



Virginia Register of Regulations

VOL. 26 ISS. 26

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 30, 2010

TABLE OF CONTENTS

Register Information Page	2863
Publication Schedule and Deadlines	2864
Petitions for Rulemaking	2865
Notices of Intended Regulatory Action	2866
Regulations	2867
9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (Forms)	2867
12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (Final).....	2870
12VAC5-371. Regulations for the Licensure of Nursing Facilities (Final)	2873
12VAC5-381. Regulations for the Licensure of Home Care Organizations (Final)	2876
12VAC5-391. Regulations for the Licensure of Hospice (Final).....	2878
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Final)	2881
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Final)	2882
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Final)	2883
18VAC90-20. Regulations Governing the Practice of Nursing (Proposed).....	2883
18VAC90-25. Regulations Governing Certified Nurse Aides (Proposed).....	2883
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Proposed)	2883
18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (Proposed)	2883
18VAC90-50. Regulations Governing the Certification of Massage Therapists (Proposed).....	2883
18VAC90-60. Regulations Governing the Registration of Medication Aides (Proposed).....	2883
18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (Proposed).....	2892
Governor	2899
General Notices/Errata	2901

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **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: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Jane M. Roush**; **Patricia L. West**.

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>).

August 2010 through August 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
26:26	August 11, 2010	August 30, 2010
27:1	August 25, 2010	September 13, 2010
27:2	September 8, 2010	September 27, 2010
27:3	September 22, 2010	October 11, 2010
27:4	October 6, 2010	October 25, 2010
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010
27:7	November 16, 2010 (Tuesday)	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 (Tuesday)	January 3, 2011
27:10	December 29, 2010	January 17, 2011
27:11	January 12, 2011	January 31, 2011
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 2. AGRICULTURE PESTICIDE CONTROL BOARD

Agency Decision

Title of Regulation: 2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Matt Crabbe, Crabbe Aviation, L.L.C.

Nature of Petitioner's Request: Requesting that the Virginia Pesticide Control Board prescribe additional experience requirements for certified commercial aerial applicators who are seeking to own and operate a commercial aerial pesticide application business. The petitioner proposes that the applicator have at least two years of experience in the field and a minimum of 300 hours performing actual aerial application.

Agency Decision: Request denied.

Statement of Reason for Decision: At its July 15, 2010, quarterly meeting the Pesticide Control Board denied this request. Reasons for the decision included the board's concern that this action would have a disparate impact on commercial aerial applicators who sought to operate a business vs. noncertified persons who could own and operate such a business while hiring qualified aerial applicators. The board also determined there did not appear to be a consensus among other state pesticide licensing agencies on this issue so that setting specific experience standards for aerial applicators ought to be determined by the Federal Aviation Agency and the Virginia Department of Aviation.

Agency Contact: Roy E. Seward, Jr., Regulatory Coordinator, Department of Agriculture and Consumer Services, Oliver W. Hill, Sr. Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3535, or email roy.seward@vdacs.virginia.gov.

VA.R. Doc. No. R10-50; Filed July 30, 2010, 5:08 p.m.

TITLE 9. ENVIRONMENT

AIR POLLUTION CONTROL BOARD

Agency Decision

Title of Regulation: None specified.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Name of Petitioner: Kenneth C. Strong.

Nature of Petitioner's Request: The State Air Pollution Control Board has received a petition to promulgate a new

regulation concerning ELF magnetic fields around outdoor overhead high-voltage electric power transmission lines. The petitioner states that an overhead high-voltage electric power transmission line conductor is a substance in the outdoor atmosphere that is or may be harmful to public health because of, but not limited to, the alternating motion of the conductor's electrons that establish an ELF magnetic field around the conductor. The petitioner asserts that ELF magnetic fields are possibly carcinogenic to humans, a reasonable precaution against exposures to the magnetic fields is necessary, and practices that encourage proximity to overhead transmission lines should be discouraged.

The specific requested regulation is:

For any outdoor overhead electric power transmission line 115 kilovolts or more, the owners of underlying real property and the transmission line company shall not grant permission for public recreational trails or public recreational areas within the company's right-of-way or within an area typical of company right-of-ways should no legal right-of-way agreement exist, except that necessary crossings are exempt from the rule.

A copy of the full petition is available from Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Agency Decision: Request denied.

Statement of Reason for Decision: At the State Air Pollution Control Board meeting on June 4, 2010, the board unanimously voted to deny the petitioner's request for rulemaking. The board's decision was based on the following:

1. Neither high-voltage electric power transmission lines nor the ELF magnetic fields generated by them are either a source of air pollutants or air pollutants in and of themselves. The board is restricted by statute to regulating air pollutants; it cannot regulate phenomena such as those identified by the petitioner.

2. The board has the authority to control pollutants emitted from a variety of sources; the board does not have the authority to control land use in proximity to a specific air pollution source. Such siting criteria and zoning issues are governed by other governmental agencies.

3. The State Corporation Commission is the entity responsible for approval of siting for electric power transmission lines. The board has no authority with respect to approval or regulation of siting for power lines.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

VA.R. Doc. No. R10-51; Filed August 8, 2010, 6:47 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Withdrawal of Notice of Intended Regulatory Action

The State Board of Education has WITHDRAWN the Notice of Intended Regulatory Action to promulgate **8VAC20-730, Regulations Governing Unexcused Absences and Truancy**, which was published 26:8 VA.R. 931 December 21, 2009. The board intends to reissue a Notice of Intended Regulatory Action in the future to establish regulations that govern the collection and reporting of truancy-related data.

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

VA.R. Doc. No. R10-2154; Filed July 23, 2010, 9:01 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: The following forms have been filed by the State Water Control Board. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.**

Agency Contact: Copies of the forms may be obtained from Betsy Bowles, Animal Feeding Operations Program Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, or email betsy.bowles@deq.virginia.gov.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (9VAC25-630)

~~Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 12/09).~~

Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 12/09).

Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 7/10).

Regulations

VIRGINIA DEQ REGISTRATION STATEMENT FOR VPA GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT FOR POULTRY GROWERS

For DEQ Use Only:

Accepted: Yes No

Initials: _____

Date: _____

PLEASE TYPE OR PRINT ALL INFORMATION ALL PARTS OF THIS FORM MUST BE COMPLETED

1. Poultry Grower Information	Name: _____
	Mailing Address: _____ Street
	City _____ State _____ Zip _____
	Business Phone _____ Mobile Phone _____ Home Phone _____
	E-Mail Address: _____
	The best day of the week & time to contact the poultry grower: _____ <input type="checkbox"/> AM Date _____ Time _____ <input type="checkbox"/> PM

2. Operator or Contact Person Information	Name: _____
	Business Phone _____ Mobile Phone _____ Home Phone _____
	E-Mail Address: _____
	The best day of the week & time to contact the operator or contact person: _____ <input type="checkbox"/> AM Date _____ Time _____ <input type="checkbox"/> PM

3. Farm or Facility Information	Farm Name: _____							
	Location: _____							
	Is this a contract operation? YES ___ NO ___ Poultry Integrator: (if applicable) _____							
	Does the facility have an existing VPA permit? YES ___ NO ___ Permit Number: _____							
	Are new poultry growing houses under construction or planned for construction? YES ___ NO ___							
	Types of poultry and the maximum numbers of each type that will be grown at the facility at any one time:							
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; border-bottom: 1px solid black;"><u>Poultry Type</u></th> <th style="text-align: center; border-bottom: 1px solid black;"><u>Maximum Number</u></th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black; height: 20px;"> </td> <td style="border-bottom: 1px solid black; height: 20px;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black; height: 20px;"> </td> <td style="border-bottom: 1px solid black; height: 20px;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black; height: 20px;"> </td> <td style="border-bottom: 1px solid black; height: 20px;"> </td> </tr> </tbody> </table>	<u>Poultry Type</u>	<u>Maximum Number</u>					
<u>Poultry Type</u>	<u>Maximum Number</u>							
Identify the method of dead bird disposal: _____								

4. **Attachments:** the following items must accompany this completed Registration Statement: (see instructions)
- a copy of the nutrient management plan approved by the Department of Conservation and Recreation (DCR).
 - a copy of the DCR nutrient management plan approval letter which also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

5. **Certification:** "I certify that for any confined poultry feeding operation that proposes construction of new poultry growing houses, notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted.

I certify under penalty of law that all the requirements of the Board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Signature _____ Printed Name _____ Date _____

RS VPG2 07/10

REGISTRATION STATEMENT INSTRUCTIONS
VPA GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT FOR
POULTRY GROWERS

General

A Registration Statement must be submitted when a confined poultry feeding operation makes application to the Department of Environmental Quality for coverage under the VPA General Permit for Poultry Waste Management. Contact the nearest DEQ regional office if you have questions about filing this form.

Section 1 Poultry Grower Information

Give the name, mailing address, telephone numbers and e-mail address (if available) of the person to whom this permit will be issued. Please provide the best day of the week and time for DEQ to make contact with the grower during regular working hours.

Section 2 Operator or Contact Person Information

If there is a person other than the grower who manages daily activities at the operation being permitted or who should be contacted for site visits, give that person's name, phone numbers and e-mail address (if available). If these are the same as the grower information, write "SAME AS ABOVE". Please provide the best day of the week and time for DEQ to make contact with the operator or contact person during regular working hours.

Section 3 Farm or Facility Information

Give the name of the farm. Give the location for the confined poultry feeding operation other than the grower's mailing address (e.g. Rt. 653, 1 mile west of Rt. 702). Indicate whether the facility operates under a contract with a poultry integrator. If applicable, give the name of the integrator. List the number of any expiring or currently effective permits issued to the poultry feeding operation under the VPA permit program.

New Construction

Indicate if you are building or plan to build new poultry growing houses at this operation. Note that growers who are building new growing houses must notify all owners or occupants of property bordering the operation, including land where litter will be spread, that they are applying for coverage under the general permit. This notice must include the types and maximum number of poultry on the operation and the address and phone number of the DEQ regional office to which they can send comments relative to the operation's ability to comply with the permit. DEQ must allow 30 days from the date you file the registration statement for comments to be submitted and considered. Failure to provide this notice to neighboring property owners/occupants will invalidate your coverage under the general permit if you are going to build new growing houses. The notice is not required if new houses are not going to be constructed.

This permit has the following restriction on the siting of new growing houses: "New, expanded or replacement poultry growing houses that are constructed after December 1, 2000 shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures."

Animal Information

Indicate the type of poultry (i.e. layers, broilers, pullets, turkeys, etc.) grown at this operation and the maximum numbers of each type that the operation will have at any one time.

Method of Dead Bird Disposal

Indicate how daily mortalities are disposed of. Note that while composting, incineration, rendering and burial are allowable methods of disposal under the Code of Virginia, operations that use burial for disposal of daily mortalities are not allowed coverage under the general permit. They will have to apply for an individual VPA permit. Contact DEQ for further information if you use burial for disposal of daily mortalities. Burial of entire flocks under §3.2-6002 of the Code of Virginia and burial of partial flocks under the Solid Waste Management Act (§ 10.1-1400) are allowed under the general permit.

Section 4 Attachments**a. Nutrient Management Plan (NMP)**

State law requires that every poultry feeding operation seeking coverage under the VPA general permit have a Nutrient Management Plan. A copy of the operation's Nutrient Management Plan must be attached to the Registration Statement; however, if a current NMP is on file at the DEQ regional office then it is not necessary to attach the NMP.

b. NMP Approval Letter

A copy of the letter from the Virginia Department of Conservation and Recreation approving the operation's NMP and certifying that the NMP was developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia must be attached to the Registration Statement. However, if a current NMP approval letter is on file at the DEQ regional office then it is not necessary to attach the NMP approval letter.

Section 5 Certification

The Certification must bear an original signature in ink, photocopies are not acceptable. State statutes provide for severe penalties for submitting false information on this Registration Statement. State regulations require this Registration Statement to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

RS VPG2 07/10

VA.R. Doc. No. R10-2547; Filed August 4, 2010, 8:24 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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 State Board of Health will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-220. **Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-110, 12VAC5-220-200).**

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Effective Date: September 30, 2010.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendments increase the capital expenditure threshold for projects requiring a certificate of public need in accordance with § 32.1-102.1 of the Code of Virginia, which requires an annual revision to reflect inflation. Using the Consumer Price Index published by the U.S. Department of Labor, the capital expenditure threshold for projects requiring registration increased to \$5,548,790, and those projects requiring the filing of an application increased to \$16,646,371.

12VAC5-220-110. Requirements for registration of certain capital expenditures.

At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is ~~\$5 million~~ \$5,548,790 or more but is less than ~~\$16,083,450~~ \$16,646,371 and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in this chapter shall register in writing such expenditure with the commissioner. The format for registration shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner

shall include any person making the affected capital expenditure. See definition of "project."

12VAC5-220-200. One hundred ninety-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 190-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12VAC5-220-200.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/Obstetrical Services/Neonatal Special Care Services	Feb. 10 Aug. 10	Aug. 18 Feb. 16
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	Sep. 16 Mar. 19
C	Psychiatric Facilities/Substance Abuse Treatment/Mental Retardation Facilities	Apr. 10 Oct. 10	Oct. 17 Apr. 18
D/F	Diagnostic Imaging Facilities/Services Selected Therapeutic Facilities/Services	May 10 Nov. 10	Nov. 16 May 19
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Dec. 17 Jun. 18
D/F	Selected Therapeutic Facilities/Services Diagnostic Imaging Facilities/Services	July 10 Jan. 10	Jan. 16 Jul. 18
G	Nursing Home Beds at Retirement Communities/Bed Relocations/Miscellaneous Expenditures by Nursing Homes	Jan. 10 Mar. 10 May 10 July 10 Sep. 10 Nov. 10	Jul. 18 Sep. 16 Nov. 16 Jan. 16 Mar. 19 May 19

Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical

facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more (see 12VAC5-220-280).

