alternative method") and provide the auditor with documentation supporting the computation. The taxpayer must compute the ratio based on a review of purchases for the same period used by the auditor to compute the compliance ratio. Use tax penalty will not be assessed if the taxpayer's tax compliance ratio falls within the required tolerances.

$$\frac{\text{Measure Reported}}{\text{Measure Reported + Measure Found}} = \text{Compliance Ratio}$$

~~"Measure reported" means dollar amounts of gross sales or the cost price of purchases reported on returns for the audit period.~~

~~"Measure found" means dollar amounts of additional sales deficiency or dollar amounts of additional use deficiency disclosed by the audit. Separate ratios for sales and use taxes will be necessary if the audit contains deficiencies in both areas. Tax paid to vendors will not be included in the computation of the compliance ratio.~~

4. 3. First generation audits. Generally, penalty will be waived for first generation audits. First generation audit penalty cannot be waived if any of the following conditions exist:

- a. The taxpayer has been previously notified in writing by the Department of Taxation to collect tax on sales or to pay tax on purchases, but has failed to follow instructions; or
- b. The taxpayer has collected the sales tax, but failed to remit it to the Department of Taxation; or
- c. The taxpayer has willfully evaded reporting and remitting the tax to the Department of Taxation and indications of fraud exist.

The audit of a business ~~which that~~ which that has experienced a name change, a change in responsible partners or officers or the addition of new locations, and where the business is conducted in the same manner and for the same purposes as during a prior audit, will not be considered a first audit for purposes of this subsection.

Similarly, audits performed for periods subsequent to the institution of reorganization plans, where during such reorganizations, the continuity of the business was not affected and the business entity maintained operations for

the purpose of producing the same product(s) or rendering the same service(s), will not qualify for first generation audit status. In addition, audits performed for periods subsequent to business mergers, absorptions and like ventures, where the intent is to diversify or expand, will not qualify for first generation audit status. However, penalty generally will not be applied to audit deficiencies occurring in new areas not covered in prior audit(s) as set forth in subdivision ~~6~~ 8 of this subsection.

In the event that a business should undergo a reorganization, restructuring, acquisition, merger, diversification of product line or process, or any other event that would subject the business to a different sales tax application than its normal course of business, it is recommended that the business request a written ruling from the department as to the proper sales and use tax application. See 23VAC10-210-20.

~~2. 4. Second generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 60% for use tax, as computed by the auditor or under the alternative method.~~

~~3. 5. All subsequent generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 85% for use tax, as computed by the auditor or under the alternative method.~~

~~4. 6. Taxable sales. Penalty, based on the compliance ratio, will generally be applied to the net understatement of the sales tax. "Net understatement" means sales tax deficiency determined by the audit less allowable credits, such as the sales price of tangible personal property returned by the purchaser, repossessed, or charged off as bad debts during the period of the audit.~~

~~5. 7. Taxable purchases. Penalty, based on the compliance ratio calculated by either the auditor or under the alternative method, will generally be applied to the net underpayment of the use tax on recurring purchases of tangible personal property used regularly in the business. "Net underpayment" means use tax deficiency determined by the audit.~~

a. Withdrawals from inventory. Withdrawals of tangible personal property are subject to the use tax on a cost basis (or fabricated cost basis in the case of a fabricator/manufacturer) and should be added to taxable recurring purchases for purposes of computing the compliance ratio.

b. Fixed assets. The tax applies to purchases of fixed assets used in the business and such purchases should be added to taxable recurring purchases and taxable withdrawals from inventory for purposes of computing the compliance ratio.

6. 8. Exceptions. Penalty generally will not be applied to audit deficiencies occurring in new areas not covered by prior audit(s), provided the application of the tax is not clearly established under existing law, regulations or other published documents of which the taxpayer reasonably should have had knowledge, or areas where the taxpayer has relied on prior correspondence with the department that has not been superseded by a law change, a change in regulations, or other published documents of which the taxpayer reasonably should have had knowledge. Deficiencies in these areas will not be included in compliance ratio computations. Notwithstanding the above, items of like class or similar nature may be subject to penalty even though the specific item was not addressed in the previous audit(s) if the general class of items was held taxable in previous audit(s). The application of penalty to audit deficiencies will not be waived on second and subsequent audits for other than exceptional mitigating circumstances.

~~B.~~ C. Interest. The application of interest to all audit deficiencies is mandatory and accrues as set forth in 23VAC10-210-2030 C.

