



# Virginia Register of Regulations

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OCTOBER 11, 2010

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

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

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### October 2010 through August 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 ( <b>Tuesday</b> )	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 ( <b>Tuesday</b> )	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.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: § 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Establish a new regulation requiring state-operated and publicly funded facilities to physically post Freedom of Information Act (FOIA) information.**

**Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.**

**Public Comment Deadline: November 1, 2010.**

**Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.**

VA.R. Doc. No. R11-08; Filed September 16, 2010, 10:46 a.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: § 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Establish a new regulation requiring all state mental health facilities, excluding mental health facilities publicly funded or licensed, to establish a facility directory and to require the commissioner (or the department's Central Office) to establish and maintain a master patient directory for all eight state mental health facilities.**

**Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.**

**Public Comment Deadline: November 1, 2010.**

**Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.**

VA.R. Doc. No. R11-09; Filed September 16, 2010, 9:42 a.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: § 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Amend 12VAC35-115-30 to add a definition of "acute treatment."**

**Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.**

**Public Comment Deadline: November 1, 2010.**

**Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.**

VA.R. Doc. No. R11-06; Filed September 14, 2010, 3:58 p.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: § 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Amend 12VAC35-115-40 to require the display of information on how to contact people the provider identifies as accountable for individuals resolving complaints or exercising FOIA rights for all providers operated or publicly funded by or through the department.**

**Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.**

**Public Comment Deadline: November 1, 2010.**

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# Petitions for Rulemaking

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Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-10; Filed September 16, 2010, 10:00 a.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-40 B 1 to require all providers to list the people identified for helping individuals resolve complaints and help with other rights.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-05; Filed September 14, 2010, 3:45 p.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-90 to include the statement that "clinical findings required to be stated for denial or limitation of access to service records shall not be construed as the reason required to be documented or explained under 12VAC35-115-100."

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and

Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-03; Filed September 14, 2010, 3:13 p.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-100 A 1 d to add the Internet to the list of resources that an individual has the right to see, hear, or receive and add an additional requirement for the provider to document the criteria for removal of restrictions.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-04; Filed September 14, 2010, 3:18 p.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-150 to better reflect the requirements of and to reference the specific section of § 2.2-3700 et seq. of the Code of Virginia (Virginia Freedom of Information Act) related to closed meeting attendance policies.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and

Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-07; Filed September 14, 2010, 4:11 p.m.

## Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-160 to allow the human rights advocate to remove the facility director from reviewing or appointing a designee to review a complaint when the human rights advocate makes a finding that the facility director is not willing and able to render an impartial review of the complaint.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-12; Filed September 16, 2010, 10:40 a.m.

## Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-180 to establish the findings of an abuse allegation as a basis for a Local Human Rights Committee fact-finding hearing.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA

23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-13; Filed September 16, 2010, 10:11 a.m.

## Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-230 A to include the Virginia Office for Protection and Advocacy as a required agency to whom providers must report abuse, neglect, and exploitation allegations.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R11-14; Filed September 16, 2010, 10:30 a.m.

## Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-250 to remove the State Human Rights Director (SHRD) and all Human Rights Advocates from under the authority of the Commissioner.

Agency's Plan for Disposition of Request: The board anticipates it will consider public comments on this request at its November 30, 2010, meeting and will then determine what appropriate action is required.

Public Comment Deadline: November 1, 2010.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-0040, or email linda.grasewicz@dbhds.virginia.gov.

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# Petitions for Rulemaking

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VA.R. Doc. No. R11-11; Filed September 16, 2010, 9:51 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Agency Decision

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Joseph Porter, Esq., on behalf of Excelsior College.

Nature of Petitioner's Request: To amend regulations to allow registered nurse applicants whose educational programs did not provide the requisite hours of clinical education to be licensed based on other criteria set forth in regulation.

Agency Decision: Request denied.

Statement of Reason for Decision: The board considered the petition on September 14, 2010, and decided to deny the specific changes requested to requirements for licensure by examination and endorsement. It would appear that the draft amendments presented in the petition could have unintended consequences and potentially be in conflict with the Code of Virginia, which requires an applicant for nursing licensure to complete an approved nursing education program as a minimal qualification for licensure.

The proposed amendments would set one standard for Virginia schools and graduates and a different standard for all other schools and their graduates. Without an equal standard for curricula and clinical experiences, the determination of competency could be inconsistently applied by various schools and their faculty. The regulations proposed by the petition could have a chilling effect on the nursing workforce in Virginia, as the changes would limit the qualification for licensure to graduation from either Virginia programs approved by the board or programs that admit only persons with previous health care licensure and/or experience. Other programs outside of Virginia that currently meet the educational and clinical criteria for approval would be excluded.

Additionally, the board discussed its commitment to precepted clinical hours of direct patient care in the role of a registered nurse as essential for evidence of competency for licensure. Years of experience as an LPN are certainly valuable but do not translate into experience in the RN role across areas of practice throughout the life span.

Finally, the board expressed its intent to address the issues raised by the petition and by a few recent applicants who have

graduated from other out-of-state programs that do not meet all the board's standards for approval. In the next two months, an ad hoc committee will review policies and rules in other states to determine whether there are alternatives that could accommodate the needs of Excelsior graduates and other out-of-state programs that do not have the requisite number of clinical hours and also provide assurance to the board and the public that registered nurses licensed in Virginia have the didactic and clinical education necessary for safe, competent practice.

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

VA.R. Doc. No. R10-64; Filed September 16, 2010, 9:37 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider promulgating the following regulation: **8VAC20-671, Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth**, and repealing **8VAC 20-670, Regulations Governing the Operation of Private Day Schools for Students with Disabilities**. The purpose of the proposed action is to repeal the current regulation and promulgate a new regulation governing both private day schools for students with disabilities and the education programs in private residential facilities and group homes.

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

Statutory Authority: §§ 22.1-321 and 22.1-323 of the Code of Virginia.

Public Comment Deadline: November 12, 2010.

Agency Contact: Dr. Sandra Ruffin, Director, Federal Program Monitoring, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2768, FAX (804) 225-2524, or email [sandra.ruffin@doe.virginia.gov](mailto:sandra.ruffin@doe.virginia.gov).

VA.R. Doc. No. R11-2536; Filed September 14, 2010, 10:52 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider promulgating the following regulation: **8VAC20-730, Regulations Governing Unexcused Absences and Truancy**. The purpose of the proposed action is to govern the collection and reporting of truancy-related data while providing comprehensive guidance on school attendance policy, including a standard definition of "unexcused absence."

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

Statutory Authority: §§ 22.1-16 and 22.1-258 of the Code of Virginia.

Public Comment Deadline: November 12, 2010.

Agency Contact: Dr. Cynthia Cave, Director of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2818, FAX (804) 225-2524, or email [cynthia.cave@doe.virginia.gov](mailto:cynthia.cave@doe.virginia.gov).

VA.R. Doc. No. R11-2535; Filed September 14, 2010, 10:49 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF ACCOUNTANCY

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Accountancy has **WITHDRAWN** the Notice of Intended Regulatory Action for 18VAC5-21, Board of Accountancy Regulations, that was published in 22:25 VA.R. 3805 August 21, 2006. New regulations promulgated through the fast-track rulemaking process became effective on September 16, 2010.

Agency Contact: Wade Jewell, Executive Director, Board of Accountancy, Perimeter Center, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-0290, FAX (804) 527-4409, email [wade.jewell@boa.virginia.gov](mailto:wade.jewell@boa.virginia.gov).

VA.R. Doc. No. R06-308; Filed September 21, 2010, 4:29 p.m.

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Accountancy has **WITHDRAWN** the Notice of Intended Regulatory Action for 18VAC5-21, Board of Accountancy Regulations, that was published in 25:20 VA.R. 3476 June 8, 2009. New regulations promulgated through the fast-track rulemaking process became effective on September 16, 2010.

Agency Contact: Wade A. Jewell, Executive Director, Board of Accountancy, 9960 Mayland Drive, Perimeter Center, Suite 402, Richmond, VA 23233, telephone (804) 367-8540, FAX (804) 527-4409, or email [wade.jewell@boa.virginia.gov](mailto:wade.jewell@boa.virginia.gov).

VA.R. Doc. No. R09-1099; Filed September 21, 2010, 4:27 p.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulation: **22VAC40-601, Food Stamp Program**. The purpose of the proposed action is to require local social service eligibility workers to certify eligible households for Supplemental Nutrition Assistance Program, or SNAP, benefits for no longer than six months.

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



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## Notices of Intended Regulatory Action

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

Public Comment Deadline: November 10, 2010.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, Division of Benefit Programs, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7357, TTY (800) 828-1120, or email [celestine.jackson@dss.virginia.gov](mailto:celestine.jackson@dss.virginia.gov).

VA.R. Doc. No. R11-2565; Filed September 21, 2010, 9:30 a.m.

### **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulation: **22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints.** The purpose of the proposed action is to conduct a general review of the regulation and to review and amend definitions and related information to conform to 22VAC40-705, Child Protective Services.

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

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

Public Comment Deadline: November 10, 2010.

Agency Contact: Mary Wilson, Child Protective Services Policy Specialist, Department of Social Services, Division of Family Services, 801 East Main Street, 11th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, TTY (800) 828-1120, or email [mary.m.wilson@dss.virginia.gov](mailto:mary.m.wilson@dss.virginia.gov).

VA.R. Doc. No. R11-2527; Filed September 21, 2010, 9:33 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-10, 4VAC20-260-40, 4VAC20-260-50, 4VAC20-260-60; repealing 4VAC20-260-35).**

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

Effective Date: October 1, 2010.

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

#### Summary:

*This amendment repeals the maximum cull size of 4-1/4 inches for clean cull oysters in the Rappahannock River.*

#### **4VAC20-260-10. Purpose.**

The purpose of this chapter is to establish clean cull and seed areas, culling requirements, ~~(minimum and maximum size limits)~~ minimum cull size, and inspection procedures that will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

#### **4VAC20-260-35. Maximum cull size in the Rappahannock River. (Repealed.)**

~~In order to protect potentially disease tolerant oysters in the Lower Rappahannock River, maximum size limits are hereby established. In the Lower Rappahannock River, Rotation Areas 1 through 3, oysters larger than the maximum size limit shall either be collected by the Marine Resources Commission or returned immediately to the natural beds, rocks, or shoals when taken. Allowance for oversized oysters and shells incidentally retained during culling are described in 4VAC20-260-40.~~

~~Oysters taken for direct human consumption from Rotation Areas 1 through 3 in the Lower Rappahannock River shall not have shells greater than 4 1/4 inches in length.~~

#### **4VAC20-260-40. Culling tolerances or standards.**

A. In the clean cull areas, ~~except the Lower Rappahannock River, Rotation Areas 1 through 3~~, if more than one four-quart measure of undersized oysters or shells is found per bushel inspected, it shall constitute a violation of this chapter.

~~B. In the Lower Rappahannock River, Rotation Areas 1 through 3, if more than one four quart measure of undersized or oversized oysters or shells is found per bushel inspected, it shall constitute a violation of this chapter.~~

~~C. B.~~ In the James River seed areas, if more than one six-quart measure of shells is found per bushel of seed oysters inspected, it shall constitute a violation of this chapter.

~~D. C.~~ In the James River seed areas, if more than one four-quart measure of undersized oysters or shells ~~are~~ is found per bushel of clean cull oysters inspected, it shall constitute a violation of this chapter.

~~E. D.~~ On the seaside of Eastern Shore seed areas, if more than one four-quart measure of undersized (less than three inches) oysters and ~~shell~~ shells is found per bushel of oysters to be marketed for direct consumption, it shall constitute a violation of this chapter.

#### **4VAC20-260-50. Culling and inspection procedures.**

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile and subject to inspection by any Marine Resources Commission law-enforcement officer.

B. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

C. It shall be unlawful for any harvester to store oysters taken from public grounds on any boat in any type of container, except as described for the James River in 4VAC20-1230-30 L. All oysters taken from said areas shall be sold or purchased only in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, except that on the seaside of the Eastern

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Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

D. In the inspection of oysters the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters.

## 4VAC20-260-60. Penalty.

A. As set forth in §§ 28.2-510 and 28.2-511 of the Code of Virginia, any person, firm, or corporation violating any provision of this chapter except 4VAC20-260-50 C shall be guilty of a Class 3 misdemeanor.

B. As set forth in § 28.2-526 of the Code of Virginia, any person violating any provision of 4VAC20-260-50 C of the chapter shall be guilty of a Class 1 misdemeanor.

~~C. In addition to the penalty set forth by § 28.2-903 of the Code of Virginia, any person violating any provisions of this chapter shall return all oysters in possession to the water and shall cease harvesting on that day. All harvesting apparatus of the person in violation of this chapter shall be subject to seizure, and pursuant to § 28.2-232 of the Code of Virginia, that person shall be subject to the immediate forfeiture of all oyster licenses and permits until appearing before the Marine Resources Commission.~~ C. In addition to the penalty prescribed by law, any person violating any provision of this chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area, and shall cease harvesting on that day. All harvesting apparatus may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Marine Resources Commission.

V.A.R. Doc. No. R11-2563; Filed September 29, 2010, 4:15 p.m.

## Final Regulation

Title of Regulation: **4VAC20-650. Establishment of Oyster Sanctuary Areas (amending 4VAC20-650-20, 4VAC20-650-40).**

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

Effective Date: October 1, 2010.