4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services that the facility has not provided in the previous 12 months.

5. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.

3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services that the facility has not provided in the previous 12 months.

4. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization.

5. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

6. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, that is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

2. An increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more (see 12VAC5-220-280).

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service that the facility has not provided in the previous 12 months.

6. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A and B or Batch Groups D/F through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.

7. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A through B or Batch Groups D/F through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging services, except for the purpose of nuclear cardiac imaging that the facility has not provided in the previous 12 months.

3. The addition by an existing medical care facility of any equipment for the provision of computed tomography

Regulations

(CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning.

4. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except that portion of a physician's office dedicated to providing nuclear cardiac imaging.

5. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.
2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.
3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility that is not a dedicated medical rehabilitation hospital.
4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more (see 12VAC220-280).
5. The introduction into an existing medical care facility of any new medical rehabilitation service that the facility has not provided in the previous 12 months.
6. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical rehabilitation hospital.
7. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical care facility, that is primarily related to the provision of medical rehabilitation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services that the facility has not provided in the previous 12 months.

3. The addition by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

4. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

5. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

2. The establishment of a nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.

3. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

4. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.

5. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more (see 12VAC5-220-280).

6. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, which does not increase the total number of beds of the facility.

7. Any capital expenditure of ~~\$16,083,450~~ \$16,646,371 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a medical care facility, that is primarily related to the provision of nursing home, intermediate care, or extended care services, and does not increase the number of beds of the facility.

VA.R. Doc. No. R10-2459; Filed July 29, 2010, 10:32 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The 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: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-10, 12VAC5-371-340).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: September 30, 2010.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

Summary:

These amendments are technical in nature to refer to applicable citations in the Code of Virginia and for consistency within the regulation as recommended by the Attorney General's Government and Regulatory Reform Task Force.

Part I

Definitions and General Information

12VAC5-371-10. Definitions.

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

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish, or deprivation by an individual, including caretaker, of goods or services that are necessary to attain or maintain physical, mental, and

psychosocial well-being. This includes verbal, sexual, physical or mental abuse.

"Administrator" means the individual licensed by the Virginia Board of Long-Term Care Administrators and who has the necessary authority and responsibility for management of the nursing facility.

"Admission" means the process of acceptance into a nursing facility, including orientation, rules and requirements, and assignment to appropriate staff. Admission does not include readmission to the facility after a temporary absence.

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

"Assessment" means the process of evaluating a resident for the purpose of developing a profile on which to base services. Assessment includes information gathering, both initially and on an ongoing basis, designed to assist the multi-disciplinary staff in determining the resident's need for care, and the collection and review of resident-specific data.

"Attending physician" means a physician currently licensed by the Virginia Board of Medicine and identified by the resident, or legal representative, as having the primary responsibility in determining the delivery of the resident's medical care.

"Board" means the Board of Health.

"Certified nurse aide" means the title that can only be used by individuals who have met the requirements to be certified, as defined by the Virginia Board of Nursing, and who are listed in the nurse aide registry.

"Chemical restraint" means a psychopharmacologic drug (a drug prescribed to control mood, mental status, or behavior) that is used for discipline or convenience and not required to treat medical symptoms or symptoms from mental illness or mental retardation that prohibit an individual from reaching his highest level of functioning.

"Clinical record" means the documentation of health care services, whether physical or mental, rendered by direct or indirect resident-provider interactions. An account compiled by physicians and other health care professionals of a variety of resident health information, such as assessments and care details, including testing results, medicines, and progress notes.

"Commissioner" means the State Health Commissioner.

"Complaint" means any allegation received by the Department of Health other than an incident reported by the facility staff. Such allegations include, but are not limited to,

Regulations

abuse, neglect, exploitation, or violation of state or federal laws or regulations.

"Comprehensive plan of care" means a written action plan, based on assessment data, that identifies a resident's clinical and psychosocial needs, the interventions to meet those needs, treatment goals that are measurable and that documents the resident's progress toward meeting the stated goals.

"Construction" means the building of a new nursing facility or the expansion, remodeling, or alteration of an existing nursing facility and includes the initial and subsequent equipping of the facility.

"Department" means the Virginia Department of Health.

"Dignity" means staff, in their interactions with residents, carry out activities which assist a resident in maintaining and enhancing the resident's self-esteem and self-worth.

"Discharge" means the process by which the resident's services, delivered by the nursing facility, are terminated.

"Discharge summary" means the final written summary of the services delivered, goals achieved and post-discharge plan or final disposition at the time of discharge from the nursing facility. The discharge summary becomes a part of the clinical record.

"Drug" means (i) articles or substances recognized in the official United States "Drug" Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or other animal; and (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii). This does not include devices or their components, parts or accessories.

"Emergency preparedness plan" means a component of a nursing facility's safety management program designed to manage the consequences of natural disasters or other emergencies that disrupt the nursing facility's ability to provide care.

"Employee" means a person who performs a specific job function for financial remuneration on a full-time or part-time basis.

"Full-time" means a minimum of 35 hours or more worked per week in the nursing facility.

"Guardian" means a person legally invested with the authority and charged with the duty of taking care of the resident, managing his property and protecting the rights of the resident who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs.

The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the resident in need of a guardian has been determined to be incapacitated.

"Medication" means any substance, whether prescription or over-the-counter drug, that is taken orally or injected, inserted, topically applied, or otherwise administered.

"Neglect" means a failure to provide timely and consistent services, treatment or care to a resident or residents that are necessary to obtain or maintain the resident or residents' health, safety or comfort; or a failure to provide timely and consistent goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Nursing facility" means any ~~institution or any identifiable component of any institution, nursing home~~ as defined in § 32.1-123 of the Code of Virginia, ~~with permanent facilities that include inpatient beds, whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of individuals who may require various types of long term care, including facilities known by varying nomenclature or designation such as convalescent homes, nursing homes, nursing or nursing care facilities, skilled nursing or skilled care facilities, intermediate care facilities or extended care facilities.~~

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Person" means any individual, corporation, partnership, association, trust, or other legal entity, whether governmental or private, owning, managing, or operating a nursing facility.

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

"Policy" means a written statement that describes the principles and guides and governs the activities, procedures and operations of the nursing facility.

"Procedures" means a series of activities designed to implement program goals or policy, which may or may not be written, depending upon the specific requirements within this chapter. For inspection purposes, there must be evidence that procedures are actually implemented.

"Progress note" means a written statement, signed and dated by the person delivering the care, consisting of a pertinent, chronological report of the resident's care. A progress note is a component of the clinical record.

"Qualified" means meeting current legal requirements of licensure, registration or certification in Virginia; having appropriate training and experience commensurate with assigned responsibilities; or, if referring to a professional,

possessing an appropriate degree or having documented equivalent education, training or experience.

"Quality assurance" means systematic activities performed to determine the extent to which clinical practice meets specified standards and values with regard to such things as appropriateness of service assignment and duration, appropriateness of facilities and resources utilized, adequacy and clinical soundness of care given. Such activities should also assure changes in practice that do not meet accepted standards. Examples of quality assurance activities include the establishment of facility-wide goals for resident care, the assessment of the procedures used to achieve the goals, and the proposal of solutions to problems in attaining those goals.

"Readmission" means a planned return to the nursing facility following a temporary absence for hospitalization, off-site visit or therapeutic leave, or a return stay or confinement following a formal discharge terminating a previous admission.

"Resident" means the primary service recipient, admitted to the nursing facility, whether that person is referred to as a client, consumer, patient, or other term.

"Responsible person or party" means an individual authorized by the resident to act for him as an official delegate or agent. The responsible person may be a guardian, payee, family member or any other individual who has arranged for the care of the resident and assumed this responsibility. The responsible person or party may or may not be related to the resident. A responsible person or party is not a guardian unless so appointed by the court.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, face-to-face guidance and instruction.

"Volunteer" means a person who, without financial remuneration, provides services to the nursing facility.

Part IV
Support Services

12VAC5-371-340. Dietary and food service program.

A. The dietary and food service operation shall meet all applicable sections of 12VAC5-421.

B. There shall be a food ~~service~~ protection manager, qualified as allowed in 12VAC5-421-60, responsible for the full-time management and supervision of the dietary service.

C. If the food ~~service supervisor~~ protection manager is not a dietitian qualified according to § 54.1-2731 of the Code of Virginia, the nursing facility shall have a written agreement for ongoing consultation from a registered dietitian who meets the qualifications of § 54.1-2731 of the Code of Virginia to provide guidance to the food ~~service supervisor~~ protection manager on methods for maintaining the dietary

service, planning of nutritionally balanced meals, and assessing the dietary needs of individual residents.

D. The dietitian's duties shall include the following:

1. Developing all menus, including therapeutic diets prescribed by a resident's physician;
2. Developing, revising, and annually reviewing dietary policies, procedures and job descriptions;
3. Assisting in planning and conducting regularly scheduled inservice training that includes, but is not limited to:
 - a. Therapeutic diets;
 - b. Food preparation requirements; and
 - c. Principles of sanitation.
4. Visiting residents on a regular basis to discuss nutritional problems, depending upon their needs and level of care, and recommending appropriate solutions.

E. Menus shall meet the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, as adjusted for age, sex, and activity.

F. A copy of a diet manual containing acceptable practices and standards for nutrition must be kept current and on file in the dietary department.

G. Food service shall be staffed for not less than 12 hours during the day and evening. Duty schedules shall be retained for at least 30 days.

H. At least three meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's clinical record.

I. A between meal snack of nutritional value shall be available upon request to each resident or in accordance with their plan of care.

J. Therapeutic diets shall be prepared and served as prescribed by the attending physician.

K. Visitors or employees assigned to other duties in the nursing facility shall not be allowed in the food preparation area during food preparation and resident meal service hours, except in cases of emergency.

L. Weekly menus, including therapeutic diets, substitutes, and copies of menus, as served, shall be retained on file for 12 months.

M. Disposable dinnerware or tableware shall be used only for emergencies, for infection control, as part of special activities, or as indicated in a resident's plan of care.

VA.R. Doc. No. R10-2463; Filed July 29, 2010, 10:33 a.m.

Regulations

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-381. Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-170, 12VAC5-381-180, 12VAC5-381-200).

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Effective Date: September 30, 2010.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230-4920, telephone (804) 367-2102, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

Summary:

Based on a recommendation of the Attorney General's Government and Regulatory Reform Task Force, the technical amendment to 12VAC5-381-170 removes the expired deadline for qualifying individuals designated by January 1, 2006, to perform the home care organization administrator's duties in his absence. The amendments to 12VAC5-381-180 and 12VAC5-381-200 reflect changes to § 32.1-162.9:1 of the Code of Virginia by Chapter 415 of the 2010 Acts of Assembly related to home care organizations developing policies for maintaining a drug-free workplace and reporting positive results of any drug test administered to the appropriate health regulatory board of the Department of Health Professions.

12VAC5-381-170. Administrator.

A. The governing body shall appoint as administrator an individual who has evidence of at least one year of training and experience in direct health care service delivery with at least one year within the last five years of supervisory or administrative management experience in home health care or a related health program.

B. The administrator shall be responsible for the day-to-day management of the organization, including but not limited to:

1. Organizing and supervising the administrative function of the organization;
2. Maintaining an ongoing liaison with the governing body, the professional personnel and staff;

3. Employing qualified personnel and ensuring adequate staff orientation, training, education and evaluation;

4. Ensuring the accuracy of public information materials and activities;

5. Implementing an effective budgeting and accounting system;

6. Maintaining compliance with applicable laws and regulations and implementing corrective action in response to reports of organization committees and regulatory agencies;

7. Arranging and negotiating services provided through contractual agreement; and

8. Implementing the policies and procedures approved by the governing body.

C. The individual designated to perform the duties of the administrator when the administrator is absent from the organization shall be able to perform the duties of the administrator as identified in subsection B of this section.

~~Organizations shall have one year from January 1, 2006, to ensure that individuals currently designated are qualified.~~

D. The administrator or his designee shall be available at all times during operating hours and for emergency situations.

12VAC5-381-180. Written policies and procedures.

A. The organization shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval, as necessary.

C. Administrative and operational policies and procedures shall include, but are not limited to:

1. Administrative records;
2. Admission and discharge or termination from service criteria;
3. Informed consent;
4. Advance directives, including Durable Do Not Resuscitate Orders;
5. Client rights;
6. Contract services;
7. Medication management, if applicable;
8. Quality improvement;
9. Mandated reporting of abuse, neglect and exploitation pursuant to § 63.2-1606 of the Code of Virginia;
10. Communicable and reportable diseases;
11. Client records, including confidentiality;

12. Record retention, including termination of services;
13. Supervision and delivery of services;
14. Emergency and on-call services;
15. Infection control;
16. Handling consumer complaints;
17. Telemonitoring; and
18. Approved variances.

D. Financial policies and procedures shall include, but are not limited to:

1. Admission agreements;
2. Data collection and verification of services delivered;
3. Methods of billing for services by the organization and by contractors;
4. Client notification of changes in fees and charges;
5. Correction of billing errors and refund policy; and
6. Collection of delinquent client accounts.