VA.R. Doc. No. R07-252; Filed August 19, 2009, 10:05 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Final Regulation

Title of Regulation: **24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (adding 24VAC30-73-10 through 24VAC30-73-170).**

Statutory Authority: § 33.1-198 of the Code of Virginia.

Effective Date: October 14, 2009.

Agency Contact: Paul Grasewicz, AICP, Access Management Program Administrator, Department of Transportation, Maintenance Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0778, FAX (804) 662-9405, or email paul.grasewicz@vdot.virginia.gov.

Summary:

This action promulgates a new regulation; however, the regulation carries over and consolidates some content from existing regulations in the Minimum Standards of Entrances (24VAC30-71) and the entrance regulations in the Land Use Permit Manual (24VAC30-150). Items appearing in the Minimum Standards such as entrance illustrations and sight distance standards are relocated to

the Road Design Manual and are incorporated by reference.

Significant changes made since the proposed version was published are as follows:

1. The list of definitions (such as those for "access management," "crossover," and "intersection" were revised for greater accuracy and clarity. Some terms ("roadside") were deleted, and others ("median opening") were added.

2. Provisions appearing in the proposed regulation were moved for clarity or consistency of organization. For example, proposed subsection B of 24VAC30-73-20 was transferred to the first item under 24VAC30-73-120 C 3 in response to public input indicating the initial location was confusing. Other provisions were also rephrased in response to public comments indicating these provisions were not clear.

3. For provisions concerning appeals, the term "calendar days" was used to eliminate any confusion over whether calendar days or business days were intended; this change simplifies calculations concerning deadlines.

4. Technical amendments relating to engineering specifications or standards were made to provide more meaningful guidance or correct errors. For example, a reference in 24VAC30-73-50 B in the proposed version stated that the methodology and format of the traffic engineering investigation report conform to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD does not provide such report methodology and format, but IIM-LD-227, a VDOT Location & Design Division official memorandum, available on the VDOT public website, does.

5. Provisions concerning shared entrances were revised for consistency to eliminate redundancy or to emphasize statutory intent.

6. Catchlines, titles of documents incorporated by reference, and division names were revised for consistency to reflect organizational changes within VDOT and regulatory changes occurring since the previous publication or in response to public input.

7. Provisions concerning VDOT's authority and procedural requirements were revised to provide more guidance or to eliminate redundancy. For example, 24VAC30-73-120 was amended to provide more information on what documentation is necessary to justify the exception request.

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.

Regulations

CHAPTER 73

ACCESS MANAGEMENT REGULATIONS: MINOR ARTERIALS, COLLECTORS, AND LOCAL STREETS

24VAC30-73-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median [openings openings/crossovers], traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic [from local streets in residential neighborhoods] and channel it into the arterial system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" [or "~~median opening~~"] means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing [movements] and [left and right] turning [traffic movements].

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property [and to other streets].

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means [~~any at grade connection with a highway, including~~ (i) a crossing of] two [or more] highways [~~or an~~ at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial] entrance [~~and a highway~~].

["Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.]

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-73-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

["Median opening" means a crossover or a directional opening in a nontraversable median (such as a concrete barrier or raised island) that physically restricts movements to specific turns such as left turns and U-turns.]

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified

Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

["Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."]

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

["Roundabout" means a circular intersection with yield control of all entering traffic, right-of-way assigned to traffic within the circular roadway, and channelized approaches and a central island that deflect entering traffic to the right.]

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highways.

["Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.]

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The

Regulations

Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commonwealth Transportation Commissioner, or his designees.

24VAC30-73-20. Authority to regulate entrances to highways.

A. VDOT's authority to regulate highway entrances and manage access to highways is provided in §§ 33.1-13, 33.1-197, 33.1-198, 33.1-198.1, and 33.1-199 of the Code of Virginia, and its authority to make regulations concerning the use of highways generally is provided in § 33.1-12 (3) of the Code of Virginia. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

~~[B. Where a plan of development with the specific location of an entrance or entrances was proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to October 1, 2009, such entrances shall be exempt from the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-70-170 A), provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shown on a subdivision plat, site plan, or preliminary subdivision plat that is valid pursuant to §§ 15.2-2260 and 15.2-2261 and approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 prior to October 1, 2009, shall be exempt from the spacing standards for entrances and intersections in Appendix G of the Road Design Manual.~~

~~€ B.] The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in § 33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).~~

[~~Đ. C.] Notwithstanding Part IV (24VAC30-150-1680 et seq.) of the Land Use Permit Manual, after the effective implementation date as set forth in 24VAC30-73-30, the district administrators or their designees are authorized to~~

issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

[~~E. D.] In cases where the provisions and requirements of this chapter conflict with the Land Use Permit Manual (24VAC30-150) [or the Minimum Standards of Entrances to State Highways (24VAC30-71)], the provisions and requirements of this chapter shall govern.~~

24VAC30-73-30. Application to minor arterials, collectors, and local streets.