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

### Summary:

*The amendments establish five new shellfish sanctuaries in Northampton and Accomack counties on the Seaside*

*Eastern Shore (on and adjacent to the nature conservancy).*

## 4VAC20-650-20. Oyster sanctuary areas.

The following oyster sanctuary areas are established:

1. The Wreck Shoals-James River Oyster Sanctuary Area consisting of all public oyster grounds, with a boundary defined as: ~~beginning at Corner 1 of Public Ground No. 1 Warwick County (Lat 37° 04.520'N, Lon 76° 33.7333'W-NAD 1983); thence southeasterly to Deep Creek Channel Marker "2" (Lat 37° 03.609'N, Lon 76° 32.102'W); thence south-southwesterly to James River Channel Marker "5" (Lat 37° 02.345'N, Lon 76° 32.769'W); thence southwesterly to the chimney of a beach house east of the Luter airstrip (Lat 37° 01.666'N, Lon 76° 35.136'W); thence northerly to James River Channel Marker "12" (Lat 37° 03.323'N, Lon 76° 35.169'W); thence northeasterly to Corner 190 of Plat File 16734 (Lat 37° 04.904'N, Lon 76° 34.254'W); thence southeasterly to Corner 1 of Public Ground 1 Warwick County, the point of beginning James River Channel Marker 6; thence westerly to James River Channel Marker 10A; thence northeasterly to a point at Lat. 37° 04' 24" N. Long. 76° 34' 39" W; thence southeasterly to a point at Lat. 37° 04' 02" N. Long. 76° 34' 06" W; thence southeasterly to James River Channel Marker 6, the point of beginning.~~

2. Smith Island Sanctuary - Beginning at a point in Smith Island Bay near the western shore of Smith Island, said point being approximately 9,900 feet north-northwest of the Cape Charles Light House and the northern most point on Ballard Fish and Oyster Co., Inc. oyster lease, plat 16613, said point being corner 85, having NAD 83 Geographic Coordinates of 37° 08.3987390' N, 75° 54.0094551'W; thence in a northeasterly direction along the inshore oyster lease line of Thomas J. O'Conner, III, plat 17720, to corner 106, 37° 08.5079488'N, 75° 53.9121013'W; thence northeasterly to corner 107, 37° 08.5406502'N, 75° 53.8494541'W; thence east-northeasterly to corner 207, 37° 08.5420829'N, 75° 53.8281776'W; thence east-northeasterly along the inshore oyster lease line of Mark R. Heath, plat 17721, to corner 108, 37° 08.5446005' N, 75° 53.7907806'W; thence north-northeasterly to corner 109, 37° 08.5895883'N, 75° 53.7864524'W; thence northeasterly to corner 110, 37° 08.6921483'N, 75° 53.6226465'W; thence northeasterly to corner 111, 37° 08.7546771'N, 75° 53.4568175'W; thence northeasterly to corner 112, 37° 08.7754748'N, 75° 53.3619827'W; thence southeasterly along the inshore oyster lease line of H. M. Terry Co., Inc. to corner 18, 37° 08.7544364'N, 75° 53.3207742'W; thence southeasterly to corner 17, 37° 08.7306590'N, 75° 53.2980718'W; thence southeasterly to corner 16, 37° 08.6251318'N, 75° 53.1579039'W; thence easterly to corner 15, 37° 08.6225028' N, 75° 53.1025432'W; thence north-

northeasterly to corner 14, 37° 08.6626612'N, 75° 53.0854858'W; thence northwesterly to corner 153, 37° 08.6768312'N, 75° 53.1394736'W; thence along the inshore oyster lease line of Daniel Scott Long, plat 16802, northeasterly to corner 152, 37° 08.7156785'N, 75° 53.0819599'W; thence northeasterly to corner 151, 37° 08.8330482'N, 75° 52.7283538'W; thence, south-southeasterly onto Smith Island to corner 1, 37° 08.4630004'N, 75° 52.6679990'W; thence, southwesterly to corner 2, 37° 07.9690002'N, 75° 53.0919992'W; thence southwesterly to corner 3, 37° 07.9080005'N, 75° 53.4390002'W; thence southwesterly to corner 4, 37° 07.7800009'N, 75° 53.6839996'W; thence southwesterly to corner 5, 37° 07.6540002'N, 75° 54.3200009'W; thence southwesterly to corner 6, 37° 07.3169996'N, 75° 54.6700007' W.; thence northwesterly, off shore, to corner 170 of Mark R. Heath's oyster lease, plat 17456, 37° 07.3524313'N, 75° 54.6976587'W; thence along the inshore line of said parcel, northwesterly to corner 169, 37° 07.3528695'N, 75° 54.7176135'W; thence north-northeasterly to corner 168, 37° 07.4495084'N, 75° 54.7100342'W; thence northeasterly to corner 92, 37° 07.5477653'N, 75° 54.5615711'W; thence northeasterly along the inshore oyster lease line of Ballard Fish and Oyster Co., Inc., plat 16613, to corner 91, 37° 07.6416382'N, 75° 54.4402745'W; thence northeasterly to corner 90, 37° 07.6890220'N, 75° 54.3527929'W; thence northeasterly to corner 89, 37° 07.7661702'N, 75° 54.0839677'W; thence northeasterly along the inshore oyster lease line of Henry S. Jones, Jr., plat 19450, to corner 254, 37° 07.7879690'N, 75° 53.9324560'W; thence northerly to corner 253, 37° 07.8109207'N, 75° 53.9343385'W; thence westerly to corner 252, 37° 07.8094111'N, 75° 53.9916726'W; thence north-northwesterly to corner 251, 37° 07.8582020'N, 75° 53.9962243'W; thence west-southwesterly to corner 250, 37° 07.8535649'N, 75° 54.0512576'W; thence northwesterly to corner 249, 37° 07.9116397'N, 75° 54.0935389'W; thence westerly to corner 248, 37° 07.9113922'N, 75° 54.0976427'W; thence north-northwesterly along the inshore oyster lease line of Ballard Fish and Oyster Co., Inc., plat 16613, to corner 88, 37° 08.0660474'N, 75° 54.1122194'W; thence northeasterly to corner 87, 37° 08.1821017'N, 75° 54.0516546'W; thence north-northeasterly to corner 86, 37° 08.2555945'N, 75° 54.0483544'W; thence north-northeasterly to corner 85, 37° 08.3987390'N, 75° 54.0094551'W, said point being the point of beginning.

3. Cobb Island Oyster Sanctuary - Beginning at a point in Cobb Bay, near the western shore of Cobb Island and being the southern most point of the oyster lease of John R. Mariner, plat 16866, corner 355, said corner having NAD 83 Geographic Coordinates of 37° 19.3528688'N, 75° 45.9182774'W; thence northeasterly along the inshore line of said oyster lease to corner 354, 37° 19.4051876'N, 75°

45.8386060'W; thence northeasterly to corner 353, 37° 19.5182900'N, 75° 45.6662561'W; thence northeasterly to corner 352, 37° 19.6443229'N, 75° 45.5201098'W; thence southeasterly to a point on Cobb Island, corner 5, 37° 19.2960000'N, 75° 45.3319992'W; thence southwesterly to corner 6, 37° 19.2109998'N, 75° 45.4150006'W; thence southwesterly to a point west of Cobb Island, corner 7, 37° 18.9289998'N, 75° 45.5570001'W; thence southwesterly to corner 8, 37° 18.8050003'N, 75° 45.7710008'W; thence southwesterly to corner 9, 37° 18.2650004'N, 75° 46.3249991'W; thence southwesterly to corner 10, 37° 18.1689997'N, 75° 46.6559996'W; thence northerly to corner 11, 37° 18.6160000'N, 75° 46.6279994'W; thence northeasterly to corner 12, 37° 18.7500009'N, 75° 46.5019997'W; thence northeasterly to the western most point of the oyster lease of J. Steve McCready, plat 16371, corner 90, 37° 18.8870550'N, 75° 46.1567968'W; thence southeasterly along the lease line to corner 89, 37° 18.8653681'N, 75° 46.1241425'W; thence southeasterly along the oyster lease line of R&C Seafood, plat 16986 to corner 374, 37° 18.7448511'N, 75° 46.0512077'W; thence northeasterly to corner 373, 37° 18.9339657'N, 75° 45.7191531'W; thence northeasterly to corner 372, 37° 18.9858220'N, 75° 45.6864128'W; thence northwesterly to corner 355, 37° 19.3528688'N, 75° 45.9182774'W, said point being the point of beginning.

4. Boxtree Oyster Sanctuary - Beginning at a point in Boxtree Creek, said point being the eastern most point on the oyster lease of Edwin E. Brady and Marion Brady, Jr., plat 16344, corner 7, said corner having NAD 83 Geographic Coordinates of 37° 23.7990757'N, 75° 51.5561984'W; thence southeasterly to corner 2, 37° 23.6849997'N, 75° 51.4280006'W; thence southerly to a point in Ramshorn Bay, corner 3, 37° 23.5570008'N, 75° 51.4309991'W; thence southeasterly to corner 4, 37° 23.5009994'N, 75° 51.3100008'W; thence southeasterly to corner 5, 37° 23.4050000'N, 75° 51.2529994'W; thence southwesterly to corner 6, 37° 22.8749994'N, 75° 51.5500012'W; thence westerly to a point on shore, corner 8, 37° 22.9039994'N, 75° 52.3000000'W; thence northeasterly to corner 7, 37° 23.7990757'N, 75° 51.5561984'W, said point being the point of beginning.

5. Parramore Island Sanctuary - Beginning at a point, corner 1, in Swash Bay, near the western shore of Parramore Island, being approximately 1,550 feet northeast of the northern most point of the oyster lease of John Barr, plat 19331, said corner having NAD 83 Geographic Coordinates of 37° 32.7759991'N, 75° 39.1639995'W; thence in an east-southeasterly direction, onto Parramore Island, to corner 2, 37° 32.7529993'N, 75° 39.0129998'W; thence south-southeasterly to, a point on shore, corner 3, 37° 32.2970002'N, 75° 39.0090007'W; thence northwesterly, off shore, to corner 4, 37° 32.3579996'N, 75° 39.1610007'W; thence north-northwesterly to corner 1,

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37° 32.7759991'N, 75° 39.1639995'W, said point being the point of beginning.

6. Hillcrest Oyster Sanctuary - Beginning at a point in Brockenberry Bay, on the south side of the entrance channel to Oyster Slip and approximately 139 feet south-southwest of Day Marker 14, said point being corner 1, having NAD 83 Geographic Coordinates of 37° 17.3320003'N, 75° 55.1269999'W; thence southeasterly to corner 2, 37° 17.2680001'N, 75° 54.8050006'W; thence east-northeasterly to corner 3, 37° 17.3050000'N, 75° 54.5899996'W; thence northeasterly to corner 4, 37° 17.4090006'N, 75° 54.5039998'W; thence northeasterly to corner 5, 37° 17.5909997'N, 75° 54.4389995'W; thence northeasterly to corner 6, 37° 17.7330004'N, 75° 54.2999997'W; thence south-southeasterly to corner 7, 37° 17.5039998'N, 75° 54.0680001'W; thence south-southeasterly to corner 8, 37° 17.3660002'N, 75° 53.9980006'W; thence south-southeasterly to corner 9, 37° 16.8299992'N, 75° 53.9940006'W; thence south-southwesterly to corner 10, 37° 16.4400007'N, 75° 54.0729995'W; thence northwesterly to corner 11, 37° 16.6400008'N, 75° 54.3490009'W; thence west-northwesterly to corner 12, 37° 16.7200007'N, 75° 54.5290004'W; thence west-southwesterly to corner 13, 37° 16.7550008'N, 75° 55.1040003' W; thence west-southwesterly to corner 14, 37° 16.7039996'N, 75° 55.6450007'W; thence northeasterly to corner 15, 37° 17.0609995'N, 75° 55.0360003'W; thence northeasterly to corner 16, 37° 17.1370004'N, 75° 54.9509998'W; thence northwesterly to corner 17, 37° 17.2660006' N, 75° 55.0820004'W; thence west-southwesterly to corner 18, 37° 17.2610009'N, 75° 55.2330009'W; thence northerly to corner 19, 37° 17.2979996'N, 75° 55.2310007'W; thence northeasterly to corner 1, 37° 17.3320003'N, 75° 55.1269999'W, said point being the point of beginning.

7. All constructed oyster reef sanctuary areas marked by a "no harvesting" sign provided by the Conservation and Replenishment Department.

## 4VAC20-650-40. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty set forth by § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall return all oysters in possession to the water and shall cease harvesting on that day. All harvesting apparatus of the person in violation of this chapter shall be subject to seizure, and pursuant to § 28.2-232 of the Code of Virginia, that person shall be subject to the immediate forfeiture of all oyster licenses and permits until appearing before the Marine

~~Resources Commission~~ prescribed by law, any person violating any provision of this chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area, and shall cease harvesting on that day. All harvesting apparatus may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Virginia Marine Resources Commission.

VA.R. Doc. No. R11-2561; Filed September 29, 2010, 4:17 p.m.

## Final Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40 through 4VAC20-720-80, 4VAC20-720-110).**

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

Effective Date: October 1, 2010.

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

### Summary:

*The amendments set times of closure and other restrictions on the harvest of oysters from all oyster grounds in the Chesapeake Bay and its tributaries, including the Potomac River tributaries and Seaside of Eastern Shore.*

## 4VAC20-720-20. Definitions.

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

"Coan River Area" means that area of the Coan River to the ~~Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur) inside of Public Grounds 77 and 78.~~

"Deep Rock Patent Tong Area (Lower Chesapeake Bay)" means the area described as follows: starting at Cherry Point, Gwynns Island, thence northeast to G"1P" along the south side of the channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, North of Hole-in-the-Wall.

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth

30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east 2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Great Wicomico River Hand Scrape Area" means that area east of a line drawn from Sandy Point to Cockrell Point.

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

"James River Hand Scrape Area" means those public oyster grounds of the James River west of the Monitor and Merrimac Bridge Tunnel and northeast of the Mills E. Godwin/Nansemond River Bridge (Route 17) to the James River Bridge (Route 17).

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43.

"Lower Machodoc Area" means that area of the Lower Machodoc River to the Virginia-Maryland state line (PRV5A to PRV5C).

"Milford Haven" means that area of Milford Haven inside of Public Ground 7, within these coordinates: 37° 28.32', N., 76° 16.45', W.; 37° 28.35', N., 76° 16.42', W.; 37° 28.37', N., 76° 16.47', W.; 37° 28.35', N., 76° 16.50', W.

"Mobjack Bay Hand Scrape Area" shall consist of all of Public Ground No. 25, Gloucester County (Towe Stake) within these coordinates: 37° 20.59', N., 76° 23.24', W.; 37° 20.38', N., 76° 22.72', W.; 37° 19.86', N., 76° 23.59', W.; 37° 20.03', N., 76° 23.77', W.; and 37° 20.39', N., 76° 23.58', W. and that portion of Public Ground No. 2, Mathews County (Pultz Bar), within these coordinates: 37° 21.25', N., 76° 21.37', W.; 37° 21.27', N., 76° 20.96', W.; 37° 21.02', N., 76° 20.94', W.; and 37° 21.05', N., 76° 21.33', W.

~~"Nomini River Hand Scrape Area" means that area of the Nomini River inside of Public Ground No. 1 to the Virginia-Maryland state line (PRV6A to PRV6B) (Kingscopsico), Public Ground 26 (Deans) and Public Ground 28 (Cut).~~

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

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

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Rotation Area 1" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning at the MLW west of Broad Creek (37° 33.952', N., 76° 19.309', W.); thence north to a VMRC buoy on the Baylor line (37° 34.539', N., 76° 19.022', W.) to VMRC buoy (37° 34.683', N., 76° 19.100' W.); thence, northeasterly to VMRC Buoy (37° 35.017', N., 76° 19.450', W.); thence, northeasterly to Sturgeon Bar Light (7R) (37° 35.150', N., 76° 19.733', W.); thence, continuing northwest to Mosquito Point Light (8R) (37° 36.100', N., 76° 21.300', W.); thence to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.) bounded on the east by a line from Windmill Point (37° 35.793', N., 76° 14.180', W.); thence, southeast to Windmill Point Light (37° 35.793', N., 76° 14.180', W.); thence southwesterly to Stingray Point Light (37° 33.673', N., 76° 16.362', W.); thence, westerly to Stingray Point (37° 33.692', N., 76° 17.986', W.)