E. Personnel policies and procedures shall include, but are not limited to a:

1. Written job description that specifies authority, responsibility, and qualifications for each job classification;
2. Process for maintaining an accurate, complete and current personnel record for each employee;
3. Process for verifying current professional licensing or certification and training of employees or independent contractors;
4. Process for annually evaluating employee performance and competency;
5. Process for verifying that contractors and their employees meet the personnel qualifications of the organization;
6. Process for obtaining a criminal background check and maintaining a drug-free workplace pursuant to § 32.1-162.9:1 of the Code of Virginia; and
7. Process for reporting licensed and certified medical personnel for violations of their licensing or certification to the appropriate board within the Department of Health Professions.

F. Admission and discharge or termination from service policies and procedures shall include, but are not limited to:

1. Criteria for accepting clients for services offered;
2. The process for obtaining a plan of care or service;

3. Criteria for determining discharge or termination from each service and referral to other agencies or community services; and

4. Process for notifying clients of intent to discharge/terminate or refer, including:

- a. Oral and written notice and explanation of the reason for discharge/termination or referral;
- b. The name, address, telephone number and contact name at the referral organization; and
- c. Documentation in the client record of the referral or notice.

G. Policies shall be made available for review, upon request, to clients and their designated representatives.

H. Policies and procedures shall be readily available for staff use at all times.

12VAC5-381-200. Personnel practices.

A. Personnel management and employment practices shall comply with applicable state and federal laws and regulations.

B. The organization shall design and implement a staffing plan that reflects the types of services offered and shall provide qualified staff in sufficient numbers to meet the assessed needs of all clients.

C. Employees and contractors shall be licensed or certified as required by the Department of Health Professions.

D. The organization shall design and implement a mechanism to verify professional credentials.

E. Any person who assumes the responsibilities of any staff position or positions shall meet the minimum qualifications for that position or positions.

F. The organization shall obtain the required sworn statement and criminal record check for each compensated employee as specified in § 32.1-162.9:1 of the Code of Virginia.

G. Each employee position shall have a written job description that includes:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills, and abilities or professional qualifications required for entry level.

H. Employees shall have access to their current position description. There shall be a mechanism for advising employees of changes to their job responsibilities.

Regulations

I. New employees and contract individuals shall be oriented commensurate with their function or job-specific responsibilities. Orientation shall include:

1. Objectives and philosophy of the organization;
2. Confidentiality;
3. Client rights;
4. Mandated reporting of abuse, neglect, and exploitation;
5. Applicable personnel policies;
6. Emergency preparedness procedures;
7. Infection control practices and measures;
8. Cultural awareness; and
9. Applicable laws, regulations, and other policies and procedures that apply to specific positions, specific duties and responsibilities.

J. The organization shall develop and implement a policy for evaluating employee performance.

K. Individual staff development needs and plans shall be a part of the performance evaluation.

L. The organization shall provide opportunities for and record participation in staff development activities designed to enable staff to perform the responsibilities of their positions.

M. All individuals who enter a client's home for or on behalf of the organization shall be readily identifiable by employee nametag, uniform or other visible means.

N. The organization shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

O. Employee personnel records, whether hard copy or electronic, shall include:

1. Identifying information;
2. Education and training history;
3. Employment history;
4. Results of the verification of applicable professional licenses or certificates;
5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;
6. Results of performance evaluations;
7. A record of disciplinary actions taken by the organization, if any;
8. A record of adverse action by any licensing bodies and organizations, if any;

9. A record of participation in staff development activities, including orientation; and

10. The criminal record check and sworn affidavit.

~~P.~~ P. All positive results from drug testing shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any, pursuant to § 32.1-162.9:1 of the Code of Virginia.

~~Q.~~ Q. Each employee personnel record shall be retained in its entirety for a minimum of three years after termination of employment.

~~R.~~ R. Personnel record information shall be safeguarded against loss and unauthorized use.

~~S.~~ S. Employee health-related information shall be maintained separately within the employee's personnel file.

VA.R. Doc. No. R10-2460; Filed July 29, 2010, 10:33 a.m.

Final Regulation

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

Title of Regulation: **12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-10, 12VAC5-391-40).**

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: September 30, 2010.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA, telephone (804) 367-5100, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendments to 12VAC5-391-10 are technical in nature and refer to applicable citations from the Code of Virginia as recommended by the Attorney General's Government and Regulatory Reform Task Force. The amendment to 12VAC5-391-40 reflects changes to § 32.1-162.2 of the Code of Virginia by Chapter 790 of the 2010 Acts of Assembly that extended licensure exemption to hospice programs accredited by national accrediting organizations recognized by the Centers for Medicare and Medicaid.

Part I
Definitions and General Information

12VAC5-391-10. Definitions.

The following words and terms when used in these regulations shall have the following meaning unless the context clearly indicates otherwise.

"Activities of daily living" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his supervision or (ii) the patient at the direction and in the presence of the practitioner as defined in § 54.1-3401 of the Code of Virginia.

"Administrator" means a person designated, in writing, by the governing body as having the necessary authority for the day-to-day management of the hospice program. The administrator must be a member of the hospice staff. The administrator, director of nursing, or another clinical director may be the same individual if that individual is dually qualified.

"Attending physician" means a physician licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the patient as having the primary responsibility in determining the delivery of the patient's medical care. The responsibilities of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Available at all times during operating hours" means an individual is available on the premises or by telecommunications.

"Barrier crimes" means certain offenses specified in § 32.1-162.9:1 of the Code of Virginia that automatically bar an individual convicted of those offenses from employment with a hospice program.

"Bereavement service" means counseling and support offered to the patient's family after the patient's death.

"Commissioner" means the State Health Commissioner.

"Coordinated program" means a continuum of palliative and supportive care provided to a terminally ill patient and his family, 24 hours a day, seven days a week.

"Core services" means those services that must be provided by a hospice program. Such services are: (i) nursing services, (ii) physician services, (iii) counseling services, and (iv) medical social services.

"Counseling services" means the provision of bereavement services, dietary services, spiritual and any other counseling services for the patient and family while the person is enrolled in the program.

"Criminal record report" means the statement issued by the Central Criminal Records Exchange, Virginia Department of State Police.

"Dedicated hospice facility" means an institution, place, or building providing room, board, and appropriate patient care 24 hours a day, seven days a week to individuals diagnosed with a terminal illness requiring such care pursuant to a physician's orders.

"Dispense" means to deliver a drug to the ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery as defined in § 54.1-3401 of the Code of Virginia.

"Employee" means an individual who is appropriately trained and performs a specific job function for the hospice program on a full or part-time basis with or without financial compensation.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the hospice program.

"Home attendant" means a nonlicensed individual performing personal care and environmental services, under the supervision of the appropriate health professional, to a patient in the patient's residence. Home attendants are also known as certified nursing assistants or CNAs, home care aides, home health aides, and personal care aides.

~~"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs that are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available 24 hours a day, seven days a week hospice as defined in § 32.1-162.1 of the Code of Virginia.~~

"Inpatient" means services provided to a hospice patient who is admitted to a hospital or nursing facility on a short-term basis for the purpose of curative care unrelated to the diagnosed terminal illness. Inpatient does not mean services provided in a dedicated hospice facility.

"Interdisciplinary group" means the group responsible for assessing the health care and special needs of the patient and the patient's family. Providers of special services, such as mental health, pharmacy, and any other appropriate

Regulations

associated health services may also be included on the team as the needs of the patient dictate. The interdisciplinary group is often referred to as the IDG.

"Licensee" means a licensed hospice program provider.

"Medical director" means a physician currently licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, and responsible for the medical direction of the hospice program.

"Medical record" means a continuous and accurate documented account of services provided to a patient, including the prescription and delivery of the treatment or care.

"Nursing services" means the patient care performed or supervised by a registered nurse according to a plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity responsible for the day-to-day administrative management and operation of the hospice.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process. Palliative care means treatment to enhance comfort and improve the quality of a patient's life during the last phase of his life.

"Patient" means a ~~diagnosed terminally ill individual, with an anticipated life expectancy of six months or less, who, alone or in conjunction with designated family members or representatives, has voluntarily requested admission and been accepted into a licensed hospice program~~ hospice patient as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's family" means ~~the hospice patient's immediate kin, including spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the patient's family by mutual agreement among the patient, the relation or individual~~ a hospice patient's family as defined in § 32.1-162.1 of the Code of Virginia.

"Patient's residence" means the place where the individual or patient makes his home.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a hospice.

"Plan of care" means a written plan of services developed by the interdisciplinary group to maximize patient comfort by symptom control to meet the physical, psychosocial, spiritual

and other special needs that are experienced during the final stages of illness, during dying, and bereavement.

"Primary caregiver" means an individual that, through mutual agreement with the patient and the hospice program, assumes responsibility for the patient's care.

"Progress note" means a documented statement contained in a patient's medical record, dated and signed by the person delivering the care, treatment or service, describing the treatment or services delivered and the effect of the care, treatment or services on the patient.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of care and services, pursue opportunities to improve care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing services to meet the needs of patients and their families.

"Staff" means an employee who receives financial compensation.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular face-to-face guidance and instruction.

"Terminally ill" means a medical prognosis that life expectancy is six months or less if the illness runs its usual course.

"Volunteer" means an employee who receives no financial compensation.

12VAC5-391-40. Exemption from licensure.

~~A. According to § 32.1-162.2 of the Code of Virginia, this chapter is not applicable to a hospice established or operated for the practice of religious tenets of any recognized church or denomination that provides care and treatment for the sick by spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation. Such a hospice shall comply with the statutes and regulations governing environmental protection and life safety. This chapter is not applicable to hospice programs described in § 32.1-162.2 of the Code of Virginia.~~

B. The hospice program must file a request for exemption from licensure in writing to the director of the OLC. The request shall contain documentation explaining the hospice program's relationship to the practice of religious tenets of a recognized church or denomination.

C. The hospice program shall be notified in writing that the exemption from licensure has been registered.

D. Exempt hospice programs shall remain subject to complaint investigations in keeping with state law.

VA.R. Doc. No. R10-2462; Filed July 29, 2010, 10:33 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

REGISTRAR'S NOTICE: For the following regulations the Board of Funeral Directors and Embalmers 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 Funeral Directors and Embalmers will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-152).

Statutory Authority: §§ 54.1-2400 and 54.1-2816.1 of the Code of Virginia.

Effective Date: September 29, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Summary:

The regulation is amended to conform to § 54.1-2816.1 of the Code of Virginia, which specifies that continuing education providers must maintain certificates issued to licensees for a period of two years following each course offered. 18VAC65-20-152 requires continuing education providers to retain documentation for three years; therefore, the regulation is amended to require document retention for two years.

18VAC65-20-152. Continuing education providers.

A. Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

1. Local, state or federal government agencies;
2. Regionally accredited colleges and universities; or
3. Board-recognized national, regional, state and local associations or organizations as follows:

- a. National Funeral Directors Association and state chapters;
- b. National Funeral Directors and Morticians Association and state chapters;
- c. Association of Independent Funeral Homes of Virginia;
- d. Cremation Association of North America;
- e. American Board of Funeral Service Education;
- f. International Conference of Funeral Service Examining Boards;
- g. Virginia Morticians Association; and
- h. Other similar associations or organizations as approved by action of the board.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit 60 days prior to offering a continuing education course:

- a. Documentation of an instructional plan and course objectives for continuing education courses that meet the criteria set forth in 18VAC65-20-151 B;
- b. A syllabus of the course or courses to be offered with the credentials of the course instructors, a description of each session, including number of continuing education hours; and
- c. The continuing education provider fee set forth under 18VAC65-20-70.

2. Board approval of continuing education providers under this subsection shall expire on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the provider fee as required by the board.

3. Continued approval of a continuing education provider may be granted without submission of the provider fee if the provider submits a statement that courses and instructors offered for the coming year will not change from the previous year. If there will be additions or alterations to the continuing education offerings of a provider, resubmission of documentation and a provider fee is required.

C. Continuing education providers approved under subsection A or B of this section shall:

1. Maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of ~~three~~ two years;

Regulations

2. Monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and
3. Provide a certificate of completion for licensees who successfully complete a course.

VA.R. Doc. No. R10-2458; Filed August 11, 2010, 9:39 a.m.

Final Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-500).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Effective Date: September 29, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Summary:

The regulation is amended to conform the unprofessional conduct provisions relating to the inappropriate handling and storage of dead human bodies to § 54.1-2811.1 of the Code of Virginia as enacted by Chapter 823 of the 2010 Acts of Assembly.

Part VI

Refusal, Suspension, Revocation, and Disciplinary Action

18VAC65-20-500. Disciplinary action.

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
2. Unfair competition.
 - a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.
 - b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.
3. False advertising.
 - a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the

public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 of the Code of Virginia and regulations of the board. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

VA.R. Doc. No. R10-2544; Filed August 10, 2010, 9:40 a.m.

Final Regulation

Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (repealing 18VAC65-20-530).

Statutory Authority: § 54.1-2400 and Chapter 28 (§ 54.1-2800) of Title 54.1 of the Code of Virginia.

Effective Date: September 29, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Summary:

Section 54.1-2811.1 of the Code of Virginia, added by the 2010 General Assembly, specifies in subsection B that a dead human body shall be maintained in refrigeration and shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order. Therefore, the regulation authorizing a funeral establishment to proceed with embalming absent express permission is in direct conflict with changes in the law and is repealed.

18VAC65-20-530. Documentation of embalming. (Repealed.)