A. This chapter shall apply on October [~~± 14~~], 2009, to any highway with a functional classification as a minor arterial, collector, or local street. Any highway with a functional classification as a principal arterial is governed by the provisions of 24VAC30-72.

B. The commissioner shall publish maps of the Commonwealth on the VDOT website that show all highways with the above functional classifications and shall periodically update such maps.

24VAC30-73-40. Administrative procedures and rules for obtaining commercial and private entrance permits.

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements and procedures of this chapter and the Land Use Permit Manual (24VAC30-150).

24VAC30-73-50. Appeal and [sight distance] exception procedure.

A. The permit applicant may appeal denial or revocation or conditions [~~imposed by~~ of] a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 [~~calendar~~] days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue or issues. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 [~~calendar~~] days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to

the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 [calendar] days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 [calendar] days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report, prepared by a professional engineer. ~~[The methodology and format of the report shall be in conformance with requirements set forth in the Manual on Uniform Traffic Control Devices (see 24VAC30-73-170 D)]~~ Refer to Instructional and Informational Memorandum IIM-LD-227 for requirements concerning approval of sight distance exceptions (see 24VAC30-73-170 K)] .

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 [calendar] days of receipt of the written exception request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

24VAC30-73-60. General provisions governing commercial and private entrances.

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. ~~[The violation of Any person violating]~~ any provision of this chapter and any condition of approval of an entrance permit shall be [~~subject to the penalties for violations specified in the Land Use Permit Manual (24VAC30-150)~~ guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.1-198 of the Code of Virginia. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act] .

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance

design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

~~[C. When two or more properties are to be served by the same entrance, the permit applicant shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance of the entrance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property.~~

~~D. C.]~~ Entrance standards established by localities that are stricter than those of VDOT shall govern.

24VAC30-73-70. Commercial entrance design.

A. All commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (see 24VAC30-73-170 A), the Road and Bridge Standards (see 24VAC30-73-170 C), the Road and Bridge Specifications (see 24VAC30-73-170 B), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (see 24VAC30-73-170 C) shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (see 24VAC30-73-170 H).

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in

Regulations

Appendix G of the Road Design Manual (see 24VAC30-73-170 A).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway [or during the peak hours of the generator, whichever is appropriate as determined by the district administrator's designee] .

[6. The use of a shared entrance between adjacent property owners shall be the preferred method of access.

7. The construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers shall be approved in accordance with the crossover location approval process specified in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).]

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations [(24VAC30-155 (see 24VAC30-73-170 J)) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. [The district administrator's designee will consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor.] Mitigation measures that may be considered include but are not limited to:

a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;

b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;

c. Installation, modification, or removal of traffic signals and related traffic control equipment;

d. Provisions to limit the traffic generated by the development served by the proposed entrance;

e. Dedication of additional right-of-way or easement, or both, for future road improvements;

f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;

g. Relocation or consolidation of existing entrances; or

h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

24VAC30-73-80. Minimum sight distance for commercial entrances.

A. No less than minimum intersection sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix G of the Road Design Manual (see 24VAC30-73-170 A). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (see 24VAC30-73-170 D) methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work

performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

24VAC30-73-90. Private entrances.

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in Appendix G of the Road Design Manual (see [24VAC30-73-180 24VAC30-73-170 A]) cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts, or any combination of these, [necessary] to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.
2. On roadways with ditches, the drainage pipe at the entrance.
3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk. If a sidewalk is not present, to the back of the curb line.
4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.

5. On roadways with shoulders, ditches, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

24VAC30-73-100. Commercial entrances - coordination with local governments.

A. For all commercial entrances, the permit applicant shall contact and coordinate with appropriate local government agencies to identify possible conflicts with local, state or federal regulations and plans, including but not limited to local zoning and subdivision regulations, environmental regulations, land use plans, transportation plans, corridor studies, and access management plans.

B. If local governments have established site plan/subdivision plat approval processes for developments, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of the site plan or subdivision plat for the development. If neither a local government site plan nor a subdivision plat approval process is applicable, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of any applicable land use authorization for the development.