"Rappahannock River Rotation Area 2" shall consist of all public grounds in the Rappahannock River with a boundary on the east side defined as beginning at the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence, southeast to Mosquito Point Light "8R" (37° 36.100', N., 76° 21.300', W.); thence, continuing southeasterly to Sturgeon Bar Beacon "7R" (37° 35.150', N., 76° 19.733', W.); thence, southwesterly to VMRC buoy (37° 34.933', N., 76° 21.050', W.); thence, southwesterly to VMRC buoy (37° 34.883', N., 76° 21.100', W.); thence, to a pier west of Hunting Creek at Grinels (37° 34.436', N., 76° 26.288', W.). Rappahannock River Rotation Area 2 is bordered on the west by a line beginning at Mill Creek channel marker "4" (37° 35.083', N., 76° 26.950', W.); thence, northeasterly to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence, northeasterly to the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.).

"Rappahannock River Rotation Area 3" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from the north channel fender at the Norris Bridge (37° 37.483', N., 76° 25.345', W.); thence, southeast to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence southwest to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence southwesterly to Mill Creek channel marker "4" (37° 35.083', N., 76° 24.950', W.); thence northeasterly to Parrotts Creek channel marker "1" (37° 36.033', N., 76° 25.417', W.); thence northerly to VMRC buoy (37° 36.333', N., 76° 25.200', W.); thence returning northerly to the Norris Bridge north channel fender.

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"Rappahannock River Rotation Area 4" shall consist of all public grounds in the Rappahannock River with the boundary defined as beginning at the White Stone end of the Norris Bridge (37° 38.129', N., 76° 24.722', W.); thence, along the Norris Bridge to the north channel fender (37° 37.483', N., 76° 25.345', W.); thence westerly to the VMRC buoy 5-4 (36° 38.005', N., 76° 30.028', W.); thence, north to Old House Point (37° 39.139', N., 76° 29.685', W.); thence, northerly to Ball Point (37° 41.660', N., 76° 28.632', W.); thence, continuing northerly to Bar Point (37° 41.666', N., 76° 28.866', W.); thence easterly to Black Stump Point (37° 41.737', N., 76° 28.111', W.); thence, southeasterly to the western headland of Taylor Creek (37° 40.983', N., 76° 27.602', W.); thence, southwesterly to VMRC Buoy at Ferry Bar north (37° 40.300', N., 76° 28.500', W.); thence, southeasterly to VMRC Buoy at Ferry Bar South (37° 40.167', N., 76° 28.583', W.); thence, southwesterly to Corrotoman Point Duck Blind (37° 39.876', N., 76° 28.420', W.); thence, southerly to VMRC Buoy 543 (37° 39.267', N., 76° 27.850', W.); thence, southerly to VMRC Buoy at Drumming West (37° 38.883', N., 76° 27.683', W.); thence, southerly to VMRC buoy at Drumming East (37° 38.833', N., 76° 27.567', W.); thence, northeasterly to Orchard Point (37° 38.924', N., 76° 27.126', W.).

"Rappahannock River Rotation Area 5" shall consist of public grounds in the Rappahannock River with a boundary defined as beginning east of a line from the east headland of Whiting Creek (37° 36.658', N., 76° 30.312', W.); thence, north to Towles Point buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, easterly to VMRC buoy 5-4 (37° 38.005', N., 76° 30.028', W.) continuing easterly to the Norris Bridge north channel fender (37° 37.483', N., 76° 25.345', W.); thence, along the Norris Bridge southwest to Grey's Point (37° 36.833', N., 76° 25.999', W.).

"Rappahannock River Rotation Area 6" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from Balls Point (37° 39.355', N., 76° 34.444', W.); thence, northeast to the flashing red buoy "8" off Rogue Pt. (37° 40.158', N., 76° 32.939', W.); thence, southeasterly to VMRC Towles Point Area buoy (37° 38.833', N., 76° 31.536', W.); thence, southwesterly to VMRC White House Sanctuary buoy (37° 38.150', N., 76° 30.533', W.); thence, southeasterly to red buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, southerly to the eastern headland of the mouth of Whiting Creek (37° 36.658', N., 76° 30.312', W.).

"Rappahannock River Area 7" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning south of a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.) to a line from Rogue's Point (37° 40.040', N., 76° 32.253', W.); thence, northwest to flashing red buoy "8" (37° 40.158', N., 76° 32.939', W.) continuing southwest to Balls Point (37° 39.355', N., 76° 34.444', W.).

"Rappahannock River Area 8" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning east and south of a line from Jones Point (37° 46.786', N., 76° 40.835', W.) to Sharps Point (37° 49.364', N., 76° 42.087', W.) to a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.).

"Rappahannock River Area 9" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning west of the line drawn from Sharps Pt. (37° 49.364', N., 76° 42.087', W.) to Jones Pt (37° 46.786', N., 76° 40.835', W.) to the Route 360 (Downing Bridge).

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

"Tangier-Pocomoke Sounds Rotation Area 1" shall include all public and unassigned grounds within the PTSMA, in Tangier Sound, that are west and south of a line beginning at the Maryland-Virginia Line (37° 54.61360', N., 75° 53.97396', W.) continuing south on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence continuing west to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence south to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence continuing east to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.). Area 1 shall also include all of the public and unassigned grounds in the PTSMA in Pocomoke Sound south and west of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C - 1" (37° 52.10000', N., 75° 47.80833', W.) thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier-Pocomoke Sounds Rotation Area 2" shall include all public and unassigned grounds in the PTSMA with a boundary defined as beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence south to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.); thence west to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence north to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence back east to the house on Great Fox Island. This area includes Public Ground No. 7, known as "Thoroughfare Rock" and Public Ground No. 8, known as "California Rock" in Tangier Sound. Area 2 shall also include all public and unassigned grounds in the PTSMA in Pocomoke Sound northeast of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C - 1"

(37° 52.10000', N., 75° 47.80833', W.); thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy #5, thence south southwest to buoy #3 (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning.

"Thomas Rock Hand Scrape Area" means an area in the James River with an eastern boundary being the James River, Route 17 bridge and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point; thence to the channel buoy green #5; and thence to Blunt Point on the north side of the river.

"Unassigned ground" means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

"Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area)" means the area in Public Ground Number 118, south from the Smith Point Light to the Great Wicomico Light.

"Yeocomico River Area" means that area of the Yeocomico River inside Public Grounds 8, 102, 104, and 107, 112 and 113.

"York River Hand Scrape Area" means an area above the Route 17 or Coleman Bridge in Public Ground No. 30, along the north side of the river, to just above Aberdeen Creek.

#### **4VAC20-720-40. Open season and areas.**

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2009~~ 2010, through April 30, ~~2010~~ 2011.
2. Seaside of Eastern Shore: for clean cull oysters only, November 1, ~~2009~~ 2010, through February 28, ~~2010~~ 2011.
3. ~~Rappahannock River Area 8~~; Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand

Scrape Area); ~~the York River and Mobjack Bay Hand Scrape Areas; Area; and Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Great Wicomico River Hand Scrape Area: December 1, 2009, through February 28, 2010~~ October 1, 2010, through December 31, 2010.

4. ~~Rappahannock River Rotation Area 3 4: November 1, 2009, through November 30, 2009. The Rappahannock River Rotation Area 5: October 1, 2009, through October 31, 2009, and March 1, 2010, through March 31, 2010~~ October 1, 2010, through November 30, 2010, and February 1, 2011, through February 28, 2011.

5. Tangier - Pocomoke Sounds Rotation Area ~~4~~ 2: December 1, ~~2009~~ 2010, through February 28, ~~2010~~ 2011.

6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): October 1, ~~2009~~ 2010, through December ~~31, 2009~~ 2010.

7. ~~The Great Wicomico River Hand Scrape area: November 1, 2009, through January 31, 2010. The York River Hand Scrape Area: October 1, 2010, through December 31, 2010.~~

#### 8. The Rappahannock River Multigear Areas:

a. The Rappahannock River Areas 6, 7, and 8: (For Hand Scrape Only) October 1, 2010, through December 31, 2010.

b. The Rappahannock River Areas 6 and 7: (For Patent Tong Only) January 1, 2011, through February 28, 2011.

9. Milford Haven and Deep Rock Patent Tong Area (Lower Chesapeake Bay): October 1, 2010, through December 31, 2010.

10. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: October 1, 2010, through December 31, 2010.

#### **4VAC20-720-50. Closed harvest season and areas.**

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, ~~2009~~ 2010, through September 30, ~~2010~~ 2011.
2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, ~~2010~~ 2011, through September 30, ~~2010~~ 2011.
3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, ~~2009~~ 2010, through October 31, ~~2009~~ 2010, and March 1, ~~2010~~ 2011, through September 30, ~~2010~~ 2011, and for seed oysters, all year.



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4. ~~Rappahannock River Area 8; Rappahannock River Area 9; Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); and the York River and Mobjack Bay Hand Scrape Areas; and the Great Wicomico River Hand Scrape Area: October 1, 2009, through November 30, 2009, and March 1, 2010, through September 30, 2010~~ January 1, 2011, through September 30, 2011.

5. ~~The Rappahannock River Rotation Area 3 4: October 1, 2009 through October 31, 2009, and December 1, 2009 through September 30, 2010. Rotation Area 5: November 1, 2009 through February 28, 2010 and April 1, 2010, through September 30, 2010~~ December 1, 2010, through January 31, 2011, and March 1, 2011, through September 30, 2011.

6. ~~Tangier - Pocomoke Sounds Rotation Area 1 2: October 1, 2009 2010, through November 30, 2009 2010, and March 1, 2010 2011, through September 30, 2010 2011.~~

7. ~~The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): January 1, 2010 2011, through September 30, 2010 2011.~~

8. ~~The Great Wicomico River Hand Scrape Area: October 1, 2009 through October 31, 2009 and February 1, 2010 through September 30, 2010. The York River Hand Scrape Area: January 1, 2011, through September 30, 2011.~~

9. Rappahannock River Multigear Areas:

a. The Rappahannock River Areas 6, 7, and 8: (For Hand Scrape Only) January 1, 2011, through September 30, 2011.

b. The Rappahannock River Areas 6 and 7: (For Patent Tong Only) October 1, 2010, through December 31, 2010, and March 1, 2011, through September 30, 2011.

10. Milford Haven and Deep Rock Patent Tong Area: January 1, 2011, through September 30, 2011.

11. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: January 1, 2011, through September 30, 2011.

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

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1; and 3, 5, 6, and 7 through 10 of 4VAC20-720-40, except as described in 4VAC20-1230. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

~~C. It shall be unlawful for any person to harvest or attempt to harvest oysters in the area as described in subdivision 4 of 4VAC20-720-40 prior to 7 a.m. and after 1 p.m.~~

## **4VAC20-720-70. Gear restrictions.**

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area; ~~and the Rappahannock River Area 9; Milford Haven and Little Wicomico, Coan, Nomini and Yeocomico Rivers,~~ except by hand tong or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong or ordinary tong.

B. It shall be unlawful to harvest oysters from the area as described in subdivision 2 of 4VAC20-720-40, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation ~~Areas 3 and 5~~ Area 4; the Rappahannock River Area 8, James River Hand Scrape Area, Thomas Rock Hand Scrape Area, Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area), and York River, Great Wicomico, and Mobjack Bay Hand Scrape Areas, except by hand scrape. It shall be unlawful to harvest oysters in the Rappahannock River Areas 6 and 7, except by hand scrape from October 1, 2010, through December 31, 2010.

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

E. It shall be unlawful to harvest oysters from the area as described in subdivision 5 of 4VAC20-720-40, except by a standard oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Patent Tong Area, except by a standard oyster patent tong. It shall be unlawful to harvest oysters from the Rappahannock River Areas 6 and 7 from January 1, 2011, through February 28, 2011, except by a standard oyster patent tong.

**4VAC20-720-75. Gear license.**

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Mobjack Bay and Great Wicomico River, unless that person has first obtained a current hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with a dredge from the public oyster grounds in the area as described in subdivision 5 of 4VAC20-720-40, unless that person has first obtained a current dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Patent Tong Area or Rappahannock River Areas 6 and 7, unless that person has first obtained a current oyster patent tong license.

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

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

A. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4, and 6, and 7 through 10 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by eight 10 bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

B. In the area as described in subdivision 5 of 4VAC20-720-40, where harvesting is allowed by dredge, there shall be a harvest limit of eight 10 bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than eight 10 bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

C. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

**4VAC20-720-110. Penalty.**

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty prescribed by law, any person violating any provisions of this chapter shall return all oysters

~~in possession to the water, shall cease harvesting on that day, all harvesting apparatus shall be subject to seizure and pursuant to § 28.2-232 of the Code of Virginia shall be subject to the immediate forfeiture of all oyster licenses and permits until appearing before the Marine Resources Commission provision of this chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area, and shall cease harvesting on that day. All harvesting apparatus may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Virginia Marine Resources Commission.~~

VA.R. Doc. No. R11-2562; Filed September 29, 2010; 4:59 p.m.



**TITLE 9. ENVIRONMENT**

**STATE AIR POLLUTION CONTROL BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Air Pollution Control Board is claiming an exclusion 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 Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 9VAC5-20. General Provisions (Rev. D10) (amending 9VAC5-20-21).

**Statutory Authority:** § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the Clean Air Act; 40 CFR Part 51.

**Effective Date:** November 10, 2010.

**Agency Contact:** Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

**Summary:**

*Section 10.1-1307.03 of the Code of Virginia requires that the board, by January 1, 2011, adopt any regulations necessary to implement and enforce the requirements of § 328 of the federal Clean Air Act relating to requirements to control air pollution from Outer Continental Shelf (OCS) sources located offshore of the Commonwealth. The regulations may not differ materially from the regulations promulgated by the U.S. Environmental Protection Agency*

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*(EPA) in implementing § 328 of the Clean Air Act (40 CFR Part 55). Therefore, 9VAC5-20-21 is amended such that the federal OCS program of 40 CFR Part 55 is adopted. This amendment will enable EPA to delegate implementation and enforcement of 40 CFR Part 55 to the Commonwealth, and, in turn, enable the Commonwealth to require limitations on emissions as needed in order to attain and maintain the ambient air quality standards, and to meet prevention of significant deterioration (PSD) requirements.*

## **9VAC5-20-21. Documents incorporated by reference.**

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2008~~) (2010) in effect July 1, ~~2008~~ 2010. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
  - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50-National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E -- Reserved.

(f) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(j) Appendix J -- Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere.

(k) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(l) Appendix L - Reference Method for the Determination of Fine Particulate Matter as PM<sub>2.5</sub> in the Atmosphere.

(m) Appendix M - Reserved.

(n) Appendix N - Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>.

(o) Appendix O - Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(p) Appendix P - Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(q) Appendix Q - Reference Method for the Determination of Lead in Suspended Particulate Matter as PM<sub>10</sub> Collected from Ambient Air.

(r) Appendix R - Interpretation of the National Ambient Air Quality Standards for Lead.