~~A licensee who proceeds with an embalming without prior approval from a family member or other person shall document in writing the reasons for the proceeding, the efforts made to contact the family or authorized person and the licensee authorizing the embalming. Subsequently, approval for the embalming shall be obtained from a family member or other authorized person.~~

VA.R. Doc. No. R10-2531; Filed August 11, 2010, 9:39 a.m.

BOARD OF NURSING

Proposed Regulation

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

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

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

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

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

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

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

Public Hearing Information:

September 14, 2010 - 11 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Avenue, Suite 201, Richmond, VA

Public Comment Deadline: November 12, 2010.

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

Basis: Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system and to levy fees. The specific regulatory mandate for an increase in fees is found in § 54.1-113 of the Code of Virginia.

Purpose: The issue to be addressed is the need of the Board of Nursing to increase its fees to cover expenses for essential functions of licensure, investigation of complaints, and adjudication of disciplinary cases to ensure minimal competency for persons licensed, certified, or registered by the board. The board also reviewed and considered expenditures relating to initial or continued approval of nursing education programs.

The scope of the board's regulatory responsibility includes the following 12 occupations or entities with approximately 182,000 licensees, certificate holders, and registrants:

- Registered nurses
- Licensed practical nurses
- Licensed nurse practitioners
- Authorization to prescribe
- Clinical nurse specialists
- Certified nurse aides
- Advanced nurse aides
- Medication aides
- Certified massage therapists
- Virginia professional schools of nursing
- Virginia practical schools of nursing
- Volunteer registration

Section 54.1-113 of the Code of Virginia requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. By the close of FY10, it is projected that the

Regulations

Board of Nursing (in the combined budgets of Nursing and Certified Nurse Aides) will have \$10,879,889 in expenses and only \$8,359,143 in revenue. With a modest surplus carried forward from previous years, the board is expected to end the fiscal year with a deficit of \$687,532 by June 30, 2010, and will continue to build increasing deficits through the fiscal years going forward. Since the fees from regulants will no longer generate sufficient funds to pay operating expenses for the board, promulgation of regulations for a fee increase is essential. To begin to reduce the deficits and have sufficient funding for the operation of the board by calendar year 2011, amendments to regulations must be adopted at the earliest possible date.

Fee increases for licensees regulated by the Board of Nursing are necessary in order for the board and the Department of Health Professions to continue performing essential functions of licensing, certifying, or registering new practitioners, and protecting the public from continued practice by incompetent or unethical practitioners. Since the Board of Nursing is the only health regulatory board with a statutory responsibility for approval of education programs, it must also have additional revenue to support functions related to assuring that new and existing nursing education programs meet minimal standards.

Substance: The Board of Nursing is proposing amendments to increase fees charged to regulants and applicants and to establish new fees to cover the cost of continued approval of nursing education programs. Biennial renewal fees would be increased as follows: (i) registered nurses, \$45; (ii) licensed practical nurses, \$25; (iii) licensed nurse practitioners, \$30; (iv) certified massage therapists, \$25; and (v) clinical nurse specialists, \$20.

For initial approval of a nursing education program, there is an increase of \$450 in the application fee. Fees for survey visits to nursing education programs (\$2,200) and site visits for failure to achieve 80% NCLEX passage rates (\$1,500) would be added in amounts sufficient to offset the board's expenses for such visits.

For certified nurse aides, the board proposes to change the renewal cycle from biennial (current fee of \$50) to annual (proposed fee of \$30). The annual fee for medication aides would also be raised by \$5.00 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions, are increased proportionally.

Issues: The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall at \$687,532 at the end of FY10 and projected to increase to almost \$13.5 million in FY14, there could be significant delays in (i) licensing new nurses, CNA's, medication aides, and nurse practitioners, and (ii) the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in biennial

renewal fees ranging from \$25 to \$45 for nurses and in annual renewal fees for CNA's and medication aides should not significantly impact the cost of nursing care for Virginians.

There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.

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

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to increase most fees paid by licensees, registrants, and certificate holders that are subject to the Board's authority and to establish new fees to cover the cost of continued approval of nursing education programs.

Result of Analysis. There is insufficient information to accurately gauge whether benefits are likely to outweigh costs for these proposed changes.

Estimated Economic Impact. Under current regulations, registered nurses (RNs) and licensed practical nurses (LPN) pay the same licensure fees. Currently, schools that are planning on starting a nursing education program, and are applying for Board approval, must currently submit, at least 12 months in advance of the expected opening, a statement of intent and \$1,200 application fee.

With these proposed regulations, the Board intends to separate most licensure fees paid by RNs from those paid by LPNs (all fees except the fee for reinstatement of a suspended or revoked license), raise the application fee for approval of nursing programs and establish new fees for survey visits for nursing program that are being newly approved and site visits for nursing programs whose NCLEX (National Council Licensure Examination) passage rates fall below 80%. Board staff reports that these new fees are needed to cover the costs associated with required staff on-site visits. The Board also proposes to raise all fees set in chapter 18 VAC 90-20 except the fee on returned checks. Below is a comparison table for current and proposed fees:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Application for Licensure by Examination RN	\$130	\$190	46.15%
Application for Licensure by Endorsement RN	\$130	\$190	46.15%

Regulations

Application for Licensure by Examination LPN	\$130	\$170	30.77%	Transcript of All or Part of Applicant/ Licensee Records	\$25	\$35	40%
Application for Licensure by Endorsement LPN	\$130	\$170	30.77%	Returned Check Charge	\$35	\$35	unchanged
Reapplication for Licensure by Examination	\$25	\$50	100%	Application of Clinical Nurse Specialist (CNS) Registration	\$95	\$130	36.84%
Biennial License Renewal RN	\$95	\$140	47.36%	Biennial Renewal of CNS Registration	\$60	\$80	33.33%
Biennial Inactive License Renewal RN	\$50	\$70	40%	Reinstatement of Lapsed CNS Registration	\$105	\$125	19.05%
Biennial License Renewal LPN	\$95	\$120	26.32%	Verification of CNS Registration to Another Jurisdiction	\$25	\$35	40%
Biennial Inactive License Renewal LPN	\$50	\$60	20%	Late Renewal of CNS Registration	\$20	\$35	75%
Late Renewal RN	\$35	\$50	42.86%	Application for Approval of a Nursing Education Program	\$1,200	\$1,650	37.5%
Late Renewal LPN	\$35	\$40	14.29%	Survey Visit For Nursing Education Program	N/A	\$2,200	New Fee
Reinstatement of Lapsed License RN	\$145	\$225	55.17%	Site Visit for NCLEX Passage Rate for Nursing Education Program	N/A	\$1,500	New Fee
Reinstatement of Lapsed License LPN	\$145	\$200	37.93%				
Reinstatement of a Suspended or Revoked License	\$185	\$300	62.16%				
Duplicate License	\$5	\$15	200%				
Replacement Wall Certificate	\$15	\$25	66.67%				
Verification of License	\$25	\$35	40%				

The Board also proposes to require certified nurse aides to renew their certification annually, rather than biennially, and proposes to change the renewal fee from \$50 every two years to \$30 every year. This change will affectively raise the cost of renewal by \$10 (20%) every two years. Additionally, the Board proposes to raise fees in 18 VAC 90-30 (covering nurse practitioners), 18 VAC 90-40 (covering prescriptive authority for nurse practitioners), 18 VAC 90-50 (covering certified massage therapists) and 18 VAC 90-60 (medication aides).

Regulations

Below is a comparison table of current and proposed fees for nurse practitioners:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Application for Licensure	\$85	\$125	47.06%
Biennial Licensure Renewal	\$50	\$80	60%
Late Renewal	\$20	\$25	30.77%
Reinstatement of Licensure	\$85	\$150	76.47%
Reinstatement of Suspended or Revoked License	\$85	\$200	135%
Verification of Licensure to Another Jurisdiction	\$25	\$35	40%
Duplicate License	\$5	\$15	200%
Duplicate Wall Certificate	\$15	\$25	66.67%
Returned Check Charge	\$35	\$35	unchanged

A comparison table of current and proposed fees for prescriptive authority:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Initial Issuance of Prescriptive Authority	\$50	\$75	50%
Biennial Renewal	\$25	\$35	40%
Late Renewal	\$25	\$30	20%
Reinstatement of Lapsed Authorization	\$60	\$90	50%
Reinstatement of Revoked or Suspended Authorization	\$85	\$85	unchanged
Duplicate of Authorization	\$5	\$15	200%
Returned Check Charge	\$35	\$35	unchanged

And a comparison table of current and proposed fees for massage therapists:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Application and Initial Certification	\$105	\$140	33.33%
Biennial Renewal	\$70	\$95	35.71%
Late Renewal	\$25	\$30	20%
Reinstatement of Certification	\$120	\$150	25%
Reinstatement after Revocation or Suspension	\$150	\$200	33.33%
Duplicate Certificate	\$5	\$15	200%
Replacement Wall Certificate	\$15	\$25	66.67%
Verification of Certification	\$25	\$35	40%
Transcript of All or Part of Applicant/ Certificate Holder Records	\$25	\$35	40%
Returned Check Charge	\$35	\$35	unchanged

The Board proposes to increase the annual renewal fee (from \$25 to \$30) and the duplicate registration fee (from \$5 to \$15) for medication aides.

Board staff reports that the Board expects to run a deficit of \$687,532 for FY2010 and that, absent approval of these fee increases, there will be deficit spending through the fiscal years going forward. Board staff further reports that these fee increases are needed to cover 1) the costs associated with the increased number of disciplinary actions, particularly involving certified nurse aides, 2) the costs associated with on-site inspections of nursing education programs for which the Board is currently not reimbursed and 3) increasing costs for information technology (IT) services.

Board staff reports that investigation of voluminous complaints against certified nurse aides has increased the Board's disciplinary costs. The Board feels, however that trying to only adjust certified nurse aide fees to pay for these increased costs would have a significant and chilling effect on individuals' decisions to work in this field. The Board, instead, proposes to increase all nursing fees incrementally to cover these costs. As an alternative to the portion of fee increases that will be used to cover increased disciplinary costs, the Board may wish to consider measures that have costs falling

to certified nurse aides or their employers. The Board might, for instance, look in to requiring employers of certified nurse aides to carry surety bonds that would make them responsible for poor behavior on the part of their employees. Such an action would likely require the cooperation of other regulatory bodies in the Commonwealth that set requirements for facilities that hire certified nurse aides.

The Department of Health Professions (DHP) reports that a portion of the expected expenditure increases over their forecast horizon are needed to cover increased costs for services from the Virginia Information Technologies Agency (VITA). DHP reports that its VITA services costs have almost doubled over the last two years, and are expected to increase approximately \$500,000 this year. For comparison, DHPs VITA expenditures for FY 2005 were, in total, \$476,600. For FY 2010, the agency has budgeted \$1,587,788 for VITA costs.. A large portion of the increase in costs, at least for FY 2010 and FY 2011, can be attributed to the planned move of DHPs licensing servers from DHP to Northrop Grumman. DHP anticipates that this will increase the costs for maintaining these servers by approximately \$80,000 per month (\$960,000 per year). The Board is and will be responsible for a proportional share of these costs. Although it is likely beyond the capacity of DHP to control the very rapid growth of these costs, licensees of this Board (and all other DHP boards) would benefit from increased scrutiny of services provided to DHP through VITA.

The Board does not believe that these fee increases are large enough to affect either regulated entities choice to be employed in their current fields or the cost of nursing care in Virginia. One would expect to see, however, some marginal decrease in the number of individuals choosing to be licensed, certified or registered as the cost of licensure, certification and registration increases even if those increases are moderate. Particularly, individuals who are making little to no extra money at the tasks licensed, certified, and registered by the Board, when compared to their next best option for employment, will likely choose their next best option if their costs for doing their current jobs increase. To the (likely minimal) extent that individuals who are currently licensed or registered find that these proposed fee increases cause them to leave their current professions, total employment for this group in these professions may decrease by some small amount.

Businesses and Entities Affected. DHP reports that the Board currently regulates 91,316 registered nurses, 29,828 licensed practical nurses, 5,887 licensed nurse practitioners (3,456 of whom are authorized to prescribe medication), 5,335 certified massage therapists, 436 clinical nurse specialists, 3,577 medication aides, 46,281 certified nurse aides, 99 advanced certified nurse aides, 68 professional schools of nursing and 80 practical schools of nursing. All of these entities, as well as any individuals or entities who may wish to become

licensed, certified or registered 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. This regulatory action may decrease the number of individuals who choose to work in professional fields that are regulated by the Board.

Effects on the Use and Value of Private Property. To the extent that the proposed fee increases for nursing schools increase costs for affected proprietary nursing schools, profits will likely decrease. If this happens, the value of these businesses will marginally decrease. Proposed fee increases that would affect only new nursing schools may slightly decrease the chance of new programs starting in the future.

Small Businesses: Costs and Other Effects. DHP reports that there are 13 proprietary RN programs and 23 proprietary LPN programs in the Commonwealth; all of these are likely small businesses. Existing nursing program small businesses in the Commonwealth will incur costs for increased fees only if the NCLEX passage rates of their graduates fall below 80%.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate the necessity of raising fees overall (including fees that fall on proprietary nursing schools). The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Affected small businesses would also likely benefit from increased scrutiny of the IT costs that are driving increases in both agency and Board expenditures.

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

Regulations

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 Board of Nursing does not concur with the analysis of the Department of Planning and Budget for the proposed amendments to Regulations of the Board of Nursing, to increase fees for the following reasons:

1) The Board does not agree that sharply higher fees for certified nurse aides might have an ameliorative effect on the poor behavior of this group.