C. Any transportation-related funds, real property, or improvements committed to or received by a local government through the land use regulatory process does not release the applicant from fees and improvements required by VDOT. When a local government requires improvements to the abutting state highway in accordance with the locality's adopted transportation plan, VDOT may require additional improvements to ensure the safety and capacity of the proposed entrances and to manage existing entrances along the highway.

24VAC30-73-110. [~~Tenure of Existing~~] commercial entrances.

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.
2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.

Regulations

3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee [, and reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required,] when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.
2. The property is subject to a site plan or subdivision plat review.
3. There is a change in commercial use either by the property owner or by a tenant.
4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

24VAC30-73-120. Commercial entrance access management.

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the transportation system are maintained. The proposed commercial entrance shall meet the access management standards contained in Appendix G of the Road Design Manual (see 24VAC30-73-170 A) and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway. [~~As part of any commercial entrance permit review, the district administrator's designee will determine what improvements are needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. If the location of the entrance is within the limits of an access management plan approved by the local government and VDOT, the plan should guide the district administrator's designee in determining the appropriate design and location of the entrance.~~

B. A proposed development's compliance with the access management requirements specified below should be considered during the local government and VDOT's review of any rezoning, site plan, or subdivision plat for the development. VDOT's review of a rezoning traffic impact statement and a site plan/subdivision plat supplemental traffic analysis submitted for a development in accordance with the Traffic Impact Analysis Regulations (see 24VAC30-73-170 J) shall include comments on the development's compliance with the access management requirements specified below.

C.] Access management requirements, in addition to other regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. [~~Subsection B of this section provides the procedures for requesting an exception to this requirement~~ A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering investigation report that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted] .

2. Entrances shared with adjoining properties on minor arterials and collectors. To reduce the number of entrances to state highways, [~~the district administrator's designee shall require that shared entrances be created and designed to serve adjoining parcels unless the permit applicant submits compelling~~ a condition of entrance permit issuance shall be that entrances serve two or more parcels. A street that meets the Secondary Street Acceptance Requirements (see 24VAC30-73-170 L) will be publicly maintained and shall be the preferred method for shared entrances as such entrances will allow for the future development of a network of publicly maintained streets. Otherwise a shared commercial entrance shall be created and designed to serve adjoining properties. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be included with the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property. The district administrator's designee is authorized to approve an exception to this requirement upon submittal of a request according to 24VAC30-73-120 D that includes the following:

a. Written] evidence that a reasonable agreement [to share an entrance] cannot be reached with adjoining property owners [,] or

[b. Documentation] that there are physical constraints, including but not limited to topography, environmentally

sensitive areas, and hazardous uses, to creating a shared entrance. ~~[A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be submitted with the permit application for a shared entrance. The shared entrance shall be identified on any site plan or subdivision plat of the property. A permit applicant shall not be required to follow the procedures for an appeal set forth in 24VAC30-73-50 to receive an exception to the requirements of this subdivision.]~~

3. Spacing of entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-73-170 A) except as specified below.

a. ~~[Where a plan of development or a condition of development that identifies the specific location of an entrance or entrances was proffered pursuant to §§ 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia as part of a rezoning approved by the locality prior to October 14, 2009, such entrances shall be exempt from the applicable spacing standards for entrances and intersections, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shall be exempt from the applicable spacing standards for entrances and intersections when the location of such entrances are shown on a subdivision plat, site plan, preliminary subdivision plat, or a Secondary Street Acceptance Requirements (see 24VAC30-73-170 L) conceptual sketch that was submitted by the locality to VDOT for review and received by VDOT prior to October 14, 2009, or is valid pursuant to §§ 15.2-2260 and 15.2-2261 of the Code of Virginia and was approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia prior to October 14, 2009. The district administrator's designee is authorized to exempt such entrances from the spacing standards upon submittal of a request according to 24VAC30-73-120 D that includes documentation of the above criteria.~~

b. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the applicable spacing standards for entrances and intersections, subject to approval by the district administrator. Such plans may also identify the locations of any physical constraints to creating shared entrances or vehicular/pedestrian connections between adjoining properties (see 24VAC30-73-120 B 2 and B 4). If the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards and provides documentation that the location of the proposed commercial entrance is within the limits of an access management plan approved by the local government and by VDOT, the plan should guide the district administrator's designee in approving the

exception request and in determining the appropriate location of the entrance.

c. ~~[On older, established business corridors of a locality within an urban area where existing entrances and intersections did not meet the spacing standards prior to October [14], 2009, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that [the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes evidence that] reasonable efforts [are were] made to comply with the other access management requirements of this section including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.~~