(s) Appendix S - Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

~~(3)~~ (4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C - National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D - National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

~~(4)~~ (6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

~~(5)~~ (7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

~~(6)~~ (8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et

seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

~~(7) 40 CFR Part 59, Subpart D National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."~~

~~(8)~~ (9) 40 CFR Part 64, Compliance Assurance Monitoring.

~~(9)~~ (10) 40 CFR Part 72, Permits Regulation.

~~(10)~~ (11) 40 CFR Part 73, Sulfur Dioxide Allowance System.

~~(11)~~ (12) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

~~(12)~~ (13) 40 CFR Part 75, Continuous Emission Monitoring.

~~(13)~~ (14) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

~~(14)~~ (15) 40 CFR Part 77, Excess Emissions.

~~(15)~~ (16) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

~~(16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.~~

(17) 40 CFR Part 152 Subpart I, Classification of Pesticides.

(18) 49 CFR Part 172, Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F, Fire Protection and Prevention.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock

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number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency " (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this subdivision may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this subdivision are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.

### 3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

### 4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

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(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

## 12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

## 13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

## 14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

V.A.R. Doc. No. R11-2472; Filed September 21, 2010, 11:52 a.m.

### Final Regulation

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

**Title of Regulation:** **9VAC5-85. Permits for Stationary Sources of Pollutants Subject to Regulation (Rev. C10) (adding 9VAC5-85-10 through 9VAC5-85-70).**

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

**Effective Date:** January 2, 2011.

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

Summary:

*On June 3, 2010, at 75 FR 31514, EPA promulgated final regulations for permitting for greenhouse gases (GHGs). This new chapter enables permitting of GHGs for appropriate sources by raising the permitting thresholds for GHGs from 100/250 tons per year (tpy) to 100,000 tpy for new prevention of significant deterioration (PSD) sources and federal operating permit (Title V) sources, and 75,000 tpy for modifications. The regulation affects the PSD NSR regulations in 40 CFR 51.166 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "regulated NSR permit." Virginia is a "SIP-approved" state for PSD so it has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal regulations. The regulation also affects the federal operating permit (Title V) regulations in 40 CFR Part 70 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "major source." Virginia's federal operating permit regulations are federally approved, and must be revised to be at least as protective as the federal. Therefore, the Virginia regulations are being revised in accordance with the June 3, 2010, federal final regulations.*

CHAPTER 85  
PERMITS FOR STATIONARY SOURCES OF  
POLLUTANTS SUBJECT TO REGULATION

Part I  
Applicability

**9VAC5-85-10. Applicability.**

A. Except as provided in subsection C of this section, the provisions of this chapter shall apply to permit actions for a stationary source that emits, or has the potential to emit, any air pollutant subject to regulation. For the purposes of this part, "subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity.

B. The provisions of this chapter apply throughout the Commonwealth of Virginia.

C. The provisions of this chapter shall not apply to the following:

1. Permit actions under Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80. Nothing in this chapter shall be construed as designating greenhouse gases as a regulated air pollutant for the purposes of Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80.
2. Permit actions under Article 7 (9VAC5-80-1400 et seq.) of Part II of 9VAC5-80.
3. Permit actions under Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80.

Part II  
Federal (Title V) Operating Permit Actions

**9VAC5-85-20. Federal (Title V) operating permit actions.**

The requirements of Article 1 (9VAC5-80-50 et seq.) and Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5-80 shall apply, except that the terms defined shall have the meaning given them in this part.

**9VAC5-85-30. Definitions.**

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-60 (Definitions) or 9VAC5-80-370 (Definitions), as applicable, except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-10 (General Definitions), 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Greenhouse gases (GHGs)" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Major stationary source" means, in lieu of subdivision b in the definition of "major source" in 9VAC5-80-60, a major stationary source of air pollutants, as defined in § 302 of the federal Clean Air Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of § 302(j) of the federal Clean Air Act, unless the source belongs to one of the 27 categories of stationary sources as listed in subdivisions b (1) through (27) in the definition of "major source" in 9VAC5-80-60.



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"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year (tpy) CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e).
2. The term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98, and summing the resultant value for each to compute a tpy CO<sub>2</sub>e.

## Part III

### Prevention of Significant Deterioration Permit Actions

#### **9VAC5-85-40. Prevention of significant deterioration area permit actions.**

The requirements of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 shall apply, except that the terms defined shall have the meaning given to them in this part.

#### **9VAC5-85-50. Definitions.**

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-1615 (Definitions), except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-10 (General Definitions), 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

#### C. Terms defined.

"Greenhouse gases (GHGs)" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

#### "Regulated NSR pollutant" means:

1. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g.,

volatile organic compounds and NO<sub>x</sub> are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

3. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

4. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act as defined in the definition of "subject to regulation."

5. Notwithstanding subdivisions 1 through 4 of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act, or added to the list pursuant to § 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to § 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation except as provided in subdivisions 4 and 5 of this definition.

2. For purposes of subdivisions 3 through 5 of this definition, the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

- a. Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98.

- b. Sum the resultant value from subdivision a of this subdivision for each gas to compute a tpy CO<sub>2</sub>e.

3. The term "emissions increase" as used in subdivisions 4 and 5 of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 9VAC5-80-1605 G) and a significant net emissions increase (as defined in 9VAC5-80-1615 C) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value

in subdivision b of the definition of "significant" in 9VAC5-80-1615 C.

4. Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

a. The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

b. The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

5. Beginning July 1, 2011, in addition to the provisions in subdivision 4 of this definition, the pollutant GHGs shall also be subject to regulation:

a. At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e; or

b. At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

Part IV

State Operating Permit Actions

**9VAC5-85-60. State operating permit actions.**

Within the limits of 9VAC5-80-800 C, the requirements of Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5-80 may apply, except that the terms defined shall have the meaning given them in this part.

**9VAC5-85-70. Definitions.**

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-810 (Definitions), except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-10 (General Definitions), 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR 68.

6. Any pollutant subject to a regulation adopted by the board.

7. Any pollutant subject to regulation under the Virginia Air Pollution Control Law.

8. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act as defined in the definition of "subject to regulation."

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.

VA.R. Doc. No. R11-2470; Filed September 21, 2010; 11:52 a.m.

**TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

**STATE CORPORATION COMMISSION**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 10VAC5-210. Motor Vehicle Title Lending (adding 10VAC5-210-10 through 10VAC5-210-110).

**Statutory Authority:** §§ 6.2-2214 and 12.1-13 of the Code of Virginia.

**Effective Date:** October 1, 2010.

**Agency Contact:** Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation

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# Regulations

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Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email [susan.hancock@scc.virginia.gov](mailto:susan.hancock@scc.virginia.gov).

## Summary:

*The State Corporation Commission is adopting final regulations in connection with Chapter 477 of the 2010 Acts of Assembly, which establishes a comprehensive licensing and regulatory framework for motor vehicle title lenders and motor vehicle title loans effective October 1, 2010. The final regulations (i) define various terms used in Chapter 477, including "duplicate original" and "good funds instrument"; (ii) require a licensee to file written reports with the Commissioner of Financial Institutions within 15 days following the occurrence of certain events (including those events set forth in Chapter 477); (iii) require a licensee to provide prospective borrowers with a warning notice; (iv) prescribe the contents of the rights and responsibilities pamphlet; (v) require a licensee to post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside; (vi) prohibit a licensee from making a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee; (vii) require a licensee to include various questions in its loan application form so that the licensee will know whether an applicant is ineligible for a motor vehicle title loan; (viii) provide that a licensee must release its security interest and take other specified actions within 10 days after the date that a borrower's obligations under a motor vehicle title loan are satisfied in full; (ix) require a licensee to provide certain data to the Commissioner of Financial Institutions when filing its annual report, such as the total number and dollar amount of motor vehicle title loans made by the licensee; (x) set forth the rules governing the conduct of other business in motor vehicle title lending offices and contain the uniform conditions that will be applicable to the conduct of any approved other business in motor vehicle title lending offices as well as the conditions that would be attached to specific types of other businesses, such as making payday loans, acting as an agent of a money transmitter, and providing tax preparation services; (xi) require a licensed motor vehicle title lender to disclose certain information in its advertisements, including the name of the lender as set forth in the license issued by the commission and a statement that the lender is "licensed by the Virginia State Corporation Commission"; (xii) require a licensee to maintain certain records for at least three years after final payment is made on a motor vehicle title loan, including copies of the loan application, the loan agreement, and a record of the fair market value of the motor vehicle securing the loan; (xiii) require a licensee to maintain a repossession log or similar record of all motor vehicles*

*that have been repossessed by or on behalf of the licensee; (xiv) require a licensee to maintain certain other records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee, including copies of the written notices and accounting that were mailed by the licensee to the borrower prior to the sale of the motor vehicle; (xv) clarify the commission's enforcement authority and provide that the commission may, at its discretion, waive or grant exceptions to any provision of its motor vehicle title lending regulations for good cause shown; and (xiv) set forth various other requirements and limitations.*

*The final regulations made various changes to the proposed regulations. In 10VAC5-210-10, the phrase "and willing to accept" was inserted in the definition of "good funds instrument." In 10VAC5-210-20, "Virginia" or "local, state, or federal" was inserted before "governmental authority" in subdivisions C 2, C 3, C 4, and C 5. In subsection D of 10VAC5-210-30, the portion of the pamphlet entitled "Interest and Other Loan Costs" was revised to provide that as long as the maximum statutory rates are not exceeded, a lender is allowed to accrue interest using a single blended rate if the initial principal is higher than \$700. In subsection D of 10VAC5-210-50, the phrase "in the armed forces" was inserted after "active duty" in four locations. Additionally, in subsection F of 10VAC5-210-50, the word "knowingly" was inserted after "not." In 10VAC5-210-60, the ninth item of data that must be included in a licensee's annual report was expanded to include a breakdown of the total number of personal money judgments against borrowers that were obtained by or on behalf of the licensee based on various possible borrower actions. In subsection B of 10VAC5-210-70, the commission clarified the standards for approving the conduct of other business in motor vehicle title lending offices. Lastly, subdivisions E 4, H 5, and I 4 of 10VAC5-210-70 were modified to require licensees and other business operators to also identify in their required disclosures "the collateral, if any, that will be used to secure repayment of each loan product."*

*The final regulations are effective October 1, 2010. Since the final regulations become effective on the same date as Chapter 794 of the 2010 Acts of Assembly, which recodifies Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia, all of the affected statutory citations that appear in the final regulations reference Title 6.2 rather than Title 6.1.*

AT RICHMOND, SEPTEMBER 27, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00165

Ex Parte: In re: motor vehicle  
title lending regulations

ORDER ADOPTING REGULATIONS

On July 22, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions to adopt regulations pursuant to Chapter 21 of Title 6.1 of the Code of Virginia ("Chapter 21"),<sup>1</sup> which establishes a comprehensive licensing and regulatory framework for motor vehicle title lenders and motor vehicle title loans. The proposed regulations define various terms used in Chapter 21, clarify and implement certain requirements, limitations, and prohibitions applicable to motor vehicle title lenders and motor vehicle title loans, and prescribe the contents of the pamphlet that licensees must furnish to prospective borrowers. The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on August 16, 2010, posted on the Commission's website, and mailed to various interested parties. Interested parties were afforded the opportunity to file written comments on or before August 30, 2010, and a public hearing was scheduled for September 7, 2010.

Comments on the proposed regulations were filed by Mr. Blake Sims, Buckeye Title Loans of Virginia, LLC, Select Management Resources, LLC, the Virginia Department of Motor Vehicles, the Virginia Poverty Law Center, Dominion Management Services, Inc., the Office of the Attorney General, and ACE Cash Express, Inc.

On September 7, 2010, the Commission convened a hearing to consider the adoption of the proposed regulations. Staff counsel responded to the written comments filed and offered alternative suggestions for addressing some of the concerns that were raised in the written comments. The suggestions from Staff counsel pertained to the definition of "good funds instrument" in 10 VAC 5-210-10, the references to "active duty" in subsection D of 10 VAC 5-210-50, and the prohibition set forth in subsection F of 10 VAC 5-210-50. Staff counsel also responded to questions from the Commission regarding (i) subsection D of 10 VAC 5-210-30, which in specifying the text of the borrower rights and responsibilities pamphlet states that a motor vehicle title lender is required to record its lien with the Virginia Department of Motor Vehicles;<sup>2</sup> and (ii) subsection B of 10 VAC 5-210-70, which contains the standards for approving other business in motor vehicle title lending offices.

The only members of the public who participated in the hearing were David B. Irvin, representing the Office of the Attorney General, and James W. Speer, Executive Director of the Virginia Poverty Law Center. Mr. Irvin offered testimony in furtherance of the suggestion in his comment letter that the words "and conditions" be inserted after the word "costs" in three locations in 10 VAC 5-210-70 of the proposed regulations. Mr. Irvin indicated that the primary purpose of his suggestion was to ensure that consumers are aware of the type of security interest that a lender may take in connection with the various loan products that are available in a motor vehicle title lender's office. Mr. Speer testified at the hearing in support of the proposed regulations. In particular, Mr. Speer emphasized the importance of retaining the proposed requirement in subsection N of 10 VAC 5-210-50 that a licensee obtain proof of mailing from the United States Postal Service or other common carrier when sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia.

NOW THE COMMISSION, having considered the proposed regulations, the written comments filed, the record herein, and applicable law, concludes that the proposed regulations should be modified to incorporate certain suggestions that were made by commenters and Staff counsel. The Commission further concludes that the proposed standards for approving other business in motor vehicle title lending offices should be clarified, and that the proposed regulations, as modified, should be adopted with an effective date of October 1, 2010.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as modified herein and attached hereto, are adopted effective October 1, 2010.
- (2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Blake Sims, Chambliss, Bahner & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee 37402; Bridgette C. Roman, Vice President and General Counsel, Buckeye Title Loans of Virginia, LLC, 7001 Post Road, Suite 200, Dublin, Ohio 43016; John J. McCloskey, General Counsel, Select Management Resources, LLC, 3440 Preston Ridge Road, Suite 500, Alpharetta, Georgia 30005; Richard D. Holcomb, Commissioner, Virginia Department of Motor Vehicles, P.O.

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Box 27412, Richmond, Virginia 23269; James W. Speer, Virginia Poverty Law Center, 700 East Franklin Street, Suite 14T1, Richmond, Virginia 23219; Meade A. Spotts, Spotts Fain, P.C., P.O. Box 1555, Richmond, Virginia 23218; David B. Irvin, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Adam D. Nelson, Vice President and Deputy General Counsel, ACE Cash Express, Inc., 1231 Greenway Drive, Suite 600, Irving, Texas 75038; and a copy shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, including a copy of the attached regulations, to all applicants seeking a license to engage in business as a motor vehicle title lender and to any other interested parties that he may designate.

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<sup>1</sup> Chapter 794 of the 2010 Virginia Acts of Assembly recodifies Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia effective October 1, 2010. Chapter 21 of Title 6.1 will become Chapter 22 of Title 6.2.