- There is absolutely no historic evidence for any health regulatory board to support the assertion that a sharp increase in fees would cause the professionals to police themselves and the behavior of their cohorts. On July 14, 2004, there was a 36% increase in the renewal fees for registered nurses. For the fiscal year ending June 30, 2005, number of complaints per 1,000 licensees for registered nurses was 5.21; for the fiscal year ending June 30, 2006, the number per 1,000 was 5.64.

- While there are a large number of complaints filed and disciplinary proceedings held for certified nurse aides, the rate of complaints is far less than many other professions. During the 2007-08 fiscal year, the complaint rate for certified nurse aides was 9.95 per 1,000; for licensed practical nurses, the rate was 13.15 and for nurse practitioners, the rate was 13.25. There are a large number of cases because there are a large number of certified nurse aides (typically 42,000 to 43,000).

- The problem is that the Board of Nursing is not permitted by federal law to charge a fee to place a person on the Nurse Aide Registry (charge an application fee), and the profession is not highly compensated so its renewal fees alone cannot support the disciplinary and administrative costs of operation. Other similar professions, such as pharmacy technicians, do not support the activities associated with investigating and disciplining the profession with their renewal fees alone.

2) The Board has no authority to consider measures that would pass on the costs for the nurse aide registry to the employers, as is suggested in the EIA. Further, the purchase of a surety bond, as recommended in the EIA, could not accrue to the budget of the Board. A surety bond protects against financial losses to the facility or institution making

such a purchase; it would not make them responsible for poor behavior on the part of their employees.

3) In order to make fees for certified nurse aides sufficient to cover expenditures related to that portion of the budget, the current fee of \$50 per biennium would need to be increased to approximately \$170, just to offset the accumulated shortfall. That action would likely deplete the workforce that primarily provides care in all long-term care facilities and many other patient settings.

4) The EIA notes that one would expect to see some marginal decrease in the number of individuals choosing to be licensed, certified or registered affecting total employment in these professions. In 2003 and 2004, there was a substantial increase in fees for nurses; yet the number of licensed nurses increased from 122,653 in FY03 to 126,454 in FY04 and 127,858 in FY05. Clearly, there are factors other than a biennial renewal fee that determine licensure and employment in a health care profession such as nursing.

Summary:

The proposed amendments would increase fees charged to regulants and applicants and establish new fees to cover the cost of continued approval of nursing education programs. Biennial renewal fees for registered nurses would be increased by \$45 and for licensed practical nurses by \$25. For initial approval of a nursing education program, there would be an increase in the application fee of \$450. Fees for survey visits and site visits to nursing education programs would be added in amounts sufficient to offset the board's expenses for such visits.

Similar increases are proposed for clinical nurse specialists, licensed nurse practitioners, and certified massage therapists. For certified nurse aides, the board proposes to change the renewal cycle from a biennial cycle (current fee of \$50) to an annual cycle (proposed fee of \$30). The annual fee for medication aides would also be raised by \$5.00 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions would be increased proportionally.

18VAC90-20-30. Fees.

Fees required by the board are:

1. Application for licensure by examination - <u>RN</u>	\$130 <u>\$190</u>
2. Application for licensure by endorsement - <u>RN</u>	\$130 <u>\$190</u>
3. Application for licensure by examination - <u>LPN</u>	<u>\$170</u>
4. Application for licensure by endorsement - <u>LPN</u>	<u>\$170</u>
3. <u>5.</u> Reapplication for licensure by	\$25 <u>\$50</u>

examination	
4. <u>6.</u> Biennial licensure renewal - RN	\$95 <u>\$140</u>
<u>7.</u> Biennial inactive licensure renewal - RN	<u>\$70</u>
<u>8.</u> Biennial licensure renewal - LPN	<u>\$120</u>
<u>9.</u> Biennial inactive licensure renewal - LPN	<u>\$60</u>
5. <u>10.</u> Late renewal - RN	\$35 <u>\$50</u>
<u>11.</u> Late renewal - LPN	<u>\$40</u>
6. <u>12.</u> Reinstatement of lapsed license - RN	\$145 <u>\$225</u>
<u>13.</u> Reinstatement of lapsed license - LPN	<u>\$200</u>
7. <u>14.</u> Reinstatement of suspended or revoked license	\$185 <u>\$300</u>
8. <u>15.</u> Duplicate license	\$5 <u>\$15</u>
9. <u>16.</u> Replacement wall certificate	\$15 <u>\$25</u>
10. <u>17.</u> Verification of license	\$25 <u>\$35</u>
11. <u>18.</u> Transcript of all or part of applicant/licensee records	\$25 <u>\$35</u>
12. <u>19.</u> Returned check charge	\$ <u>\$35</u>
13. <u>20.</u> Application for CNS registration	\$95 <u>\$130</u>
14. <u>21.</u> Biennial renewal of CNS registration	\$60 <u>\$80</u>
15. <u>22.</u> Reinstatement of lapsed CNS registration	\$105 <u>\$125</u>
16. <u>23.</u> Verification of CNS registration to another jurisdiction	\$25 <u>\$35</u>
17. <u>24.</u> Late renewal of CNS registration	\$20 <u>\$35</u>
18. <u>Inactive licensure renewal</u>	\$ <u>\$50</u>
19. <u>Late renewal of an inactive license</u>	\$ <u>\$15</u>
<u>25.</u> <u>Application for approval of a nursing education program</u>	<u>\$1,650</u>
<u>26.</u> <u>Survey visit for nursing education program</u>	<u>\$2,200</u>
<u>27.</u> <u>Site visit for NCLEX passage rate for nursing education program</u>	<u>\$1,500</u>

Part II
Nursing Education Programs

Article 1
Establishing a Nursing Education Program

18VAC90-20-40. Application.

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

1. Submit to the board, at least 12 months in advance of expected opening date, a statement of intent to establish a nursing education program along with an application fee of ~~\$1,200~~ as prescribed in 18VAC90-20-30.

2. Submit to the board evidence documenting adequate resources for the projected number of students and the ability to provide a program that can meet the requirements of Article 2 (18VAC90-20-70 et seq.) of this part to include the following information:

a. Organizational structure of the institution and relationship of nursing program therein;

b. Purpose and type of program;

c. Availability of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;

d. Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision;

e. Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program;

f. Availability of academic facilities for the program, including classrooms, laboratory, and library;

g. Evidence of financial resources for the planning, implementation and continuation of the program with budget projections for three years;

h. Tentative time schedule for planning and initiating the program; and

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

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

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

C. The Education Special Conference Committee (the "committee"), composed of not less than two members of the board, shall, in accordance with § 2.2-4019 of the Code of

Regulations

Virginia, receive and review applications and the report of the site visit and shall make recommendations to the board regarding the granting or denial of approval of the program application.

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

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

18VAC90-20-60. Program approval.

A. The application for approval shall be complete when:

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

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

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

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

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

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

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

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

program falls below 80% for three consecutive years, the board may withdraw program approval.

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

Article 3

Maintaining or Closing an Approved Nursing Education Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Renewal of certification.

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

2. The certified nurse aide shall annually submit a completed renewal application with the required fee of ~~\$50~~ \$30 and verification of performance of nursing-related activities for compensation within the two years immediately preceding the expiration date.

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

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

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

B. Reinstatement of certification.

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

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

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

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

18VAC90-30-50. Fees.

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

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

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

The following fees have been established by the boards:

1. Initial issuance of prescriptive authority	\$50 <u>\$75</u>
2. Biennial renewal	\$25 <u>\$35</u>
3. Late renewal	\$10 <u>\$15</u>
4. Reinstatement of lapsed authorization	\$60 <u>\$90</u>
5. Reinstatement of suspended or revoked authorization	\$85
6. Duplicate of authorization	\$5 <u>\$15</u>
7. Return check charge	\$35

Regulations

18VAC90-50-30. Fees.

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

B. Fees required by the board are:

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

18VAC90-60-30. Fees.

A. The following fees shall apply:

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

B. Fees shall not be refunded once submitted.

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

VA.R. Doc. No. R10-2131; Filed August 11, 2010, 4:31 p.m.

BOARD OF VETERINARY MEDICINE

Proposed Regulation

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-75, 18VAC150-20-100, 18VAC150-20-220).

Statutory Authority: §§ 54.1-2400 and 54.1-3813 of the Code of Virginia.

Public Hearing Information:

October 20, 2010 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: October 29, 2010.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system and to levy fees. The specific regulatory mandate for an increase in fees is found in § 54.1-113 of the Code of Virginia.

Purpose: The issue to be addressed is the need of the Board of Veterinary Medicine to increase fees to cover expenses for the essential functions of licensure, investigation of complaints against licensees and facilities, adjudication of disciplinary cases, and inspections required for public safety in the care of animals in the Commonwealth.

Section 54.1-113 of the Code of Virginia requires, at the end of each biennium, an analysis of revenues and expenditures of each regulatory board so that each board has sufficient revenue to cover its expenditures. By the close of the 2008 fiscal year, the Board of Veterinary Medicine had incurred a deficit of \$148,069, and will continue to have deficits through the fiscal years going forward. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the board, a fee increase is essential. To begin to reduce the deficits and have sufficient funding for the operation of the board, amendments must be adopted at the earliest possible date or by the renewal of licenses in December 2010 for the board to have sufficient funding to carry out its responsibilities. Without action on fee increases, the shortfall is projected to increase to \$1.4 million by FY2014, which would seriously impact the boards ability to investigate complaints, adjudicate disciplinary cases, and issue new licenses.

Delays in licensing and investigation could place the animal population in Virginia at health risk as veterinarians who should not be practicing would continue to practice and the

supply of new licensees and facilities needed for the animal health system would be delayed or curtailed.

Substance: The amendment to 18VAC150-20-75 will allow a license to be renewed with payment of a late fee for up to one year after the expiration date; thereafter, the license must be reinstated. Currently, a license must be reinstated after it is lapsed for 30 days. New language will stipulate that (i) a license shall automatically lapse if the licensee fails to renew by the expiration date; and (ii) the practice of veterinary medicine without a current, active license is unlawful and may subject the licensee to disciplinary action by the board.

Fees are listed in 18VAC150-20-100 with renewal fees increased by the following amounts: (i) veterinarians, \$40 per year; (ii) veterinary technicians, \$20 per year; (iii) veterinary establishments, \$60 per year; and (iv) equine dental technicians, \$20 per year. Other fees are increased proportionally. For the renewal cycle ending January 1, 2013, there would be a one-time debt reduction assessment as follows:

Veterinary license (active)	\$100
Veterinary technician license	\$50
Veterinary establishment	\$200
Equine dental technician	\$50

With the assumption that increased fees would be in effect by December 2010 and with the one-time assessment in place in renewal year 2012, the cash balances would be projected as follows:

Cash Balance as of June 30, 2008	\$148,069
Cash Balance as of June 30, 2009	231,128
Cash Balance as of June 30, 2010	429,954
Projected Cash Balance as of June 30, 2011	394,286
Projected Cash Balance as of June 30, 2012	396,766
Projected Cash Balance as of June 30, 2013	162,549
Projected Cash Balance as of June 30, 2014	\$137,070

The amendment to 18VAC150-20-220 will allow a equine dental technician registration to be renewed with payment of a late fee for up to one year after the expiration date; thereafter, the license must be reinstated. Currently, a license must be reinstated after 30 days.

Issues: The primary advantage to the public is that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall at \$231,128 at the end of FY09 and projected to increase to \$1.4 million in FY14, there could be significant delays in licensing new veterinarians and facilities and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in annual renewal fees ranging from

\$20 to \$60 should not impact the cost of veterinary care for Virginians.

There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.

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

Summary of the Proposed Amendments to Regulation. The Board of Veterinary Medicine (Board) proposes to increase the fees paid by licensees and increase the time allowed for regulated entities to renew their licenses after expiration from 30 days to a year.

Result of Analysis. Benefits likely outweigh costs for one of these proposed changes. For the rest of these proposed changes, there is insufficient information to accurately gauge whether benefits are likely to outweigh costs.

Estimated Economic Impact. Currently, regulated entities may renew their licenses for up to 30 days after they expire so long as they pay both the renewal fee and the late renewal fee. The Board proposes to extend the deadline for late renewal to one year (one renewal cycle) with payment of the renewal fee and the late renewal fee. This change will benefit licensees who are more than 30 days late, but not more than one year late, renewing their licenses, because they will not have to get approval of the Board or pay the higher reinstatement fee to do so. No entity is likely to be harmed by this change because individuals whose licenses have lapsed will still not be able to practice before they reactivate their licenses (no matter when that happens).