~~[b. d.] Where a developer proposes a development within a designated urban development area as defined in § 15.2-2223.1 of the Code of Virginia [and other comparable local designations or an area designated in the local comprehensive plan for higher density development] that [fully] incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for [entrances and public street] intersections internal to the development that differ from the otherwise applicable spacing standards, provided that [the developer submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development and on the conformance of] such entrances and intersections [meet with] the intersection sight distance standards specified in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).~~

c. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways [in accordance with the Secondary Street Acceptance Requirements (see 24VAC30-73-170 L)] and such commercial entrances cannot meet the spacing standards for highways, the

Regulations

[developer may submit a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development. The] following shall apply [to the exception request] :

(1) For highways with a functional classification as a collector or local street, the district administrator's designee may approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances. Such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix G of the Road Design Manual (see [24VAC30-73-180 24VAC30-73-170 A]).

(2) For highways with a functional classification as a minor arterial, the district administrator's designee shall, in consultation with the developer and the locality within which the development is proposed, either approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances, or waive such state requirements that necessitate second or additional commercial entrances. [If approved, such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix G of the Road Design Manual (see 24 VAC 30-73-170 A).

f. Where a parcel of record has insufficient frontage on a highway to meet the spacing standards because of the dimensions of the parcel or a physical constraint such as topography or an environmentally sensitive area, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering investigation report that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.]

4. Vehicular/pedestrian circulation between adjoining [undeveloped] properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required on a highway with a functional classification as a minor arterial highway, and may be required by the district administrator's designee on a highway with a functional classification as a collector, [as a condition of permit issuance] to record access easements and to construct vehicular connections [to the boundaries of the property] (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and

adjoining undeveloped properties. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties [and adjoining developed properties with sidewalks that abut the property. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified vehicular and pedestrian access connection and circulation system between the sites] .

a. Such connections shall not be required if [the permit applicant submits a request for an exception according to 24VAC30-73-120 D and provides documentation that] there are physical constraints to making such connections between properties, including but not limited to topography, environmentally sensitive areas, and hazardous uses.

[~~b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development.~~

e. b.] If a permit applicant [~~cannot or~~] does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

[~~d. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified access and circulation system between the sites.]~~

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix G of the Road Design Manual (see 24VAC30-73-170 A). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. [A request for an exception to this requirement submitted according to subsection D of this section shall include a traffic engineering investigation report that (i) evaluates the suitability of the entrance location for design as a roundabout, and (ii) contains specific and documented

reasons showing that highway operation and safety will not be adversely impacted.]

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

[~~B. D.~~] A request for an exception from the access management requirements in subsection [A C] of this section [(excluding subdivision A-2) shall be submitted in writing to the district administrator's designee. The request] shall [follow identify the type of exception, describe the reasons for the request, and include all documentation specified in 24VAC30-73-120 C for the type of exception. After considering all pertinent information including any improvements that will be needed to the entrance or intersection to protect the operational characteristics of the highway, the district administrator's designee will advise the applicant in writing regarding the decision on the exception request within 30 calendar days of receipt of the written exception request, with a copy to the district administrator. The applicant may appeal the decision of the district administrator's designee to the district administrator in accordance with] the procedures for an appeal set forth in 24VAC30-73-50 [except where the District Administrator's designee is specifically authorized to approve such request. In addition such request shall include specific and documented reasons based on a traffic engineering investigation report prepared showing that highway operation and safety will not be adversely impacted by the requested exception] .

[~~C. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-73-170 A), subject to approval by the commissioner.]~~

24VAC30-73-130. Drainage.

A. Commercial and private entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the roadway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

24VAC30-73-140. Drive-in theaters.

A drive-in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in § 33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.

24VAC30-73-150. Temporary entrances (construction/logging entrances).

A. Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use Permit Manual [~~(24VAC30-150~~ (see 24VAC30-73-170 G)]. The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards (see 24VAC30-73-170 D) and certified flaggers shall be used to ensure safe ingress and egress.

B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, [roadside] and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.

24VAC30-73-160. Access to public waters.

VDOT may grant the use of portions of the highway right-of-way for access to public waters upon written request from the Executive Director of the Virginia Department of Game and Inland Fisheries to the commissioner. The district administrator's designee may require that a commercial entrance permit be obtained in accordance with the provisions of this chapter for entrances that will provide access to landings, wharves, and docks.

24VAC30-73-170. Documents incorporated by reference.