<sup>2</sup> In order to accommodate loans secured by motor vehicles that are titled in other jurisdictions, Dominion Management Services, Inc. suggested in its comment letter that the regulations require licensees to record their liens with the Virginia Department of Motor Vehicles "or applicable division of motor vehicles in the state / territory / district where titled." However, as Staff counsel pointed out during the hearing, this suggestion conflicts with subsection 11 of § 6.2-2215 of the Code of Virginia, which requires a licensee to "file to have its security interest in a motor vehicle added to a certificate of title by complying with the requirements of § 46.2-637 [of the Code of Virginia]." In prescribing the procedure for recording a security interest, § 46.2-637 specifically references the Department of Motor Vehicles of the Commonwealth.

## CHAPTER 210 MOTOR VEHICLE TITLE LENDING

### 10VAC5-210-10. Definitions.

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

"Act" means Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc.

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of the Act and this chapter means a day on which the licensee's office is open for business as posted as required by subsection B of 10VAC5-210-50.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle [ and willing to accept ] such payments, payment effected by use of a credit card.

"Liquid assets" for purposes of the Act and this chapter means cash in depository institutions, money market funds, commercial paper, and treasury bills.

B. Other terms used in this chapter shall have the [ meaning meanings ] set forth in § 6.2-2200 of the Act.

### 10VAC5-210-20. Requirements for licensees; reporting requirements; acquisitions.

A. A licensee shall maintain in its own name unencumbered liquid assets per place of business in Virginia of at least \$75,000 at all times.

1. The minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

2. A licensee shall upon request by the bureau submit proof that it is complying with the provisions of this subsection.

B. After receiving its license from the commission, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

C. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact, if any, on the activities of the licensee in Virginia:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. The Attorney General or any other [ Virginia ] governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

3. Any [ local, state, or federal ] governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

4. Any [ local, state, or federal ] governmental authority (i) revokes or suspends the licensee's motor vehicle title lender license, title pawn license, or similar license; (ii)

takes formal administrative, regulatory, or enforcement action against the licensee relating to its motor vehicle title lending, title pawn, or similar business; or (iii) takes any other action against the licensee relating to its motor vehicle title lending, title pawn, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

5. Based on allegations by any [ local, state, or federal ] governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed motor vehicle title lending, title pawn, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in motor vehicle title lending, title pawn, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in motor vehicle title lending, title pawn, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

D. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

E. If a person has filed a bond with the bureau, as required by § 6.2-2204 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases making motor vehicle title loans.

F. Within 30 days after a person's license is surrendered or revoked, the former licensee shall provide the bureau with (i) the name, address, and telephone number of a designated contact person; (ii) the location of the former licensee's motor vehicle title loan records; and (iii) any additional information that the bureau may reasonably require.

G. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all motor vehicle title loans that the person made while licensed

as a motor vehicle title lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases making motor vehicle title loans.

## **10VAC5-210-30. Notice and pamphlet.**

A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide the prospective borrower with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long-term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice.

2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24-point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The acknowledgement shall state the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia.

C. The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," etc.) shall be printed in bold type.

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D. The required text of the borrower rights and responsibilities pamphlet shall be as follows:

## **MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA**

### **BORROWER RIGHTS AND RESPONSIBILITIES**

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>.

**In General:** You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection.

**Notice from Lender:** A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long-term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

**Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time:** Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; or (ii) you currently have another motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting [ a ] motor vehicle title lending business in Virginia.

**Prohibition on Obtaining Loan on Same Day Another Loan was Repaid:** Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting [ a ] motor vehicle title lending business in Virginia.

**Prohibition on Loans to Covered Members of the Armed Forces and their Dependents:** Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on

active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

**Certificate of Title / Other Security Interests:** Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the Virginia Department of Motor Vehicles and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

**Maximum Loan Amount:** A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide.

**Minimum and Maximum Loan Term / Monthly Payments:** Under Virginia law, your loan term cannot be either less than 120 days or more than 12 months. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal and interest. However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.

**Interest and Other Loan Costs:** The following are the maximum interest rates that a motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including \$700; (ii) 18% per month on the portion of the outstanding balance between \$701 and \$1,400; and (iii) 15% per month on the portion of the outstanding balance of \$1,401 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the [ ~~outstanding balance~~ initial principal ] is higher than \$700. In addition to interest, a motor vehicle title lender may charge you for the actual cost of recording its lien with the Virginia Department of Motor Vehicles.

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to five percent of the amount of the payment.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by a motor vehicle title lender.

**Costs of Repossession and Sale:** A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, preparing for sale, and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

**Written Loan Agreement:** A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original of your loan agreement at the time you sign it. If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

**Property Insurance:** A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

**Prohibition on Obtaining Funds Electronically:** A motor vehicle title lender is prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.

**Loan Proceeds:** You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office [ as the motor vehicle title lender ] is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle

title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

**Other Businesses:** A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.

**Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans:** A motor vehicle title lender is prohibited from making you a motor vehicle title loan so that you can purchase another product or service sold at the motor vehicle title lender's business location. A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.

**Right to Cancel:** You have the right to cancel your motor vehicle title loan at any time prior to the close of business on the next day the motor vehicle title lender is open following the date your loan is made by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle [ and willing to accept ] such payments, by using a credit card. If you cancel your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

**Cash Payments / Partial Payments / Prepayments:** You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to its specified due date without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance as well as the total amount of interest that you will be required to pay.

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any accrued and unpaid interest and other charges that you may owe on your motor vehicle title loan.

**Lender to Return Original Loan Agreement and Certificate of Title:** Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take



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any action necessary to reflect the termination of its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the Virginia Department of Motor Vehicles.

**No Rollovers, Extensions, Etc.:** A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.

**Failure to Repay:** Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS AND SELL YOUR MOTOR VEHICLE (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

**Repossession and Sale of your Motor Vehicle:** If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any

reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle [ and willing to accept ] such payments, by using a credit card.

Within 30 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive any surplus from the sale in excess of the sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on your motor vehicle title loan through the date the motor vehicle title lender repossessed your motor vehicle; and (iii) any reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

**Violation of the Virginia Consumer Protection Act:** Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

**Complaints and Contacting the Bureau of Financial Institutions:** For assistance with any complaints you may have against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

**10VAC5-210-40. Posting of charges and contact information for complaints.**

Licenses shall conspicuously post the schedule of finance charges and notice required by subdivision 14 of § 6.2-2215 of the Code of Virginia in accordance with the provisions of this section.

A. The minimum size for the poster shall be 24 inches by 18 inches.

B. The title for the schedule of finance charges, which shall be printed in at least 48-point bold type, shall be

"SCHEDULE OF FINANCE CHARGES FOR MOTOR VEHICLE TITLE LOANS." The title for the notice, which shall also be printed in at least 48-point bold type, shall be "HOW TO FILE A COMPLAINT AGAINST US."

C. The schedule of finance charges and notice shall be printed in at least 24-point bold type.

D. The notice shall contain the following statement: "Should you wish to file a complaint against us, you may contact the Bureau of Financial Institutions at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416."

### **10VAC5-210-50. Additional business requirements and restrictions.**

A. Each original license shall be prominently posted in each place of business of the licensee.

B. A licensee shall post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

C. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

D. A licensee shall not knowingly make a motor vehicle title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make these determinations and the determination in subsection F of this section, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?

2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?

3. Are you (i) on active duty [ in the armed forces ] under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

4. Are you married to an individual who is either (i) on active duty [ in the armed forces ] under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

5. Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty [ in the armed forces ] under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

6. Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty [ in the armed forces ] under a call or order that does not specify a period of 30 days or less [ \_ ] or (ii) on active guard and reserve duty?

E. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

F. A licensee shall not [ knowingly ] make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

H. A licensee shall not electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries.

I. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office [ as the licensee ] or any affiliated check casher to charge the borrower a fee for cashing the check.

J. A borrower shall have the right to cancel a motor vehicle title loan agreement at any time before the close of business on the next business day following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, contract for, collect, receive, recover, or require a

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borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

K. A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the balance due on the loan.

L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

M. Pursuant to §§ 6.2-2215 and 46.2-643 of the Code of Virginia, a licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

N. When sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

O. A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

P. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

## **10VAC5-210-60. Annual reporting requirements.**

When making the annual report required by § 6.2-2210 of the Code of Virginia, in addition to other information required by the commissioner, a licensee shall provide the following data regarding motor vehicle title loans made to Virginia residents:

1. The total number and dollar amount of motor vehicle title loans made by the licensee.

2. The total number of individual borrowers to whom motor vehicle title loans were made by the licensee.

3. The minimum, maximum, and average loan amount of motor vehicle title loans made by the licensee.

4. The minimum, maximum, and average Annual Percentage Rate of motor vehicle title loans made by the licensee.

5. The minimum, maximum, and average term (in days) of motor vehicle title loans made by the licensee.

6. The total number of individual borrowers that failed to make a monthly payment on a motor vehicle title loan for at least 60 days.

7. The total number of motor vehicles that were repossessed by or on behalf of the licensee.

8. The total number of repossessed motor vehicles that were sold by or on behalf of the licensee.

9. The total number of personal money judgments against borrowers that were obtained by or on behalf of the licensee [ along with a breakdown of this total that identifies the number of judgments the licensee pursued based on each of the following borrower actions: (i) intentionally damaging or destroying a motor vehicle that secures a title loan; (ii) intentionally concealing a motor vehicle that secures a title loan; (iii) giving the licensee a lien on a motor vehicle that is already encumbered by an undisclosed prior lien; and (iv) subsequently giving a security interest in, or selling, a motor vehicle that secures a title loan to a third party, without the licensee's written consent ].

## **10VAC5-210-70. Other business in motor vehicle title lending offices.**

A. This section governs the conduct of any business other than motor vehicle title lending where a licensed motor vehicle title lending business is conducted. As used in this section, the term "other business operator" refers to a licensed motor vehicle title lender or third party, including an affiliate of the licensed motor vehicle title lender, who conducts or wants to conduct other business from one or more motor vehicle title lending offices.

1. Pursuant to subdivision 18 of § 6.2-2215 of the Code of Virginia, a licensee shall not conduct the business of making motor vehicle title loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a registered check cashing business or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. No person shall engage in the business of selling insurance or enrolling borrowers under group insurance policies from any office, suite, room, or place of business

where a licensed motor vehicle title lending business is conducted.

3. Pursuant to § 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted, unless the person is licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia and the loans are made in accordance with Chapter 18 of Title 6.2 of the Code of Virginia. Accordingly, a person registered or required to be registered as a check casher shall not make motor vehicle title loans.

B. ~~Upon the filing of a written application, provision of any information relating to the application as the commissioner may require, and payment of the fee required by law, No~~ other business ~~may shall~~ be conducted in a location where a ~~licensed licensee conducts a~~ motor vehicle title lending business ~~is conducted if the commission finds that (i) unless~~ the proposed other business is financial in nature ~~;(ii) the proposed other business is in the public interest; (iii) and the licensee obtains prior approval from the commission. Applications for approval shall be made in writing on a form provided by the commissioner, and shall be accompanied by payment of the fee required by law and any information relating to the application that the commissioner may require. In acting upon an application, the commission shall consider (i) whether~~ the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; ~~and (iv) (ii) whether~~ the applicant has been operating its motor vehicle title lending business in accordance with the Act and this chapter ~~;(iii) any other factors that the commission deems relevant~~. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. Written evidence of commission approval of each other business conducted by an other business operator should be maintained at each location where such other business is conducted.

D. All approved other businesses in motor vehicle title lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's motor vehicle title lending offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's motor vehicle title lending business and in a different location within the licensee's motor vehicle title lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

E. If a licensee receives commission authority for an other business operator to conduct a payday lending business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.

2. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

3. The other business operator and the licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that

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clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. [ The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product. ]

F. If a licensee receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's motor vehicle title lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

G. If a licensee receives commission authority for an other business operator to conduct the business of (i) tax preparation and electronic tax filing services, or (ii) facilitating third party tax preparation and electronic tax filing services, from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

H. If a licensee receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a motor vehicle title loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan

contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. [ The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product. ]

I. If a licensee receives commission authority for an other business operator to conduct a consumer finance business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

2. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

3. The licensee and other business operator shall not make a motor vehicle title loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. [ The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product. ]

J. If a licensee receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's motor vehicle title lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a motor vehicle title loan from the licensee.

K. The commission may impose any additional conditions upon the conduct of other business in motor vehicle title lending offices that it deems necessary and in the public interest.

L. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-210-100.

### **10VAC5-210-80. Advertising.**

A. A licensee shall disclose the following information in its advertisements:

1. The name of the motor vehicle title lender as set forth in the license issued by the commission.
2. A statement that the motor vehicle title lender is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the motor vehicle title lender (i.e., VTL-XXX).

B. The information required by subsection A of this section shall be disclosed in accordance with the disclosure standards prescribed in § 6.2-2218 B of the Code of Virginia.

### **10VAC5-210-90. Books, accounts, and records; responding to requests from the bureau.**

A. A licensee shall maintain in its licensed offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved.

B. In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after final payment is made on any motor vehicle title loan:

1. The loan application.
2. The motor vehicle title loan agreement. If a loan has been repaid or satisfied in full, a licensee shall maintain a copy of the motor vehicle title loan agreement with the word "paid" or "canceled" along with documentation

showing that the licensee released its security interest in the borrower's motor vehicle.

3. A record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Supporting documentation shall include any factors used to determine the value of the motor vehicle, including the motor vehicle's condition, features, mileage, as well as the name of the pricing guide that the licensee relied upon in making the loan.

4. Any disclosures that were given to a borrower pursuant to the Truth in Lending Act (15 USC § 1601 et seq.) or any other federal or state laws.

5. The certificate of title for the motor vehicle, which shall reflect the licensee's security interest unless the borrower canceled or fully satisfied the motor vehicle title loan prior to the licensee recording its security interest with the Virginia Department of Motor Vehicles.

C. A licensee shall maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee, including motor vehicles that are voluntarily surrendered by borrowers. The log or record shall include the following information: (i) the borrower's first and last name; (ii) the make, model, year, and vehicle identification number of the motor vehicle; (iii) the date the motor vehicle was repossessed; (iv) the date the motor vehicle was sold; (v) the name of the purchaser; and (vi) the sale price of the motor vehicle. Furthermore, in addition to any other books, accounts, and records as the bureau may [ ~~reasonable~~ reasonably ] require, a licensee shall maintain copies of the following records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee:

1. The written notices and accounting sent by the licensee to a borrower pursuant to § 6.2-2217 of the Code of Virginia along with the proof of mailing from the United States Postal Service or other common carrier.
2. Supporting documentation of the sale of the motor vehicle and the proceeds derived from the sale.
3. The check or other method of payment used to deliver any excess proceeds from the sale of the motor vehicle to a borrower.

D. A motor vehicle title lender shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

E. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or

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examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-2212 of the Code of Virginia.

F. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

## **10VAC5-210-100. Enforcement; civil penalties.**

A. Failure to comply with any provision of the Act or this chapter may result in civil penalties, license suspension, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2222 of the Code of Virginia, a licensee shall be subject to a separate civil penalty of up to \$1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate civil penalty for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter that are applicable to the five loans, the licensee shall be subject to a maximum civil penalty of \$10,000.

## **10VAC5-210-110. Commission authority.**

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

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

FORMS (10VAC5-210)

[Personal Financial Report and Disclosure Statement, CCB-1123 \(rev. 3/08\).](#)

[Limited Personal Financial Report and Disclosure Statement, CCB-1143 \(rev. 3/08\).](#)

[Depository Institution Authorization Form, CCB-1149 \(rev. 12/04\).](#)

[Employment and Business Affiliation Disclosure Form, CCB-1150 \(rev. 3/08\).](#)

[Application for a Motor Vehicle Title Lender License pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5523 \(eff. 6/10\).](#)

[Motor Vehicle Title Lender Surety Bond pursuant to § 6.1-484 of the Code of Virginia, CCB-5524 \(eff. 6/10\).](#)

[Application for an Additional Office or Relocation of an Existing Office pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5525 \(eff. 6/10\).](#)

[Application for Permission to Acquire Control of a Motor Vehicle Lender License pursuant to § 6.1-488 of the Code of Virginia, CCB-5526 \(eff. 6/10\).](#)

[Application to Conduct the Business of Motor Vehicle Title Lending and Other Business at the Same Location, CCB-5527 \(eff. 7/10\).](#)

VA.R. Doc. No. R10-2528; Filed September 28, 2010, 12:57 p.m.



## **TITLE 12. HEALTH**

### **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

#### **Final Regulation**

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

**Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-270).**

**12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-130).**

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

Effective Date: November 10, 2010.

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

Summary:

*The amendments reflect changes to the Patient Protection and Affordable Care Act in 42 USC § 1396d(o)(1), which requires states to continue to provide all Medicaid covered services for children even if they choose to receive hospice care.*

**12VAC30-50-270. Hospice services (in accordance with § 1905 (o) of the Act).**

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in 42 CFR Part 418.

B. Categories of care. As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.
2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.
3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver or caregivers providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.
4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are physician services, drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language/pathology services, and any other item or service which is specified under the plan and which is reasonable and necessary for the palliation and management of terminal illness and for which payment may otherwise be made under Title XIX.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician, or physicians as required by 12VAC30-60-130 D, and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

- a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.
- b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.
- c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.
- d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling



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services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by Medicare and the Department of Health Professions. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the recipient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the recipient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups. To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and except for individuals under 21 years of age, elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director, or the attending physician and the physician member of the interdisciplinary team, must initially certify the life expectancy. Thereafter, subsequent certifications shall be conducted pursuant to 12VAC30-60-130.

## 12VAC30-60-130. Hospice services.

### A. Admission criteria.

1. Service election. To be eligible for hospice coverage under Medicare or Medicaid, the recipient ~~must~~ shall be "terminally ill," defined as having a life expectancy of six months or less, and except for individuals under 21 years of age, elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director, or the attending physician and the physician member of the interdisciplinary team, must initially certify the life expectancy. The election statement ~~must~~ shall include (i) identification of the hospice that will provide care to the individual; (ii) the individual's or representative's acknowledgement that he has been given a full understanding of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness; (iii) with the exception of children, defined as persons younger than 21 years of age, acknowledgement that certain Medicaid services are waived by the election; (iv) the effective date of the election; and (v) the signature of the individual or representative.

2. Service revocation. The recipient shall have the right to revoke his election of hospice services at any time during the covered hospice periods. DMAS ~~must~~ shall be contacted if the recipient revokes his hospices services. If the recipient reelects the hospice services, the hospice periods will begin as an initial time frame. Therefore, the above certification and time requirements will apply. The recipient cannot retroactively receive hospice benefits from previously unused hospice periods. The recipient's written revocation statement ~~must~~ shall be maintained in the recipient's medical record.

B. General conditions. The general conditions provided in this subsection apply to nursing care, medical social services, physician services, counseling services, short-term inpatient care, durable medical equipment and supplies, drugs and biologicals, home health aide and homemaker services, and rehabilitation services.

The recipient ~~must~~ shall be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The hospice medical director or the physician member of the interdisciplinary team ~~must~~ shall be a licensed doctor of medicine or osteopathy. Hospice services may be provided in the recipient's home or in a freestanding hospice, hospital or nursing facility.

The hospice ~~must~~ shall obtain the written certification that an individual is terminally ill in accordance with the following procedures:

1. For the initial 90-day benefit period of hospice coverage, a Medicaid written certification (DMAS 420) ~~must~~ shall be

signed and dated by the medical director of the hospice and the attending physician, or the physician member of the hospice interdisciplinary team and the attending physician, at the beginning of the certification period. This initial certification must shall be submitted for preauthorization within 14 days from the physician's signature date. This certification must shall be maintained in the recipient's medical record.

2. For the subsequent 90-day hospice period, a Medicaid written certification (DMAS 420) must shall be signed and dated before or on the begin date of the 90-day hospice period by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification must shall include the statement that the recipient's medical prognosis is that his life expectancy is six months or less. This certification of continued need for hospice services must shall be maintained in the recipient's medical record.

3. After the second 90-day hospice period and until the recipient is no longer in the Medicaid hospice program, a Medicaid written certification must shall be signed and dated every 60 days on or before the begin date of the 60-day period. This certification statement must shall be signed and dated by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification must shall include the statement that the recipient's medical prognosis is that his life expectancy is six months or less. This certification must shall be maintained in the recipient's medical record.

C. Utilization review. Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the recipients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.

D. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Interdisciplinary team. An interdisciplinary team shall include at least the following individuals: a physician (either a hospice employee or a contract physician), a registered nurse, a social worker, and a pastoral or other counselor. Other professionals may also be members of the interdisciplinary team depending on the terminally ill recipient's medical needs.

2. Nursing care. Nursing care must shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

3. Medical social services. Medical social services must shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

4. Physician services. Physician services must shall be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must shall be a licensed doctor of medicine or osteopathy.

5. Counseling services. Counseling services must shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

6. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

7. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

8. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

9. Home health aide and homemaker services. Home health aides providing services to hospice recipients must shall meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services

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to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services ~~must~~ shall be provided under the general supervision of a registered nurse.

10. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

a. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

b. Physical therapy services shall be those furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with

accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

c. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

11. Documentation of hospice services ~~must~~ shall be maintained in the recipient's medical record. Coordination of patient care between all health care professionals should be maintained in the recipient's medical record.

VA.R. Doc. No. R11-2569; Filed September 20, 2010, 4:13 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services is also claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC30-120. Waivered Services (amending 12VAC30-120-160, 12VAC30-120-730).

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

**Effective Date:** November 10, 2010.

**Agency Contact:** Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone

(804) 371-8856, FAX (804) 786-1680, or email [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

Summary:

*The amendments incorporate into the HIV-AIDS waiver and the Individual and Family with Developmental Disability Services waiver the provision for the Director of the Department of Medical Assistance Services to immediately terminate or deny a contract to a provider who has either been convicted of a felony or who has pled guilty to felony charges. The amendments also implement technical updating of (i) form numbers on required documents used by providers and (ii) the name of a sister state agency.*

**12VAC30-120-160. General conditions and requirements for all providers for home and community-based care services participating providers.**

A. All providers must meet the general requirements and conditions for provider participation. In addition, there are specific requirements for each of the service providers (case management, personal care, respite care private duty nursing, enteral nutrition, consumer-directed personal assistance services, and consumer-directed respite care services) which are set forth in 12VAC30-120-155 through 12VAC30-120-201.

B. General requirements. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS to include the provider's physical and mailing addresses, executive staff and officers, and contact person's name, telephone number, and fax number.
2. Assure freedom of choice to individuals in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed.
3. Assure the individual's freedom to reject medical care and treatment.
4. Accept referrals for services only when staff is available to initiate services.
5. Provide services and supplies to individuals in full compliance with (i) Title VI of the Civil Rights Act of 1964 (42 USC § 2000 et seq.); (ii) § 504 of the Rehabilitation Act of 1973 (29 USC § 70 et seq.); (iii) Title II of the Americans with Disabilities Act of 1990 (42 USC § 126 et seq.); and (iv) all other applicable state and federal laws and regulations.

6. Provide services and supplies to individuals in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of eligibility.

9. Accept as payment in full the amount established by DMAS.

10. Use program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable federal or state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Comply with all Health Insurance Portability and Accountability Act (HIPAA) guidelines.

15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days prior to the date of the change.

C. Requests for participation will be screened by DMAS or the designated contractor to determine whether the provider applicant meets the basic requirements for participation.

D. For DMAS to approve contracts with home and community-based care providers, providers must meet

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staffing, financial solvency, disclosure of ownership and assurance of comparability of services requirements.

E. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider agreements and in the applicable DMAS provider service manual.

F. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies.

G. Individual choice of provider agencies. If there is more than one approved provider agency offering services in the community, the individual will have the option of selecting the provider agency of his choice from among those agencies that can appropriately meet the individual's needs.

H. If a participating provider wishes to voluntarily terminate his participation in Medicaid, the provider must give DMAS written notification 30 days prior to the desired termination date.

I. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a provider agreement immediately or may give notification in the event of a breach of the provider agreement by the provider as specified in the DMAS provider agreement. Payment by DMAS is prohibited for services provided to individuals subsequent to the date specified in the termination notice. DMAS may terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia and as may be required for federal financial participation. Such provider agreement terminations shall conform to 12VAC30-10-690 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20. DMAS shall not reimburse for services that may be rendered subsequent to such terminations.

J. Reconsideration of adverse actions. Adverse actions may include, but shall not be limited to disallowed payment of claims for services rendered that are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitation or termination. The following procedures will be available to all providers when DMAS takes adverse action.

1. The reconsideration process shall consist of three phases:
  - a. A written response and reconsideration to the preliminary findings;
  - b. The informal conference; and
  - c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 30 days from the date of the notice to request the informal conference, and 30 days to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with 12VAC30-10-1000 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20.

K. Section 32.1-325 of the Code of Virginia mandates that "Any such (Medicaid) agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or the District of Columbia must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of the laws of the Commonwealth. Additionally, termination of a provider contract will occur as may be required for federal financial participation.

L. Participating provider agency's responsibility for the ~~Patient Information Form (DMAS-122)~~ Medicaid Long Term Care Communication Form (DMAS-225). It is the responsibility of the provider agency to notify DMAS or the designated preauthorization contractor, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.
2. An individual receiving services dies; or
3. An individual is discharged or terminated from services.

M. Participating provider agency's responsibility for the ~~Patient Information Form (DMAS-122)~~ Medicaid Long Term Care Communication Form (DMAS-225). It is the responsibility of the provider agency to notify the local DSS, in writing, when any circumstances (including hospitalization) cause home and community-based care services to cease or be interrupted for more than 30 days.

N. Changes or termination of care.

1. Decreases in the amount of authorized care.
  - a. The provider may decrease the amount of authorized care if the newly developed plan of care is appropriate and based on the needs of the individual. If the individual disagrees with the proposed decrease, the individual has the right to appeal to DMAS.
  - b. The participating provider is responsible for developing the new plan of care and calculating the new hours of service delivery.
  - c. The person responsible for supervising the individual's care shall discuss the decrease in care with the individual or family, document the conversation in the individual's record, and shall notify the designated preauthorization

contractor and the individual or family of the change by letter. This letter shall give the individual the right to appeal.

2. Increases in the amount of authorized personal care. If a change in the individual's condition necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS or the designated preauthorization contractor, if the amount of service does not exceed the amount established by DMAS or the designated preauthorization contractor, as the maximum for the level of care designated for that individual. Any increase to an individual's plan of care that exceeds the number of hours allowed for that individual's level of care or any change in the individual's level of care must be preauthorized by DMAS or the designated preauthorization contractor.

3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the individual or family, or both, five days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least five days from the date of the termination notification letter. This includes a provider's voluntary termination of its provider agreement with DMAS.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the individual or provider agency personnel is endangered, DMAS or the designated preauthorization contractor must be notified prior to termination. The five-day written notification period shall not be required. If appropriate, the local DSS Adult or Child Protective Services must be notified immediately.

5. Nonemergency termination of home and community-based care services by DMAS, or the designated preauthorization contractor. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate the receipt of home and community-based care services by the individual for any of these reasons:

- a. The home and community-based care services are no longer the critical alternative to prevent or delay institutional placement;
- b. The individual no longer meets the level-of-care criteria;

c. The individual's environment does not provide for his health, safety, and welfare; or

d. An appropriate and cost-effective plan of care cannot be developed.

6. If the individual disagrees with the service termination decision, DMAS Appeals Division shall conduct a review of the individual's service need as part of the appeals process. The individual, when requesting an appeal, should submit documentation to indicate why the decision to deny was incorrect. As a result of this review, DMAS Appeals Division will either uphold or overturn the termination decision. If the termination decision is upheld, the individual has the right to file a formal appeal to the local circuit court. The individual filing the appeal shall have a right to the continuation of services pending the final appeal decision pursuant to 12VAC30-110-100.

O. Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 through 63.2-1610 of the Code of Virginia, if a participating provider agency knows or suspects that an individual receiving home and community-based care services is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to the local DSS Adult Protective Services or Child Protective Services, as appropriate, and to DMAS.

P. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS regulations, policies, and procedures, as required in the provider's agreement with DMAS, may result in a denial of Medicaid payment or termination of the provider agreement.

Q. Waiver desk reviews. DMAS will request, on an annual basis, information on every individual, that is used to assess the individual's ongoing need for Medicaid-funded long-term care. With this request, the provider will receive a list that specifies the information that is being requested. If an individual is identified as not meeting criteria for the waiver, the individual will be given 10 days' notice of termination from services and be terminated from the waiver and will also be given appeal rights.

**12VAC30-120-730. General requirements for home and community-based participating providers.**

A. Providers approved for participation shall, at a minimum, perform the following activities:

- 1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.
- 2. Assure freedom of choice for individuals seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services

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required and participating in the Medicaid Program at the time the service or services were performed.

3. Assure the individual's freedom to reject medical care, treatment, and services, and document that potential adverse outcomes that may result from refusal of services were discussed with the individual.

4. Accept referrals for services only when staff is available to initiate services within 30 calendar days and perform such services on an ongoing basis.

5. Provide services and supplies for individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public.

7. Submit charges to DMAS for the provision of services and supplies for individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS from the individual's authorization date for waiver services.

8. Use program-designated billing forms for submission of charges.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the care provided.

a. Such records shall be retained for at least six years from the last date of service or as provided by applicable state and federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

c. An attendance log or similar document must be maintained which indicates the date services were rendered, type of services rendered, and number of hours/units provided (including specific time frame).

10. Agree to furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the State Medicaid Fraud Control Unit. The Commonwealth's right of access to provider premises and records shall survive any termination of the provider participation agreement.