The Board also intends to separate initial licensure fees from license renewal fees, combine fees for reinstatement (renewal and reinstatement fees) into one fee, raise all but four of the fees (the equine dental technician initial registration fee, the equine dental technician reinstatement fee, the duplicate wall certificate fee and the returned check fee) in the fee schedule and impose a one-time debt reduction assessment for all licensees. Although the reinstatement fees paid by veterinarians and veterinary technicians are increasing, the total amount that they will pay for reinstatement, when compared to the combined renewal and reinstatement fees that they pay now, is either decreasing or increasing much less on a proportional basis than other fees. The Department of Health Professions (DHP) reports that this change will bring these fees into general alignment with the formula for reinstatement fees that is used by most other DHP Boards. Below is a comparison table for current and proposed fees:

Regulations

FEE TYPE	CURRENT FEE(S)	PROPOSED FEE	% INCREASE				
Veterinary Initial Application for Licensure	\$135	\$200	48.15%	Initial Veterinary Establishment Permit Registration	\$200	\$300	50%
Veterinary License Renewal (active)	\$135	\$175	29.63%	Veterinary Establishment Renewal	\$140	\$200	42.86%
Veterinary License Renewal (Inactive)	\$65	\$85	30.77%	Veterinary Establishment Late Renewal	\$45	\$75	66.67%
Veterinary Reinstatement of Expired License	\$175+\$135=\$310	\$255	-17.74%	Veterinary Establishment Reinstatement	\$100+\$140=\$240	\$350	45.83%
Veterinary License Late Renewal	\$45	\$60	33.33%	Veterinary Establishment Re-Inspection	\$200	\$300	50%
Veterinary Reinstatement After Disciplinary Action	\$300+\$135=\$435	\$450	3.45%	Veterinary Establishment Change of Location	\$200	\$300	50%
Veterinary Technician Initial Application for Licensure	\$30	\$65	117%	Veterinary Establishment Change of Veterinarian-in-Charge	\$30	\$40	33.33%
Veterinary Technician License Renewal (active)	\$30	\$50	66.67%	Equine Dental Technician Initial Registration	\$100	\$100	unchanged
Veterinary Technician License Renewal (inactive)	\$15	\$25	66.67%	Equine dental technician Registration Renewal	\$50	\$70	40%
Veterinary Technician License Late Renewal	\$15	\$20	33.33%	Equine Dental Technician Late Renewal	\$20	\$25	25%
Veterinary Technician Reinstatement of Expired License	\$50+\$30=\$80	\$95	18.75%	Equine Dental Technician Reinstatement	\$120	\$120	unchanged
Veterinary Technician Reinstatement After Disciplinary Action	\$75+\$30=\$105	\$125	19.05%	Duplicate License	\$10	\$15	50%
				Duplicate Wall Certificate	\$25	\$25	unchanged
				Returned Check	\$35	\$35	unchanged
				Licensure Verification to Another Jurisdiction	\$15	\$25	66.67%

In addition to the fee increases listed above, the Board proposes to impose a one-time debt reduction assessment on licensees and registrants for the renewal cycle that begins January 1, 2013. Under this assessment, veterinarians will

pay \$100 with an extra \$60 due if the assessment is paid after January 1, 2013. Veterinary technicians and equine dental technicians will pay \$50 with \$20 extra due if the assessment is paid late. Veterinary establishments will pay \$200 with \$75 extra due on late payments.

Board staff estimates that the Board will run deficits of \$429,954 for FY2010 and, assuming fee increases are effective by December 2010, \$394,286 for FY2011. Staff estimates have the Board's budget in deficit until FY2013 when the one-time assessment will be collected. Board staff arrived at these estimates by holding the number of licensees and registrants in different categories roughly constant and multiplying these numbers by the expected fees. Implicit in this methodology is the assumption that the magnitude of these fee increases, combined with the one-time assessments, is not great enough to affect regulated entities decisions to become or remain licensed. One would expect to see, however, some marginal decrease in the number of individuals choosing to be licensed or registered as the cost of licensure and registration increases even if those increases are moderate. Particularly, individuals who are making little to no extra money at the tasks licensed, or registered by the Board, when compared to their next best option for employment, will likely choose their next best option if their costs for doing their current jobs increase. To the (likely minimal) extent that individuals who are currently licensed or registered find that these proposed fee increases cause them to leave their current professions, total employment for this group in these professions may decrease by some small amount.

Board staff reports that most of the expected expenditure increases over their forecast horizon are needed to cover increased costs for services from the Virginia Information Technologies Agency (VITA). DHP reports that its VITA services costs have almost doubled over the last two years, and are expected to increase approximately \$500,000 this year. For comparison, DHPs VITA expenditures for FY 2005 were, in total, \$476,600. For FY 2010, the agency has budgeted \$1,587,788 for VITA costs. A large portion of the increase in costs, at least for FY 2010 and FY 2011, can be attributed to the planned move of DHPs licensing servers from DHP to Northrop Grumman. DHP anticipates that this will increase the costs for maintaining these servers by approximately \$80,000 per month (\$960,000 per year). The Board is and will be responsible for a proportional share of these costs. Although it is likely beyond the capacity of DHP to control the very rapid growth of these costs, licensees of this Board (and all other DHP boards) would benefit from increased scrutiny of services provided to DHP through VITA.

To the extent that Board estimates of revenues and expenditures are correct, these fee increases and the planned one-time assessment will allow the Board to decrease and then eliminate deficit spending. Given the costs that regulated entities will incur on account of the proposed fee increases

and the proposed assessment, the Board may wish to consider some alternative regulatory amendments that might decrease, but likely not eliminate, the need for increasing fees.

The Board could, for instance, amend these regulations so that license and registration renewal is required biennially rather than annually. Such a change would cut roughly in half the variable costs associated with license/registration renewal. DHP has, however, expressed reservations about the effects that might accrue if licensees were subject to biennial renewal. They report that most costs for renewal are fixed since most renewals are handled electronically so cost reductions for such a change would be minimal. DHP further reports that cost savings would mostly consist of reductions in staff time needed to update the Boards lists of licensees/registrants. Given DHPs increasing VITA costs, however, one would expect to also see reductions in IT costs if licensees are using DHPs IT resources to fill out and file renewal documentation only half as frequently and a lesser proportion of staffs use of IT services can be attributed to this particular Board. Without further information on the specific contractual obligations between VITA and DHP, the magnitude of such IT cost avoidance is unknown. DHP also reports that changing to biennial renewal would also make it more difficult for Board staff to accurately forecast revenues. Nonetheless, it is likely worthwhile to consider a move to biennial renewal, not only because it has the potential to save (some) costs for the Board but also because regulated entities would likely benefit from reduced paperwork/time costs if they are renewing their licenses/registrations half as frequently.

Businesses and Entities Affected. DHP reports that the Board currently licenses/registers 3,576 veterinarians, 1,370 veterinary technicians, 938 veterinary establishments and 23 equine dental technicians. All of these entities, as well as any individuals who may wish to become licensed or registered 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. This regulatory action may decrease the number of individuals who choose to work as veterinarians, veterinary technicians, and equine dental technicians, as well as the number of veterinary establishments operating in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that these proposed fee increases and assessments increase costs for affected small businesses, profits will likely decrease. If this happens, the value of these businesses will marginally decrease.

Small Businesses: Costs and Other Effects. Affected small businesses in the Commonwealth will incur the cumulative costs of licensure fees and assessments that will increase on account of this regulatory action.

Regulations

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. The Board may also wish to consider amending these regulations so that license and registration renewal is required biennially rather than annually. Such a change would cut roughly in half the staff time and other costs associated with license/registration renewal without adversely affecting the public or applicants for initial licensure or registration. Affected small businesses would also likely benefit from increased scrutiny of the IT costs that are driving the rapid increase in both agency and Board expenditures.

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, Section 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 Analysis: The Board of Veterinary Medicine does not concur with the analysis of the Department of Planning and Budget for the proposed amendments to 18VAC150-20-10, Regulations Governing the Practice of Veterinary Medicine, to increase fees for the following reasons:

1) The board takes issue with the assumption that there will be a decrease in the number of individuals licensed or registered. Historically, that has not been the case with fee increases for this and other boards.

- The last fee increase for veterinary medicine was effective January 15, 2003; there were 4,840 licensees in 2002 and 4,938 as of 2004, an increase rather than decrease in numbers. The current number is 5,670.

- Veterinarians require four years of postgraduate doctoral work to receive their professional doctoral degree. The national average salary of a first year veterinarian is \$50,000 and the national average annual salary for a veterinarian is \$84,000. It is highly unlikely that even a trained veterinarian would abandon eight years of college and an annual salary of over \$50,000 because of an annual licensure renewal fee of \$175 and a one-time assessment of \$100. The annual renewal fee and assessment total only 0.3% of the average salary of a veterinarian.

- Veterinary technicians require an associate degree from an American Veterinary Medical Association program in veterinary technology. The national average salary of a veterinary technician is \$37,000. It is highly unlikely in today's economy that a gainfully employed veterinary technician would abandon their profession because of renewal fee of \$50 and a one-time assessment of \$50. The annual renewal fee and assessment total only 0.3% of the average salary of a veterinary technician.

2) While the EIA is correct that VITA services have almost doubled over the last two years and are expected to increase on average \$500,000 per year, the agency does not anticipate that total VITA costs will more than double from the FY10 to FY14.

3) In particular, the board does not agree that a biennial renewal could reduce costs.

- The Board of Veterinary Medicine is staffed by one full-time operations manager and one part-time assistant; this two-person minimal staffing level is essential to perform the day-to-day functions of the board and would not be affected by a biennial renewal. At least 65% of costs for operation of a board at the Department of Health Professions is related to investigation and adjudication of disciplinary matters; none of those costs would be affected by a change in the renewal schedule.

- There would be no reduction in IT costs as stated in the EIA. The agency IT costs through VITA are not transaction-based, so accessing and filing a renewal online does not result in additional IT costs. The Department of Health Professions does not have a contract with VITA, so there are no contractual obligations as stated in the EIA.

- There would be little or no benefit from reduced paperwork, since 96% of this boards licensees renew electronically.
- With a biennial renewal, the board would lose a renewal fee from a licensee who relocated out of state, retires or changes professions during the two-year period. The board is likely to capture more renewal fees with annual renewals than biennial renewals.
- Records maintained for emergency contacts by the Department of Health (rabies outbreak, etc.) are typically updated at the time of renewal. Biennial renewal would make those records and licensee information maintained by the board less accurate.

4) The board is continuing to actively pursue expense reductions, but it is impossible to reduce expenses sufficiently to alleviate the accumulated shortfall. To the extent possible, the board will likely use any savings realized to reduce the amount of the one-time assessment proposed in this action.

Summary:

The proposed amendments increase fees charged to regulants and applicants of the Board of Veterinary Medicine. Annual renewal fees would be increased by the following amounts: (i) veterinarians, \$40 per year; (ii) veterinary technicians, \$20 per year; (iii) veterinary establishments, \$60 per year; and (iv) equine dental technicians, \$20 per year. Other fees are increased proportionally. For the renewal cycle ending January 1, 2013, a one-time debt reduction assessment of \$100 for veterinarians, \$200 for veterinary establishments, and \$50 for veterinary technicians and equine dental technicians is proposed. Other fees set proportionally to the renewal fees would also be increased. Licensees would be allowed to renew a lapsed license for one year (one renewal cycle) with payment of the renewal fee and a late fee; thereafter, the licensee would be required to reinstate the license and pay the reinstatement fee.

18VAC150-20-75. Expired license; reinstatement; practice with an expired or lapsed license not permitted.

A. A license may be renewed up to ~~30 days~~ one year after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee. A license shall automatically lapse if the licensee fails to renew by the expiration date. The practice of veterinary medicine without a current, active license is unlawful and may subject the licensee to disciplinary action by the board.

B. Reinstatement of licenses expired for more than ~~30 days~~ one year shall be at the discretion of the board. To reinstate a license, the licensee shall pay the ~~renewal and~~ reinstatement fees fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to

the number of years in which the license has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

18VAC150-20-100. Fees.

A. The following fees shall be in effect:

<u>Veterinary application for licensure</u>	<u>\$200</u>
Veterinary initial license or renewal (active)	\$135 <u>\$175</u>
Veterinary license renewal (inactive)	\$65 <u>\$85</u>
Veterinary reinstatement of expired license	\$175 <u>\$255</u>
Veterinary license late renewal	\$45 <u>\$60</u>
Veterinarian reinstatement after disciplinary action	\$300 <u>\$450</u>
<u>Veterinary technician application for licensure</u>	<u>\$65</u>
Veterinary technician initial license or renewal	\$30 <u>\$50</u>
Veterinary technician license renewal (inactive)	\$15 <u>\$25</u>
Veterinary technician license late renewal	\$15 <u>\$20</u>
Veterinary technician reinstatement of expired license	\$50 <u>\$95</u>
Veterinary technician reinstatement after disciplinary action	\$75 <u>\$125</u>
Initial veterinary establishment permit registration	\$200 <u>\$300</u>
Equine dental technician initial registration	\$100
Equine dental technician registration renewal	\$50 <u>\$70</u>
Equine dental technician late renewal	\$20 <u>\$25</u>
Equine dental technician reinstatement	\$120
Veterinary establishment renewal	\$140 <u>\$200</u>
Veterinary establishment late renewal	\$45 <u>\$75</u>
Veterinary establishment reinstatement	\$100 <u>\$350</u>
Veterinary establishment reinspection	\$200 <u>\$300</u>
Veterinary establishment – change of location	\$200 <u>\$300</u>

Regulations

Veterinary establishment – change of veterinarian-in-charge	\$30 <u>\$40</u>
Duplicate license	\$10 <u>\$15</u>
Duplicate wall certificate	\$25
Returned check	\$35
Licensure verification to another jurisdiction	\$15 <u>\$25</u>

B. For the renewal of licensees and registrations due by January 1, 2013, the following one-time debt-reduction fee will be assessed:

<u>Veterinary license (active)</u>	<u>\$100</u>
<u>Veterinary technician license</u>	<u>\$50</u>
<u>Veterinary establishment</u>	<u>\$200</u>
<u>Equine dental technician</u>	<u>\$50</u>
<u>Veterinary license – late fee on assessment</u>	<u>\$60</u>
<u>Veterinary technician license – late fee on assessment</u>	<u>\$20</u>
<u>Veterinary establishment – late fee on assessment</u>	<u>\$75</u>
<u>Equine dental technician – late fee on assessment</u>	<u>\$20</u>

Part VI Equine Dental Technicians

18VAC150-20-220. Requirements for registration as an equine dental technician.