A. Road Design Manual (effective January 1, 2005, revised October 2009).

Note: Appendices F and G (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of

Regulations

the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

B. 2007 Road and Bridge Specifications (effective July 2008).

Scheduling and Contract Division (VDOT)
State Contract Engineer
1401 E. Broad Street
Richmond, Virginia 23219

C. [2008] Road and Bridge Standards (effective [February 1, 2004 June 2009]).

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004).

Federal Highway Administration
Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004.

American Association of State Highway and Transportation Officials (AASHTO)
444 North Capitol St. N.W., Suite 225
Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401.

Traffic Engineering Division (VDOT)
1401 E. Broad St.
Richmond, VA 23219

G. Land Use Permit Manual, 24VAC30-150.

[~~Asset Management~~ Maintenance] Division (VDOT)
1401 E. Broad St.
Richmond, VA 23219

H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004.

[~~Asset Management~~ Maintenance] Division (VDOT)
1401 E. Broad St.
Richmond, VA 23219

I. Highway Capacity Manual, 2000.

Transportation Research Board
500 Fifth Street, NW
Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155.

[~~Asset Management~~ Maintenance] Division (VDOT)

1401 E. Broad St.
Richmond, VA 23219

[K. Instructional and Informational Memorandum IIM-LD-227.3, eff. May 23, 2007.

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, VA 23219

L. Secondary Street Acceptance Requirements, 24VAC30-92, eff. March 9, 2009.

Maintenance Division (VDOT)
1401 E. Broad Street
Richmond, VA 23219]

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (24VAC30-73)

LUP-A - Land Use Permit Application (revised 1/2005).

LUP-SP - Land Use Permit Special Provisions (Notice of Permittee Liability) (revised 11/2007).

LUP-CSB - Land Use Permit Corporate Surety Bond (revised 1/2005).

LUP-LC - Land Use Permit Irrevocable Letter of Credit Bank Agreement (revised 1/2005).

LUP-SB - Land Use Permit Surety Bond (revised 1/2005).

VA.R. Doc. No. R09-1410; Filed August 24, 2009, 3:16 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Donnie C. Campbell, Sr.

An enforcement action has been proposed for Donnie C. Campbell, Sr., for alleged violations in Nelson County. Mr. Campbell is a poultry waste broker and failed to submit his poultry waste transfer records for 2008. A consent order with Mr. Campbell will collect a civil charge and require timely submittal of his poultry waste transfer records for 2009. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. David Robinett will accept comments by email (david.robinett@deq.virginia.gov), FAX ((540) 574-7878), or postal mail (Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for Centerville II, LLC

An enforcement action has been proposed for Centerville II, LLC, for alleged violations in Chesapeake, Virginia. A consent order describes a settlement to resolve unpermitted wetland impacts that occurred at the terminus of Kinderly Lane in the Charlestown Shores Subdivision. The order requires restoration and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email (daniel.vanorman@deq.virginia.gov), FAX ((757) 518-2009), or postal mail (Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462), from September 14, 2009, to October 14, 2009.

Total Maximum Daily Load for Chesapeake Bay

Public Meeting Locations: There will be a public meeting on Friday, October 2 from 1 p.m. to 4 p.m. via a video conference at the following Virginia Department of Environmental Quality locations:

Central Office, 629 E. Main St., Richmond, VA 23219 (meeting home site), telephone (804) 698-4000

Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120

Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3800

Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5020

Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2000

Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7800

There will also be a webinar for those interested in participating in the process but prefer not to travel to one of the meeting locations (refer to additional information below).

Purpose of notice: This notice announces the intent of the Environmental Protection Agency Region 3 (EPA) to establish a Chesapeake Bay-wide total maximum daily load (TMDL) for nutrients and sediment for all impaired segments in the tidal portion of the Chesapeake Bay watershed. This action is being taken pursuant to § 303(d) of the Clean Water Act (CWA). The Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation are cooperating with EPA to hold an initial public meeting to provide information to the public regarding the process, approach and implications of this action.

Description of study: EPA, in coordination with Bay watershed jurisdictions, will establish a TMDL pollution budget consistent with CWA requirements to guide and assist Chesapeake Bay restoration efforts. This action is designed to identify needed reductions of pollutant loads to the impaired waters in order to meet the appropriate water quality standards.

Additional information: Further information on this process and how the public can provide input can be found at the following EPA website: <http://www.epa.gov/chesapeakebaytmdl>. In addition, the DEQ website at www.deq.virginia.gov/tmdl contains information for connecting to the webinar link for the October 2 meeting presentations and will also be used to announce future meetings held in the Commonwealth during the development of the Chesapeake Bay TMDL.