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals enrolled in Medicaid.

B. Pursuant to 42 CFR Part 431, Subpart F, 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for DMAS authorized purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data are necessary for the functioning of DMAS in conjunction with the cited laws. DMAS shall not disclose medical information to the public.

C. Change of ownership. When ownership of the provider changes, the provider must notify DMAS at least 15 calendar days before the date of change.

D. For (ICF/MR) facilities covered by § 1616(e) of the Social Security Act in which respite care as a home and community-based waiver service will be provided, the facilities shall be in compliance with applicable standards that meet the requirements for board and care facilities. Health and safety standards shall be monitored through the ~~DMH/MRSAS~~ DBHDS licensure standards or through DSS-approved standards for adult foster care providers.

E. Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services agency, as applicable, as well as to DMAS, and, if applicable, to ~~DMH/MRSAS~~ DBHDS Offices of Licensing and Human Rights.

F. Adherence to provider participation agreement and the DMAS provider manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined

in their individual provider participation agreements and in the DMAS provider manual.

G. DMAS may terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia and as may be required for federal financial participation. Such provider agreement terminations shall conform to 12VAC30-10-690 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20. DMAS shall not reimburse for services that may be rendered subsequent to such terminations.

H. Direct marketing. Providers are prohibited from performing any type of direct marketing activities to Medicaid individuals or their family/caregivers.

**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 (12VAC30-120)

Virginia Uniform Assessment Instrument (UAI) (1994).

Consent to Exchange Information, DMAS-20 (rev. 4/03).

Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).

LPN Skilled Respite Record, DMAS-90A (eff. 7/05).

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 10/06).

Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).

Provider Agency Plan of Care, DMAS-97A (rev. 9/02).

Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).

Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).

MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

~~Patient Information Form, DMAS-122 (rev. 11/07).~~

[Medicaid Long Term Care Communication Form, DMAS-225 \(3/09\).](#)

Technology Assisted Waiver/EPSTDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07).



<b><u>Medicaid LTC Communication Form</u></b>	Patient Name: _____ Medicaid ID#: _____ SSN: _____
<p><b>Provider Name:</b> _____ <b>Address:</b> _____</p> <p><b>Provider NPI#:</b> _____ <b>Provider Rep.:</b> _____ <b>Title:</b> _____</p> <p><b>Telephone:</b> _____ <b>Fax:</b> _____ <b>Date:</b> ____/____/____</p> <p><u>Patient Information:</u> DMAS-96 <input type="checkbox"/> attached <input type="checkbox"/> unavailable</p> <p><input type="checkbox"/> Patient/Enrollee admitted to this facility/service on ____/____/____ (date), from <input type="checkbox"/> Home <input type="checkbox"/> Hospital <input type="checkbox"/> Other Facility</p> <p><input type="checkbox"/> Patient Pay determination requested <input type="checkbox"/> Patient Funds Account balance \$ ____ as of ____/____/____ (date).</p> <p><input type="checkbox"/> Patient/Enrollee discharged ____/____/____ (date), to: <input type="checkbox"/> Home <input type="checkbox"/> Hospital <input type="checkbox"/> Other Facility <input type="checkbox"/> Deceased</p> <p><input type="checkbox"/> Change in income, deductions, health insurance or other: _____</p> <p>*Enrollee Residential Address: _____</p> <p>Medicaid Per Diem Rate: \$ _____ *Enrollee FIPS: _____ (Waiver Enrollees Only)</p> <p>CBC Provider Hourly Rate: \$ _____ Hours received in the month of Discharge: _____</p>	
<p><b>LDSS:</b> _____ <b>FIPS Code:</b> _____ <b>Eligibility Worker:</b> _____</p> <p><b>Telephone:</b> _____ <b>Fax :</b> _____ <b>Date:</b> ____/____/____</p> <p><u>Eligibility Information:</u></p> <p><input type="checkbox"/> Eligible, full Medicaid services beginning ____/____/____ (date) <input type="checkbox"/> Eligible, QMB Medicaid only</p> <p><input type="checkbox"/> Eligible Medicare premium payment only</p> <p><input type="checkbox"/> Ineligible for Medicaid <input type="checkbox"/> Ineligible for Medicaid payment of LTC services from ____/____/____ to ____/____/____</p> <p><input type="checkbox"/> Medicare Part A insurance _____ Other health insurance: _____ LTC insurance: _____</p> <p><input type="checkbox"/> Change in deductions, health insurance or other: _____</p>	

DMAS-225

Department of Medical Assistance

**Medicaid LTC Communication Form****DMAS-225**

**PURPOSE OF FORM**--To allow the local Department of Social Services (LDSS) and nursing facility (NF) or Community Based Care (CBC) Waiver Providers to exchange information regarding:

- o The Medicaid eligibility status of a patient/enrollee;
- o A change in the patient/enrollee level of care;
- o Admission or discharge of a patient/enrollee to an institution or Medicaid CBC services, or death of a patient;
- o Other information known to the provider that might cause a change in the eligibility status or patient pay amounts.

**USE OF FORM**--Initiated by either the LDSS or the provider of care. A new form must be prepared by the LDSS whenever there is any change in the enrollee's circumstances that results in a change in eligibility status or information needs to be given to the provider. The provider must use the form to document admission date, request Medicaid eligibility status, and notify the LDSS of changes in the patient's circumstances, discharge or death.

**NUMBER OF COPIES**--Original and one copy for NF patients; original and two copies for CBC patients.

**DISTRIBUTION OF COPIES**--For NF patients/enrollees, send the original to the nursing facility. For PACE patients/enrollees, send the original to the PACE provider. For Medicaid CBC, send the original to the following individuals:

- Case Manager at DMAS for Tech Waiver, DMAS, Division of LTC, Waiver Unit, 600 E. Broad St., Richmond, VA 23219
- Case Manager at the Community Service Board for the MR and DS waivers
- Case Manager (Support Coordinator) for DD Waiver
- Service Facilitator for EDCD with consumer-directed service,
- Case Manager for any enrollee with case management services, and
- Personal Care Provider for EDCD-personal care services and other services.

Place a copy of this form in the eligibility case file.

**INSTRUCTIONS FOR PREPARATION OF THE FORM**--Complete either the Provider or LDSS section as appropriate. At the top of the form, enter the Patient's name, Social Security number and Medicaid identification number, if known.

**Provider Section**--Complete all data elements in the gray section. Check the appropriate boxes and complete all data elements as appropriate in the white section to the enrollee's circumstances. Providers should attach a copy of the DMAS-96 to this form when the patient is first admitted to care. Waiver providers must advise the LDSS of the enrollee residential address when different from the address from which this form originates and provide the Enrollee FIPS code.

**LDSS Section**--Complete all data elements of the gray section. Check the appropriate boxes and complete all data elements in the white section as appropriate to the patient's circumstances. Do not provide the source of an enrollee's income. If the enrollee is ineligible for Medicaid payment of long-term care due to imposition of a penalty period, send a copy of this memo to the DMAS, Long-Term Care Division, 600 E. Broad St., Suite 1300, Richmond, Va. 23219

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Final Regulation

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

**Title of Regulation:** 18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-120).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

**Effective Date:** November 10, 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.

**Summary:**

*The amendment changes subdivision 2 g of 18VAC90-60-120 to read: "Having been denied a license, certificate, or registration or having had a license, certificate, or registration issued by the board revoked or suspended" to correct a grammatical error.*

**18VAC90-60-120. Disciplinary provisions for medication aides.**

The board has the authority to deny, revoke or suspend a registration issued, or to otherwise discipline a registrant upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in order to procure or maintain a registration shall mean, but shall not be limited to:
  - a. Filing false credentials;
  - b. Falsely representing facts on an application for initial registration, reinstatement or renewal of a registration; or
  - c. Giving or receiving assistance in taking the competency evaluation.

2. Unprofessional conduct shall mean, but shall not be limited to:

- a. Performing acts beyond those authorized by the Code of Virginia and this chapter for practice as a medication aide;
- b. Assuming duties and responsibilities within the practice of a medication aide without adequate training or when competency has not been maintained;
- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
- d. Falsifying or otherwise altering client or drug records relating to administration of medication;
- e. Falsifying or otherwise altering employer records, including falsely representing facts on a job application or other employment-related documents;
- f. Abusing, neglecting or abandoning clients;
- g. Having been denied a license, certificate, or registration or having had a license, certificate, or registration issued by the board revoked or suspended;
- h. Giving to or accepting from a client property or money for any reason other than fee for service or a nominal token of appreciation;
- i. Obtaining money or property of a client by fraud, misrepresentation or duress;
- j. Entering into a relationship with a client that constitutes a professional boundary violation in which the medication aide uses his professional position to take advantage of a client's vulnerability, to include but not limited to actions that result in personal gain at the expense of the client, an inappropriate personal involvement or sexual conduct with a client;
- k. Violating state laws relating to the privacy of client information, including but not limited to § 32.1-127.1:03 of the Code of Virginia;
- l. Failing to follow provisions of the Medication Management Plan for the assisted living facility in which the aide is employed; or
- m. Violating standards of practice as set forth in 18VAC90-60-110.

3. For the purposes of interpreting provisions of subdivision 5 of § 54.1-3007 of the Code of Virginia, a pattern of medication errors may constitute practice that presents a danger to the health and welfare of clients or to the public.

VA.R. Doc. No. R11-2549; Filed September 22, 2010, 10:40 a.m.

**BOARD OF PHARMACY****Final Regulation**

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-400; adding 18VAC110-20-740 through 18VAC110-20-800).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

**Effective Date:** November 10, 2010.

**Agency Contact:** Caroline Juran, RPh, Acting Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

**Summary:**

*Pursuant to Chapter 429 of the 2008 Acts of the Assembly, the Board of Pharmacy promulgated regulations to establish a prescription drug donation program for accepting unused, previously dispensed prescription drugs that meet certain criteria for redispensing to patients of free clinics. The regulations set forth requirements for pharmacies to register as a drug donation site; criteria for drugs eligible for donation; procedures for collecting donated drugs, transferring and redispensing donated drugs, and disposing of any unused donated drugs; and recordkeeping requirements associated with the program. As no changes were made in the adoption of final regulations, the regulations are identical to the proposed regulations.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

Part I  
General Provisions

**18VAC110-20-10. Definitions.**

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply

to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application in accordance with 21 CFR Part 1300 and is transmitted to a pharmacy as an electronic data file.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over

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telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).
2. "Room temperature" means the temperature prevailing in a working area.
3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for

excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

## **18VAC110-20-400. Returning of drugs and devices.**

~~A.~~ Drugs may be accepted for return or exchange by any pharmacist or pharmacy for resale in accordance with the provisions of § 54.1-3411.1 of the Code of Virginia. Devices may be accepted for return or exchange provided the device is in the manufacturer's original sealed packaging.

~~B. Any pharmacy accepting drugs returned from nursing homes for the purpose of redispensing to the indigent free of charge shall maintain a copy of a written agreement with the nursing home in accordance with § 54.1-3411.1 B of the Code of Virginia and a current policy and procedure manual describing the following:~~

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1. Method of delivery from the nursing home to the pharmacy and of tracking of all prescription medications;
2. Procedure for determining the suitability and integrity of drugs for redispensing to include assurance that the drugs have been stored according to official compendial standards; and
3. Procedure for assigning a beyond use date on redispensed drugs.

## **18VAC110-20-740. Drug donation sites.**

Any pharmacy with a current active pharmacy permit may apply on a form provided by the board for registration as a drug donation site. A registered drug donation site may receive eligible donated drugs, transfer such donated drugs to another registered drug donation site, or redispense the donated drugs in accordance with § 54.1-3411.1 of the Code of Virginia to patients of clinics organized in whole or in part for the delivery of health care services to the indigent. Drugs collected under the drug donation program may not be dispensed to any other patient, sold, or otherwise distributed except as authorized in 18VAC110-20-770 or 18VAC110-20-790.

## **18VAC110-20-750. Eligible drugs.**

A. Drugs may be accepted by a registered drug donation site only if the following criteria are met:

1. Official compendium storage requirements are assured and the drugs are in manufacturers' original sealed containers or in sealed individual dose or unit dose packaging that meets official compendium Class A or B container requirements, or better, as set forth in § 54.1-3411.1 A 2 of the Code of Virginia;
2. The drugs bear an expiration date that is not less than 90 days from the date the drug is donated; and
3. The drugs have not been adulterated or misbranded.

B. The following drugs shall not be accepted by a drug donation site:

1. Schedule II-V controlled substances or any other drug if such return is inconsistent with federal law;
2. Drugs determined to be hazardous for donation based on (i) the pharmacist's professional judgment, experience or knowledge, or (ii) available reference materials;
3. Drugs that may only be dispensed to a patient registered with the drug manufacturer under a restricted distribution system; and
4. Drugs that have been previously compounded.

## **18VAC110-20-760. Procedures for collecting eligible donated drugs.**

A. A pharmacist or a pharmacy technician under the personal supervision of a pharmacist shall receive and conduct the initial screening for eligibility of donated drugs.

B. At the time of accepting donated drugs, the drug donation site shall ensure that a donor form is completed. The drug donation site shall give a copy of the donor form to the person donating the drug at the time of the donation and shall maintain the original donor form. A donor form is not required for drugs donated by a patient residing in a long-term care facility or other facility where drugs are administered to that patient if the drugs are donated directly to the provider pharmacy for that facility and such provider pharmacy is registered as a drug donation site.

C. A donor form shall include the following information:

1. A statement that the donor is the patient or patient's agent for whom the prescription drug was dispensed;
2. A statement that the donor intends to voluntarily donate the prescription drug for redispensing;
3. A statement attesting that the drugs have been properly stored at all times while in the possession of the patient according to official compendium storage requirements;
4. Contact information for the patient or patient's agent;
5. The date of donation;
6. A listing of the donated drugs to include name, strength, and quantity;
7. A statement that private health information will be protected;
8. The signature of the patient or patient's agent; and
9. The initials of the receiving pharmacist, or the initials of the receiving pharmacy technician and supervising pharmacist.

D. Donated prescription drugs shall be stored within the prescription department, separate from other drug inventory.

E. Prior to transferring any donated drugs or redispensing donated drugs, a pharmacist shall perform a final review of any donated drug for eligibility and shall ensure that all the donor's patient specific information has been removed from previous labeling or rendered unreadable.

F. A drug donation site may not charge a fee for collecting donated drugs.

## **18VAC110-20-770. Procedure for transferring donated prescription drugs.**

A. A drug donation site may transfer eligible donated prescription drugs to another drug donation site for the purpose of redispensing.

B. The transferring drug donation site shall provide a transfer record to the receiving drug donation site that includes the following:

1. The names and addresses of the transferring site and the receiving site;
2. The name, strength, and quantity of each donated drug being transferred; and
3. The date of transfer.

C. The original transfer record shall be maintained by the transferring drug donation site.

D. A copy of the transfer record shall be provided to the receiving drug donation site, the date of receipt shall be recorded on the copy, and it shall be maintained by the receiving drug donation site.