A. A person applying for registration as an equine dental technician shall provide a recommendation from at least two veterinarians licensed in Virginia who attest that at least 50% of their practice is equine, and that they have observed the applicant within the past five years immediately preceding the attestation and can attest to his competency to be registered as an equine dental technician.

B. The qualifications for registration shall include documentation of one of the following:

1. Current certification from the International Association of Equine Dentistry;
2. Completion of a board-approved certification program or training program;
3. Completion of a veterinary technician program that includes equine dentistry in the curriculum; or
4. Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

C. In order to maintain an equine dental technician registration, a person shall renew such registration by January 1 of each year by payment of the renewal fee specified in 18VAC150-20-100 and attestation of obtaining 16 hours of continuing education relating to equine dentistry within the past three years.

1. Equine dental technicians shall be required to maintain original documents verifying the date and subject of the continuing education program or course, the number of continuing education hours, and certification of completion from a sponsor. Original documents shall be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

2. Registration may be renewed up to ~~30 days~~ one year after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.

3. Reinstatement of registration expired for more than ~~30 days~~ one year shall be at the discretion of the board. To reinstate a registration, the applicant shall pay the reinstatement fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours equal to the number of years in which the registration has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

VA.R. Doc. No. R10-2132; Filed August 11, 2010, 2:28 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 22 (2010)

Commission on Military and National Security Facilities

Importance of the Initiative

For more than one hundred years the Commonwealth of Virginia has served the United States of America and its citizens by providing an unparalleled array of military and non-military national security facilities, including the Pentagon in Arlington, the world's largest naval base in Norfolk, both the field training facility for the Central Intelligence Agency at Camp Perry and the headquarters of the Central Intelligence Agency in Langley, the National Ground Intelligence Center and many other facilities throughout the Commonwealth. Collectively these military and national security facilities have become an integral part of the Commonwealth, including our security, our economic stability and our civic life.

The people of Virginia are acutely aware of the integral role military and national security facilities play in the economic vitality of the Commonwealth. The estimated \$56 billion the Department of Defense alone is projected to spend in the Commonwealth in 2010 translates to business for Virginia and high-quality jobs for our citizens. Virginia will be vigilant in protecting the military and national security assets located in the Commonwealth, and will continuously seek new opportunities for growth. To this end, the Commonwealth will be proactive in identifying the appropriate strategies to retain the military and national security facilities located in the Commonwealth and to identify operations and facilities that can be located within Virginia.

To accomplish this, in accordance with the authority vested in me by Article V of the Constitution of Virginia and by Section 2.2-134 of the Code of Virginia, I hereby create Virginia's Commission on Military and National Security Facilities.

The Commission

The Commission will consist of the Secretary of Commerce and Trade and the Assistant to the Governor for Commonwealth Preparedness, as well as members appointed by the Governor and serving at his pleasure. Initial appointments of members to the Commission by the Governor will include 25 members. The Governor may appoint additional persons to the Commission at his discretion.

The Commission is to consist of two (2) working groups – one working group on military installations under the coordination of the Assistant to the Governor for Commonwealth Preparedness and one working group on non-

military national security facilities under the coordination of the Secretary of Commerce and Trade.

The Commission's responsibilities shall include the following:

1. Identify appropriate opportunities for relocating additional military commands and missions to the Commonwealth.
2. Identify appropriate opportunities for relocating additional national security facilities to the Commonwealth.
3. Recommend, as appropriate, the best business practices for the Commonwealth to retain its existing military installations and commands.
4. Recommend, as appropriate, the best business practices for the Commonwealth to retain its existing non-military national security facilities.
5. Support and foster collaboration among local and regional entities in identifying appropriate opportunities for placement of additional national security facilities in the Commonwealth.
6. Determine the best and most efficient manner to foster and promote business, technology, transportation, education, economic development and other efforts to support, attract and retain existing military installations and commands in the Commonwealth.
7. Determine the best and most efficient manner to foster and promote business, technology, transportation, education, economic development and other efforts to support and retain existing non-military national security facilities in the Commonwealth.
8. Identify and track all national security facilities located in the Commonwealth and their building needs.
9. Determine the best industrial and economic development for the localities included in or adjacent to military installations and commands in the Commonwealth.
10. Determine the best industrial and economic development for the localities included in or adjacent to non-military national security facilities in the Commonwealth.
11. Inform the Governor on a regular basis on all pertinent findings and recommendations.

Commission Staffing and Funding

Necessary staff support for the Commission's work during its existence shall be furnished by the Office of Commonwealth Preparedness and the Office of the Secretary of Commerce and Trade, and such other agencies and offices as designated by the Governor. An estimated 100 hours of staff time will be required to support the work of the Commission.

Governor

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Commission, as authorized by Section 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are \$5,000.00.

Commission members shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties consistent with state law.

The Commission shall report quarterly to the Governor and shall issue such other reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect until January 15, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 9th day of August 2010.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Visibility Impairments in Federal Class I Areas

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to improve visibility impairment in federal Class I areas. Federal Class I areas are defined in the Clean Air Act as national parks over 6,000 acres and wilderness areas and memorial parks over 5,000 acres, established as of 1977. Virginia is home to two such areas, the Shenandoah National Park and the James River Face Wilderness Area. If adopted, the Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) and § 169 A of the federal Clean Air Act (CAA). The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal CAA to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan, and on the issue of whether the plan will enable the Commonwealth to meet federal requirements for controlling air pollutants that reduce visibility in Class I areas.

Public comment period: August 16, 2010, to September 17, 2010.

Public hearing: September 16, 2010 - 10 a.m.- 2nd Floor Conference Room A, Department of Environmental Quality, 629 East Main Street, Richmond, VA.

Description of proposal: Virginia is required to demonstrate reasonable progress toward meeting the national goal of a return to natural visibility conditions by 2064 for each Class I area within the state and for Class I areas located outside the state that may be affected by emissions from sources within the state. The plan establishes baseline visibility conditions for 2000-2004, natural background visibility conditions in 2064, and the rate of uniform progress (glidepath) between baseline and background conditions. The plan establishes reasonable progress goals (RPGs), which provide for reasonable progress toward achieving natural visibility conditions, provide for improvement in visibility for the most impaired days over the period of the implementation plan, and ensure no degradation in visibility for the least impaired days over the same period.

In order to ensure that visibility goals are properly met and set, the regional haze SIP includes determinations, for each Class I area, of the baseline visibility conditions for the most impaired and least impaired days. The SIP also contains supporting documentation for all required analyses used to calculate the degree of visibility impairment for the most impaired and least impaired days. In addition, the plan

includes a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all Class I areas within the state.

This first set of RPGs must be met through measures contained in the state's long-term strategy covering the period from the present until 2018. The long-term strategy includes enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs, including all controls required or expected under all federal and state regulations by 2018. During development of the long-term strategy, the Commonwealth considered specific factors such as the abovementioned ongoing control programs, measures to mitigate construction activities, source retirement and replacement schedules, smoke management programs for agriculture and forestry, and enforceability of specific measures.

In addition, the plan demonstrates implementation of best available retrofit technology (BART) requirements, including a determination of BART for each source that emits any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area. BART-eligible sources are sources in 26 specific source categories that began operation within a 15-year period prior to enactment of the 1977 CAA. Emission limitations representing BART and schedules for compliance with BART for each source subject to BART are included in the long-term strategy.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) and § 169A of the federal CAA in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

Consultation with federal land managers (FLMs): As provided in 40 CFR 51.302(b)(2), the FLMs were given the opportunity to comment on the proposed plan on October 1, 2007, and May 19, 2010. FLMs were also given opportunity to comment on BART requirements. FLM comments on BART documents are located in Appendices H-9e, H-9f, H-9i, H10b-P, and H-10b-S. DEQ responses to these comments are located in Appendices H-9g, H-9h, H-9j, H-10b-R, and H-10b-T. FLM comments on the entire SIP are located in Appendices J-3, J-4, J-5, and J-6. DEQ responses to these comments are located in Appendices J-7 and J-8.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by the DEQ contact listed below by the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along

General Notices/Errata

with any supporting documents or exhibits. All testimony, exhibits, and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by EPA.

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

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

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email doris.mcleod@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

July 28, 2010

Administrative Letter 2010-08

To: All Surplus Lines Brokers Licensed in Virginia

Re: Premium Tax and Assessment Practices and Procedures

The State Corporation Commission Bureau of Insurance has modified its quarterly and annual filings requirements pursuant to §§ 38.2-4806 and 38.2-4807 of the Code of Virginia. The new process will streamline the requirements for the brokers while providing the Bureau of Insurance flexibility to implement an audit program to verify policy and

tax information as required by the Code of Virginia. Therefore, effective with the third quarter tax report due October 30th, 2010, the Quarterly Surplus Lines Tax Report will be comprised of only the SLB-7. The annual tax report due March 1 will remain the same with the exception of a few modifications to the report. Beginning with the 2010 third quarter tax report, surplus lines brokers will no longer have to submit detailed policy information on a quarterly basis; however, the broker must maintain that detailed policy information. The Bureau of Insurance will provide instructions regarding the new process of filing the detailed policy information at a later date. This does not constitute the full array of changes that will be implemented by the Bureau of Insurance in its effort to transition brokers to a more streamlined and ultimately to an electronic filing and payment process. Finally, federal legislation was recently passed which could necessitate additional changes; therefore, you will periodically receive updated filing procedures which will be governed by this administrative letter.

Questions regarding this letter may be directed to: Keith D. Kelley, Administrative Tax Supervisor, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9333.

/s/ Alfred W. Gross
Commissioner of Insurance

SURPLUS LINES BROKERS NEW TAX FILING REQUIREMENTS:

Quarterly Tax Form Requirements:

- Brokers must complete the revised SLB-7 only (copy attached). Individualized quarterly forms for the remainder of 2010 will be mailed to you by October 1, 2010. Instructions to download future forms will be mailed to you at a later date.
- The SLB-7 must reflect all insurance transactions for the specified quarter.
- If no business was written, quarterly reports are not required.
- Make check payable to Treasurer of Virginia and send it with the SLB-7.
- Check total must equal the amount due on the form.
- Broker must send one check with each SLB-7. Multiple checks with one form cannot be processed.
- THE NEW MAILING ADDRESS FOR TAX FORMS AND PAYMENTS WILL BE SENT WITH THE FORMS.

Annual Tax Form Requirements:

- Brokers must complete the revised SLB-8 only (copy attached). Individualized annual forms will be mailed to you in January 2011. Instructions to download future forms will be mailed to you at a later date.
- Annual tax forms are required by all brokers even if no business was transacted.
- Make check payable to Treasurer of Virginia and send it with the SLB-8.
- Brokers must send one check with each SLB-8. Multiple checks with one form cannot be processed.
- Check total must equal the amount due on the form.
- Reports are still required to be filed by March 1 of every year.
- THE NEW MAILING ADDRESS FOR TAX FORMS AND PAYMENTS WILL BE SENT WITH THE FORM.

Policy Detail Report Requirements:

- While you are no longer required to file the detailed policy information quarterly, you must continue to maintain that data pursuant to § 38.2-4807 of the Code of Virginia. The broker can maintain the data in a manner of their choosing; however, the data must be available for examination by the Bureau upon request. While you may continue to use the SLB Quarterly Filing Program to maintain your data, the Bureau will no longer service this program.
- The Bureau will provide instructions regarding the new process of filing the detailed policy information at a later date.

General Notices/Errata

FORM ID: **S71101**

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
QUARTERLY GROSS PREMIUMS TAX REPORT

Quarter Ended: March 31, 2010

(Surplus Lines Broker Name)

(Broker License Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

1. GROSS PREMIUMS	\$ _____
2. ADDITIONAL PREMIUMS	\$ _____
3. Less: RETURN PREMIUMS	\$ _____
4. TAXABLE PREMIUM (Line 1 + Line 2 – Line 3)	\$ _____
5. Premium Tax (2.25% of TAXABLE PREMIUM, Line 4)	\$ _____
6. Less: Credits from Prior Periods	\$ _____
7. TAX AMOUNT DUE Attach check payable to TREASURER OF VIRGINIA (ONLY ONE CHECK PER FORM CAN BE SUBMITTED)	\$ _____

Under penalties of perjury, I declare that I have examined this return and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

AND

Each of the insureds for which premium has been recorded on this report have been given the notice as required by subsection B of § 38.2-4806 of the Code of Virginia and 14 VAC 5-350-95.

Surplus Lines Broker/Agency Officer Signature

Date

Day Time Phone Number

Preparer's Signature (if different from above)

Date

Day Time Phone Number

FORM ID:

S72101

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
QUARTERLY GROSS PREMIUMS TAX REPORT

Quarter Ended: June 30, 2010

(Surplus Lines Broker Name)

(Broker License Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

1. GROSS PREMIUMS	\$	_____
2. ADDITIONAL PREMIUMS	\$	_____
3. Less: RETURN PREMIUMS	\$	_____
4. TAXABLE PREMIUM (Line 1 + Line 2 – Line 3)	\$	_____
5. Premium Tax (2.25% of TAXABLE PREMIUM, Line 4)	\$	_____
6. Less: Credits from Prior Periods	\$	_____
7. TAX AMOUNT DUE Attach check payable to TREASURER OF VIRGINIA (ONLY ONE CHECK PER FORM CAN BE SUBMITTED)	\$	_____

Under penalties of perjury, I declare that I have examined this return and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
AND
Each of the insureds for which premium has been recorded on this report have been given the notice as required by subsection B of § 38.2-4806 of the Code of Virginia and 14 VAC 5-350-95.