Virginia contact for additional information: Arthur J. Butt, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, or P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4314, FAX (804) 698-4116, or email arthur.butt@deq.virginia.gov.

Proposed Consent Order for HMR, LLC

An enforcement action has been proposed for HMR, LLC, for alleged violations in Chester, Virginia. The State Water Control Board proposes to issue a consent special order to HMR, LLC, to address noncompliance with underground storage tank regulations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email (cynthia.akers@deq.virginia.gov), FAX ((804) 527-5106), or postal mail (Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060), from September 14, 2009, to October 14, 2009.

General Notices/Errata

Proposed Consent Order for Kevin Lucas

An enforcement action has been proposed for Kevin Lucas for alleged violations in Page County. Mr. Lucas is a poultry waste broker and failed to submit his poultry waste transfer records by February 15 for the calendar years 2005, 2006, 2007, and 2008. A consent order with Mr. Lucas will collect a civil charge and require timely submittal of his poultry waste transfer records for 2009. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. David Robinett will accept comments by email (david.robinett@deq.virginia.gov), FAX ((540) 574-7878), or postal mail (Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for NVP, Inc.

An enforcement action has been proposed for NVP, Inc. for alleged violations in Prince William County associated with the Ewell's Mill development project. The consent order describes a settlement to resolve unpermitted impacts taken to an intermittent stream channel associated with the Ewell's Mill development project. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email (daniel.burstein@deq.virginia.gov), FAX ((703) 583-3821), or postal mail (Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193), from September 14, 2009, to October 15, 2009.

Proposed Consent Order for Pro-Line Performance, Inc.

An enforcement action has been proposed for Pro-Line Performance, Inc., for an alleged violation in Franklin County, Virginia. The special order by consent will address and resolve an alleged violation of environmental law and regulations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email (jerry.ford@deq.virginia.gov), or postal mail (Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019), from September 15, 2009, to October 14, 2009.

Public Meeting - Restore Water Quality for Shellfish Growing Areas of the Rappahannock River

Public meeting: September 30, 2009, at the Old Beale Memorial Baptist Church at Courthouse Square, 202 Church Lane (at the corner of Church and Queen St) in Tappahannock, Virginia. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting

from 6 p.m. to 8 p.m. Parking is across the street from the church.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: First public meetings on a study to restore water quality for shellfish growing areas of the Rappahannock River near Tappahannock, Garret's Marina, and Mark Haven Beach that are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of these (tidal) creeks including their tributaries. These condemnations include a total area of approximately 9.7 square miles in portions of Essex, Richmond, Westmoreland, and Northumberland Counties. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	Counties Within Watershed	Area (miles ²)	Impairment
Upper Rappahannock River, Little Carter Creek, Jugs Creek	Essex, Richmond, Westmoreland, Northumberland	9.73	Shellfish Use (Fecal Coliform) bacteria
Mark Haven Beach	Essex	0.014	
Garret's Marina	Essex	0.029	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health - Division of Shellfish Sanitation, shellfish area condemnations and the possible sources of bacterial contamination. The study recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written 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 October 29, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, 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.

Proposed Consent Order for Rappahannock County Water and Sewer Authority

An enforcement action has been proposed for the Rappahannock County Water and Sewer Authority for alleged violations in Rappahannock County at the Sperryville Sewage Treatment Plant. The consent order describes a settlement to resolve permit effluent violations at the Sperryville Sewage Treatment Plant. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email (daniel.burstein@deq.virginia.gov), FAX ((703) 583-3821), or postal mail (Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193), from September 14, 2009, to October 15, 2009.

Proposed Consent Order for West Neck Properties, Inc.

An enforcement action has been proposed for West Neck Properties, Inc. for alleged violations in Virginia Beach, Virginia. A consent order describes a settlement to resolve wetland permit violations and unpermitted wetland impacts that occurred at the intersection of Indian River Road and West Neck Road in the Eagles Nest Subdivision. The order requires corrective action and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email (daniel.vanorman@deq.virginia.gov), FAX ((757) 518-2009), or postal mail (Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462), from September 14, 2009, to October 14, 2009.

Notice of Public Comment - Proposed Consent Order for Isle of Wight County, Virginia

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality with Isle of Wight County, Virginia.

Public comment period: September 14, 2009, to October 14, 2009.

Consent order description: The State Water Control Board proposes to issue a consent order to Isle of Wight County to address alleged violations of Virginia State Water Control Law. The consent order describes a settlement to resolve alleged violations of a special order by consent effective September 26, 2007, that Isle of Wight County entered into with the State Water Control Board.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: John M. Brandt, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2010, FAX (757) 518-2009, or email john.brandt@deq.virginia.gov.

Proposed Enforcement Action - Zotas Petroleums L.L.C.

An enforcement action has been proposed for Zotas Petroleums, L.L.C., for alleged violations at eight of its retail gasoline facilities in Chesterfield and Henrico counties. The action requires Zota to corrective action and payment of a civil charge. A copy of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email (felupini@deq.virginia.gov), FAX ((804) 527-5106), or postal mail (Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060), from September 14, 2009, to October 14, 2009.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on August 24, 2009.

Director's Order Number Sixty-Two (09)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on August 21, 2009.

Game 1104	Virginia's Lucky Dog
Game 1030	Super Cash Spectacular

The last day for lottery retailers to return for credit unsold tickets from any of these games will be September 25, 2009. The last day to redeem winning tickets for any of these games will be February 17, 2010, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of February 17, 2010, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the

General Notices/Errata

duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
August 20, 2009

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 20, 2009. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Fifty-Nine (09)

Virginia's Instant Lottery Game 1137 "Fast \$100's" (effective 8/14/09)

Director's Order Number Sixty (09)

Virginia's Instant Lottery Game 1146 "Virginia's Lucky Dog 2" (effective 8/14/09)

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Town of Appomattox

An enforcement action has been proposed for the Town of Appomattox for alleged violations at the town's water reclamation facility. The proposed enforcement action contains a schedule of compliance that details the corrective action required. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at (marvin.booth@deq.virginia.gov), FAX ((434) 582-5125), or postal mail at (Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502), from September 14, 2009, to October 15, 2009.

Proposed Consent Order for Bay Bridge Enterprises, LLC

An enforcement action has been proposed for Bay Bridge Enterprises, LLC, for alleged violations in the City of Chesapeake. The consent order describes a settlement to resolve the unpermitted discharge of oil to state waters and requires development and implementation of a corrective action plan and includes a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Mr. Paul Smith will accept comments by email (paul.smith@deq.virginia.gov), FAX ((757) 518-2009), or postal mail (Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for Hopewell Regional Wastewater Treatment Facility

An enforcement action has been proposed for Hopewell Regional Wastewater Treatment Facility for alleged violations at that facility in the City of Hopewell. The proposed consent order describes the alleged violations and requires corrective action and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Allison Dunaway will accept comments by email at (allison.dunaway@deq.virginia.gov), FAX ((804) 527-5106), or postal mail at (Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for Lakewood Partners, LLC

An enforcement action has been proposed for Lakewood Partners, LLC, for alleged violations at Lakewood Mobile Home Court in Halifax County. The proposed enforcement action contains a schedule of compliance that details the corrective action required. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at (marvin.booth@deq.virginia.gov), FAX ((434) 582-5125), or postal mail at (Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502), from September 14, 2009, to October 15, 2009.

Proposed Enforcement Action for Lyon Shipyard, Inc.

An enforcement action has been proposed for Lyon Shipyard, Inc., for alleged violations in the City of Norfolk. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System permit, unauthorized excavation in state waters, and the unauthorized deposit of excavated material adjacent to state

waters and requires development and implementation of a storm water pollution prevention plan and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Mr. Paul Smith will accept comments by email (paul.smith@deq.virginia.gov), FAX ((757) 518-2009), or postal mail (Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for Sandy Bottom Materials, Inc.

An enforcement action has been proposed for Sandy Bottom Materials, Inc., for alleged violations in the City of Suffolk. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System General Permit and the unauthorized filling of approximately 1,180 linear feet of stream and 0.92 acre of wetlands and requires development and implementation of a mitigation plan and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Mr. Paul Smith will accept comments by email (paul.smith@deq.virginia.gov), FAX ((757) 518-2009), or postal mail (Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462), from September 14, 2009, to October 14, 2009.

Proposed Consent Order for Tyson Foods, Inc. d/b/a Tyson Farms, Inc.

An enforcement action has been proposed for Tyson Foods, Inc. d/b/a Tyson Farms, Inc. for alleged violations at the Tyson plant in Hanover County. The proposed consent order describes the alleged violations and requires a civil charge and supplemental environmental project. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Allison Dunaway will accept comments by email at (allison.dunaway@deq.virginia.gov), FAX ((804) 527-5106), or postal mail at (Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060), from September 9, 2009, to October 14, 2009.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table can still be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumulstab.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.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