Surplus Lines Broker/Agency Officer Signature

Date

Day Time Phone Number

Preparer's Signature (if different from above)

Date

Day Time Phone Number

General Notices/Errata

FORM ID:

S73101

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
QUARTERLY GROSS PREMIUMS TAX REPORT

Quarter Ended: September 30, 2010

(Surplus Lines Broker Name)

(Broker License Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

1. GROSS PREMIUMS	\$ _____
2. ADDITIONAL PREMIUMS	\$ _____
3. Less: RETURN PREMIUMS	\$ _____
4. TAXABLE PREMIUM (Line 1 + Line 2 – Line 3)	\$ _____
5. Premium Tax (2.25% of TAXABLE PREMIUM, Line 4)	\$ _____
6. Less: Credits from Prior Periods	\$ _____
7. TAX AMOUNT DUE Attach check payable to TREASURER OF VIRGINIA (ONLY ONE CHECK PER FORM CAN BE SUBMITTED)	\$ _____

Under penalties of perjury, I declare that I have examined this return and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

AND
Each of the insureds for which premium has been recorded on this report have been given the notice as required by subsection B of § 38.2-4806 of the Code of Virginia and 14 VAC 5-350-95.

Surplus Lines Broker/Agency Officer Signature

Date

Day Time Phone Number

Preparer's Signature (if different from above)

Date

Day Time Phone Number

FORM ID: **S74101**

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
QUARTERLY GROSS PREMIUMS TAX REPORT

Quarter Ended: December 31, 2010

(Surplus Lines Broker Name)

(Broker License Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

1. GROSS PREMIUMS	\$	_____
2. ADDITIONAL PREMIUMS	\$	_____
3. Less: RETURN PREMIUMS	\$	_____
4. TAXABLE PREMIUM (Line 1 + Line 2 - Line 3)	\$	_____
5. Premium Tax (2.25% of TAXABLE PREMIUM, Line 4)	\$	_____
6. Less: Credits from Prior Periods	\$	_____
7. TAX AMOUNT DUE	\$	_____
Attach check payable to TREASURER OF VIRGINIA		
(ONLY ONE CHECK PER FORM CAN BE SUBMITTED)		

Under penalties of perjury, I declare that I have examined this return and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
AND
Each of the insureds for which premium has been recorded on this report have been given the notice as required by subsection B of § 38.2-4806 of the Code of Virginia and 14 VAC 5-350-95.

Surplus Lines Broker/Agency Officer Signature

Date

Day Time Phone Number

Preparer's Signature (if different from above)

Date

Day Time Phone Number

General Notices/Errata

FORM ID:

S85101

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
ANNUAL GROSS PREMIUMS TAX REPORT

Postmark _____

Year ended December 31, 2010 (Due March 1, 2011)

(Surplus Lines Broker Name)

(Broker License Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §§ 38.2-4807 and 38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

- | | |
|------------------------------------------------------------------------------|----------|
| 1. GROSS PREMIUMS (from SLB-7, of previously filed quarterly reports) | \$ _____ |
| 2. ADDITIONAL PREMIUMS (from SLB-7, of previously filed quarterly reports) | \$ _____ |
| 3. Less: RETURN PREMIUMS (from SLB-7, of previously filed quarterly reports) | \$ _____ |
| 4. TAXABLE PREMIUM (Line 1 + Line 2 - Line 3) | \$ _____ |
| 5. Premium Tax (2.25% of TAXABLE PREMIUM, Line 4) | \$ _____ |
| 6. Less: QUARTERLY AMOUNT(S) PREVIOUSLY PAID (if any) | \$ _____ |

ADDITIONAL TAX OWED CANNOT BE PAID WITH THIS FORM. You MUST amend the appropriate Quarterly Report and submit payment with the amended Quarterly Report.

OVERPAYMENT OF TAX (If Line 5 minus Line 6 is negative) \$ _____

1. BOI MAINTENANCE ASSESSMENT DUE (Line 4 x .03%)
(subject to a minimum of \$300)
Remit check for this amount only, payable to TREASURER OF VIRGINIA
DO NOT reduce the assessment amount due by the overpayment of tax.
(ONLY ONE CHECK PER FORM CAN BE SUBMITTED)

\$ _____

Under penalties of perjury, I declare that I have examined this return and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Surplus Lines Broker/Agency Officer Signature

Date

Day Time Phone Number

Preparer's Signature (if different from above)

Date

Day Time Phone Number

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Harrisonburg-Rockingham Sewer Authority

An enforcement action has been proposed for the Harrisonburg-Rockingham Sewer Authority for alleged violations in Rockingham County. A proposed consent order describes a settlement to resolve certain permit effluent violations and unauthorized discharges at its North River Waste Water Treatment Plant. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from August 30, 2010, to September 29, 2010.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 9, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Sixty-Five (10)

Virginia Lottery's "American Music Festival Facebook Sweepstakes" Final Rules for Game Operation (effective August 8, 2010)

Director's Order Number Sixty-Eight (10)

Virginia Lottery's "Muscle Car Money Sweepstakes" Final Rules for Game Operation (effective August 8, 2010)

DEPARTMENT OF TRANSPORTATION

Notice of Periodic Review

Pursuant to Executive Order Number 14 (10), the Virginia Department of Transportation (VDOT) has scheduled the four regulations listed below for review to determine whether the regulation should be amended or retained as written. VDOT will file the necessary documentation to comply with applicable statutes or other directives.

Contact information and duration of the collection of comment are shown at the end of this notice.

Regulation Title: 24VAC30-210. Underground Utility Policy.

Subject: This policy prescribes the policies, procedures, and reimbursement provisions for the underground relocation of

existing overhead utility facilities on selected transportation improvement projects.

APA Exemption: § 2.2-4002 B 3 of the Code of Virginia.

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-220. Virginia Alternative Fuels Revolving Fund Regulations.

Subject: This regulation establishes the procedures VDOT will use in administering the Virginia Alternative Fuels Revolving Fund, a program designed to encourage the use of alternative fuels. This program was not funded by the General Assembly after FY98, but the regulation was not rescinded because funding may be restored in the future.

APA Exemption: § 2.2-4002 B 4 of the Code of Virginia.

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To encourage the use of alternate fuels to improve air quality.
2. To aid Virginia's economy.
3. To reduce dependence on imported fuels.
4. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
5. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-420. Operation and Maintenance of Roads in Incorporated Towns Less than 3,500.

Subject: This regulation cites pertinent state law concerning statutory authority and establishes requirements under which local governments of incorporated towns of less than 3,500 population may request the Commonwealth Transportation Board (CTB) to provide funds for road improvements from secondary funds, as well as CTB funding authority when no request is made.

APA Exemption: § 2.2-4002 B 4 of the Code of Virginia.

VDOT seeks public comment to determine whether the regulation meets the following goals:

General Notices/Errata

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. Is the regulation written clearly and understandably?

Regulation Title: 24VAC30-430. Maintenance of Roads Crossing the Interstate System.

Subject: This regulation establishes the role VDOT will play in the maintenance of roads crossing the Interstate System for roads in cities and towns, counties except Arlington and Henrico, and all other counties.

APA Exemption: § 2.2-4002 B 4 of the Code of Virginia.

VDOT seeks public comment to determine whether the regulation meets the following goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. Is the regulation written clearly and understandably?

Contact: David Roberts, Program Administration Specialist III, Virginia Department of Transportation, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3620, FAX (804) 225-4700, or email david.roberts@vdot.virginia.gov.

Comments may be submitted from August 30, 2010, to September 20, 2010, to the contact referenced above.

STATE WATER CONTROL BOARD

Public Notice - Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of 21 total maximum daily load (TMDL) reports and four TMDL modifications, and granting authorization to include the TMDL reports and modifications in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve 21 TMDL reports and four TMDL modifications as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: August 30, 2010, to September 28, 2010.

Description of proposed action: DEQ staff intends to recommend (i) that the DEQ director approve the TMDL reports and TMDL modifications listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL reports and TMDL modifications in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jsp>.

Affected Waterbodies and Localities

Potomac River & Shenandoah River Basins:

1. "Cod, Presley, Hull, Rogers, Bridgeman, Cubitt, and Hack Creeks - Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Pollution"

8 bacteria TMDLs, located in Northumberland County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairments

2. "Bacteria TMDL for the Tidal Four Mile Run Watershed"

1 bacteria TMDL, located in Arlington County and the City of Alexandria, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

3. "Bacteria TMDL Development and Benthic Stressor Analysis for South Fork Shenandoah River"

1 bacteria TMDL, located in Rockingham and Page Counties, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

4. "Bacteria and Benthic Total Maximum Daily Load Development for South River"

1 bacteria TMDL, located in the City of Waynesboro and Augusta and Rockingham Counties, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment

5. "Total Maximum Daily Load Development to Address Bacteria and Benthic Impairments in the Spout Run Watershed, Clarke County, Virginia"

3 bacteria TMDLs, located in Clarke County, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments

6. Modification for "Total Maximum Daily Load (TMDL) Development for Smith Creek"

1 bacteria TMDL, located in Shenandoah and Rockingham Counties, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment (modification)

In the James River Basin:

7. "TMDL Report for Chesapeake Bay Shellfish Waters: Bleakhorn Creek, Bennett Creek, and Knotts Creek Bacterial Impairments in the City of Suffolk, VA"

3 bacteria TMDLs, located in Suffolk County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

8. "Shellfish Bacteria Total Maximum Daily Load (TMDL) Development - Chuckatuck Creek and Brewers Creek Watersheds"

1 bacteria TMDL, located in Suffolk and Isle of Wight Counties, proposes bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

9. "Bacteria Total Maximum Daily Load (TMDL) Development for the Elizabeth River Watershed"

4 bacteria TMDLs, located in Chesapeake, Norfolk, Portsmouth, and Virginia Beach, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments

10. "Shellfish Bacteria Total Maximum Daily Load (TMDL) Development - Kings Creek and Bay and Ballard Creek and Bay Watersheds"

2 bacteria TMDLs, located in Isle of Wight and Suffolk Counties, propose bacteria reductions for

portions of the watersheds to address VDH Shellfish Area Condemnations

11. "TMDL Report for Chesapeake Bay Shellfish Waters: Lawnes Creek Bacterial Impairment in Isle of Wight and Surry Counties, VA"

1 bacteria TMDL, located in Surry and Isle of Wight Counties, proposes bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

12. "Morris Creek (tidal), Charles City County - Total Maximum Daily Load (TMDL) for Bacteria Contamination Impaired for Recreational Use"

1 bacteria TMDL, located in the Charles City County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment

13. Modification for "Bacteria Total Maximum Daily Load for the James River Basin"

7 bacteria TMDLs, located in Amherst, Bedford, and Campbell Counties and the city of Lynchburg, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment (modification)

14. Modification for "Fecal TMDL (Total Maximum Daily Load) Development for Willis River, Virginia"

1 bacteria TMDL, located in Cumberland County, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment (modification)

In the Rappahannock River Basin:

15. "Totuskey and Richardson Creeks - Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Pollution"

2 bacteria TMDLs, located in Richmond County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairments

16. Modification for "Fecal Coliform TMDL - Mountain Run Watershed, Culpeper County, Virginia"

1 bacteria TMDLs, located in Culpeper County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment (modification)

In the Tennessee/Big Sandy River Basin:

17. "Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River"

General Notices/Errata

5 bacteria TMDLs, located in Washington and Smyth Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

18. "Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek"

1 bacteria TMDL, located in Washington County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment

In the Chowan River Basin:

19. "E. Coli Total Maximum Daily Load Development for Assamoosick Swamp and Tributaries in Sussex and Southampton Counties, VA"

1 bacteria TMDL, located in Sussex and Southampton Counties, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment

20. "E. Coli Total Maximum Daily Load Development for Blackwater River and Tributaries in Sussex, Surrey, Prince George, Dinwiddie Counties and Petersburg, VA"

4 bacteria TMDLs, located in Dinwiddie, Prince George, Surry, and Sussex Counties and the City of Petersburg, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

21. "Fecal Bacteria Total Maximum Daily Load Development for Meherrin River and Tributaries"

2 bacteria TMDLs, located in Charlotte, Lunenburg, Mecklenburg, and Brunswick Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

22. "TMDL Report for Chesapeake Bay Shellfish Waters: Mattawoman Creek Bacterial Impairment in Northampton County, VA"

1 bacteria TMDL, located in Northampton County, proposes bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

In the York River Basin:

23. "TMDL Report for Chesapeake Bay Shellfish Waters: Ware Creek, Taskinas Creek, and Skimono Creek Bacterial Impairments in York, James City, and New Kent Counties, VA"

3 bacteria TMDLs, located in James City, New Kent, and York Counties, propose bacteria reductions for

portions of the watersheds to address VDH Shellfish Area Condemnations

In the New River Basin:

24. "Bacteria Total Maximum Daily Load (TMDL) Development for Cripple Creek"

3 bacteria TMDLs, located in Wythe County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

25. "Bacteria Total Maximum Daily Load (TMDL) Development for Elk Creek"

1 bacteria TMDL, located in Grayson County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.aspx> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

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 may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

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.