**18VAC110-20-780. Procedure for dispensing donated prescription drugs.**

A. A drug donation site redispensing donated prescription drugs shall comply with applicable federal and state laws and regulations for dispensing prescription drugs.

B. The pharmacy redispensing donated drugs shall not charge for cost of donated drugs, but may charge a dispensing or administrative fee for each such drug redispensed, consistent with the provisions of subdivision 10 of § 54.1-3301 of the Code of Virginia.

C. Recipients of a redispensed donated drug shall sign a form prior to receiving the drug that includes a statement that the recipient understands that the drug received has been donated for the purpose of redispensing pursuant to § 54.1-3411.1 of the Code of Virginia. The drug donation site shall maintain this form.

D. A drug donation site is under no obligation to obtain a prescription drug that is not in inventory at the time of a request for such drug.

**18VAC110-20-790. Procedures for disposing of donated prescription drugs.**

A. A drug donation site in possession of donated prescription drugs ineligible for redispensing shall dispose of such drugs in compliance with 18VAC110-20-210.

B. A drug donation site shall maintain records of disposal or transfer for disposal of donated prescription drugs separately from other pharmacy disposal records.

**18VAC110-20-800. Records.**

A. All records required for drug donation programs shall be maintained chronologically for two years.

B. Records and prescriptions related to donated drugs shall be maintained separately from other pharmacy records.

C. Storage of records.

1. Transfer, dispensing, and disposal records may be stored in an electronic database or record.

2. Prescriptions and signed forms, as well as any other records, may be stored as an electronic image that provides an exact, clearly legible image of the document.

3. Records may be stored in secured storage, either on or offsite.

D. All records in offsite storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

**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 (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. 8/07).

Affidavit of Practical Experience, Pharmacy Intern (rev. 8/07).

Application for Licensure as a Pharmacist by Examination (rev. 8/07).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 11/07).

Application to Reinstate or Reactivate a Pharmacist License (rev. 11/07).

Application for Approval of a Continuing Education Program (rev. 8/07).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 4/09).

Application for License to Dispense Drugs (permitted physician) (rev. 8/07).

Application for a Pharmacy Permit (rev. 3/09).

Application for a Nonresident Pharmacy Registration (rev. 7/08).

Application for a Permit as a Medical Equipment Supplier (rev. 3/09).

Application for a Controlled Substances Registration Certificate (rev. 4/09).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 8/07).

Closing of a Pharmacy (rev. 8/07).

Application for Approval of a Robotic Pharmacy System (rev. 8/07).

Inspection Required for Approval of a Robotic Pharmacy System (rev. 8/07).



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Application for Approval of an Innovative (Pilot) Program (rev. 8/07).

Pharmacy Technician Registration Instructions and Application (rev. 3/09).

Instructions for Reinstating a Pharmacy Technician Registration (rev. 11/07).

Application to Reinstatement a Pharmacy Technician Registration (rev. 11/07).

Application for Approval of a Pharmacy Technician Training Program (rev. 8/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/07).

Preceptor Verification Form (rev. 8/07).

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07).

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07).

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08).

Application for Registration as a Pharmacy Technician (eff. 3/09).

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(eff. 4/09\).](#)



**COMMONWEALTH OF VIRGINIA**  
**Board of Pharmacy**

9960 Mayland Drive, Suite 300  
 Richmond, Virginia 23233  
 www.dhp.virginia.gov/pharmacy

(804) 367-4456 (Tel)  
 (804) 527-4472 (Fax)  
 pharmbd@dhp.virginia.gov (email)

**REGISTRATION FOR A PHARMACY TO BE A COLLECTION SITE FOR  
 DONATED DRUGS**

Applicant—Please provide the information requested below. (Print or Type) Use full name not initials

Name of Pharmacy		Area Code and Telephone Number	
Street Address		Area Code and Fax Number	
City	State	Zip Code	
Email address, if you would like to receive Board communications electronically			
If a current pharmacy permit is held, indicate the permit number <b>0201-</b>			
Expected start date for collection of donated items			

4-2009

V.A.R. Doc. No. R09-1606; Filed September 23, 2010, 10:25 a.m.

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Public Notice - State Implementation Plan Proposed Revision

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

Regulations affected: The regulation of the board affected by this action is Permits for Stationary Sources of Pollutants Subject to Regulation (9VAC5-85).

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

Public comment period: September 22, 2010, to October 22, 2010.

Public hearing: October 22, 2010, at 9 a.m., Second floor conference room A, Department of Environmental Quality, 629 East Main Street, Richmond, VA.

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

Description of proposal: The proposed revision will consist of a regulation concerning permitting of greenhouse gases (GHGs) for appropriate sources; this is accomplished by raising the permitting thresholds for GHGs from 100/250 tons per year (tpy) to 100,000 tpy for new prevention of significant deterioration (PSD) sources and federal operating permit (Title V) sources, and 75,000 tpy for modifications. The federal regulations affect the PSD NSR regulations in 40 CFR 51.166 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "regulated NSR permit." Because Virginia has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal, the corresponding Virginia regulation must be revised

accordingly. The federal regulation also affects the operating permit (Title V) regulations in 40 CFR Part 70 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "major source." Virginia's federal operating permit regulations are federally approved, and must be revised to be at least as protective as the federal. The major provisions of the proposal are summarized as follows:

1. A section (Part I) describing applicability of the regulation to certain permitting programs regulated under 9VAC5-80 (Permits for Stationary Sources) is established.
2. Part II is established in order for the provisions of the chapter to apply to the Commonwealth's federal operating permit program. This part contains the specific federal tailoring rule requirements.
3. Part III is established in order for the provisions of the chapter to apply to the Commonwealth's PSD permit program.
4. Part IV is established in order for the provisions of the chapter to apply to the Commonwealth's state operating permit program.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP with the exception of Part II, which contains federal operating permit program provisions not germane to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters sending faxes are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative 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 East Main Street, Richmond, VA, telephone (804) 698-4070,
2. Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
3. Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
4. Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,
5. Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
6. Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
7. Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
8. Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Comments are due by the close of the comment period and are to be sent to the contact person listed below.

Contact Information: 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](mailto:karen.sabasteanski@deq.virginia.gov).

## DEPARTMENT OF CONSERVATION AND RECREATION

### Notice of Public Meeting and Public Comment - Draft Water Quality Improvement Plan for Bacteria Reductions in Buckingham County Streams

The Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) present the draft water quality improvement plan for bacteria reductions in Buckingham County streams. The impaired stream segments include - 6.14 miles of Austin Creek, 3.83 miles of Frisby Branch, 8.44 miles of North River, 0.95 mile of Troublesome Creek, 16.92 miles of the Slate River, and 8.84 miles of Rock Island Creek in Buckingham County. The Slate River empties into the James River, and Rock Island Creek, a tributary of the James River, empties into James west of the confluence of the Slate and James Rivers.

Total maximum daily limits (TMDLs) for these six segments were included in the TMDL study completed for the Slate River in March 2007. The TMDLs were approved by EPA, a copy of which can be found on DEQ's website at <http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmslate.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should

provide measurable goals and the date of expected achievement of water quality objectives. The draft IP includes the corrective actions needed to reduce bacteria loadings and their associated costs, benefits and environmental impacts.

The second public meeting on the development of the IP for the above impaired segments will be held on Wednesday, October 20, 2010, at 7 p.m. at the Buckingham Agricultural Center, 54 Administration Lane, Buckingham, VA. The IP addresses corrective actions and incentives to reduce bacteria loadings from agriculture, pets, failing septic systems and straight pipes.

The public comment period will end on November 21, 2010. A fact sheet on the development of an IP for the above impaired stream segments is available upon request. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Dr. Ram Gupta, Department of Conservation and Recreation, 101 North 14th Street, 11th Floor, Monroe Building, Richmond, VA 23219, email address [ram.gupta@dcv.virginia.gov](mailto:ram.gupta@dcv.virginia.gov), telephone (804) 371-0991.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Correction for Notice Published September 27, 2010 for Indian Creek TMDL Modification

The notice title of the original notice incorrectly advertised "Hoskins Creek" instead of Indian Creek. All other information included in the previous notice was correct and is repeated below.

Notice is hereby given that the Virginia Department of Environmental Quality (DEQ) seeks comment on the proposed modifications to the bacteria total maximum daily load (TMDL) developed for Indian Creek in Northumberland and Lancaster Counties.

The Indian Creek TMDL was developed to address the bacterial impairment of the tidal segment of Indian Creek. The TMDL was approved by the Environmental Protection Agency (EPA) on April 8, 2009, and can be found at the following website: <http://www.deq.virginia.gov/tmdl/apptmdls/shellfish/indian.pdf>.

DEQ seeks written comments from interested persons on the modification of this TMDL. In the Indian Creek Bacteria TMDL approved by the EPA and the Virginia State Water Control Board (July 29, 2009), these changes are necessary for the following permitted dischargers:

The waste load allocation (WLA) assigned to Kilmarnock Waste Water Treatment Plant (WWTP) (VA0020788) was incorrectly assigned based on the shellfish use 90th percentile water quality standard of 14 MPN/100ml. The shellfish use WLA should have been based on the geometric mean standard for fecal coliform of 200

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## General Notices/Errata

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MPN/100ml, as this is the limit imposed by DEQ within the facility's VPDES permit. DEQ proposes to revise the facility's shellfish use WLA from 2.68E+08 MPN/day to 3.82E+09 MPN/day to provide consistency between the VPDES permit and the TMDL.

The proposed changes above will neither cause nor contribute to the nonattainment of Indian Creek, as documented in the EPA approved TMDL report.

The public comment period for this modification will end on October 28, 2010. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Margaret Smigo, Piedmont Regional Office, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

### **Notice of Public Comment for Bacteria Total Maximum Daily Load Hoskins Creek**

Notice is hereby given that the Virginia Department of Environmental Quality (DEQ) seeks comment on the proposed modifications to the bacteria total maximum daily load (TMDL) developed for Hoskins Creek in Essex and Queen and King Counties.

The Hoskins Creek TMDL was developed to address the bacterial impairment of the tidal segment of Hoskins Creek. The TMDL was approved by the federal Environmental Protection Agency (EPA) on March 27, 2008, and can be found at the following website: <http://www.deq.virginia.gov/tmdl/apptmdls/rappvr/hoskins.pdf>.

DEQ seeks written comments from interested persons on the modification of this TMDL. In the Hoskins Creek Bacteria TMDL approved by the EPA and the Virginia State Water Control Board (April 28, 2009), these changes are necessary for the following permitted dischargers:

- The waste load allocations (WLAs) for the Residence (VAG404196), which is a single family home permitted discharge, and the Town of Tappahannock Sewage Treatment Plant (STP) (VA0071471) was transposed in the TMDL report. The Residence, which has a design flow of 0.001 million gallons per day (MGD) was given a WLA of 3.15E+09 counts/day, and the Town of Tappahannock, which listed a 0.8 MGD design flow, was assigned a WLA of 3.94E+06 counts/day. In addition, the instantaneous maximum single sample water quality standard of 104 counts/mL was incorrectly used to calculate the waste load allocations for both facilities. DEQ proposes to revise the report so that the Residence facility is assigned with the correct WLA calculation based on the geometric mean water quality standard of 35 counts/100mL. The correct WLA for the Residence (VAG404196) is 1.32E+06 counts/day, using the design flow of 0.001 MGD at a water

quality standard of 35 counts/mL. The change to the facility's WLA is not the result of any permit change; rather, the original TMDL contained incorrect values for the water quality standard and the maximum design flow.

- The Town of Tappahannock STP (VA0071471) listed an incorrect design flow of 0.8 MGD in the TMDL report. The correct maximum design flow is 0.95 MGD. In addition, the instantaneous maximum single sample water quality standard of 104 counts/mL was incorrectly used to calculate the waste load allocations of the facility. DEQ proposes to revise the report so that the Town of Tappahannock STP is assigned with the correct WLA calculation based on the geometric mean water quality standard of 35 counts/100mL. The correct WLA for (VA0071471) is 1.26E+09 counts/day, using the design flow of 0.95 MGD at a water quality standard of 35 counts/mL. The change to the facility's WLA is not the result of any permit change, rather the original TMDL contained incorrect values for the water quality standard and the maximum design flow.

- The correction of the two facilities' design flows and use of the geometric mean water quality standard results in a decrease of the current allocated waste load from 3.15E+09 counts/day to 1.26E+09, a decrease in the expansion for future growth (5X WLA) from 1.58E+10 counts/day to 6.30E+09 counts/day, and a decrease in the total allocated waste load from 1.90E+10 counts/day to 7.56E+09 counts/day. The total change in the WLA is equal to less than 1%.

- The correction of the WLA number from 1.90E+10 to 7.56E+09 results in an increase to the allocations assigned to the livestock, wildlife, and pet non-point sources in the TMDL report. The allocated load for livestock will increase from 5.35E+10 to 9.29E+09, for wildlife it will increase from 3.51E+12 to 3.60E+12, and for pets it will increase from 5.18E+10 to 8.99E+09. The total change in the LA is less than 1%.

The proposed changes above will neither cause nor contribute to the non-attainment of Hoskins Creek, as documented in the EPA approved TMDL report.

The public comment period for this modification will end on November 15, 2010. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Margaret Smigo, Piedmont Regional Office, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

**Total Maximum Daily Load for Northwest River**

Announcement of a total maximum daily load (TMDL) study to restore water quality in the dissolved oxygen (DO) impaired waters of the Northwest River.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a public meeting regarding the Northwest River TMDL Study.

Public meeting: Thursday, October 21, 2010, 6 p.m., Hampton Roads Planning District, The Regional Building, 723 Woodlake Drive, Chesapeake, VA 23320.

Meeting description: This is the first public meeting for this project. The purpose of this meeting is to discuss the study to restore water quality in the Northwest River watershed.

Description of study: Portions of the Northwest River have been identified as impaired in the Clean Water Act § 303(d) list due to violations of the state's water quality standard for dissolved oxygen. The Northwest River watershed is located within the City of Chesapeake. Below are descriptions of the impaired segments that will be addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Northwest River	Aquatic Life use Impairment due to Dissolved Oxygen	16.37 square miles	From headwaters near Wallaceton at River Mile 22.15	VA/NC state line

During this study, DEQ will develop a total maximum daily load (TMDL) for the impaired Northwest River. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the draft TMDL Report will extend from October 21, 2010, to November 22, 2010. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Jennifer Howell, Virginia Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

**DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION**

**Notice of Public Meeting and Public Comment - Implementation Plan for the South River and Christians Creek in Augusta and Rockingham Counties**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the South River and Christians Creek in Augusta and Rockingham Counties. The Upper South River, South River and Christians Creek were originally listed as impaired in the 2004, 2009, and 2002 303d Reports respectively. All streams were listed for violations of the water quality standard for bacteria and the general aquatic life (benthic) standard. TMDLs for bacteria and sediment were developed to address the bacterial impairments in all streams. A TMDL for phosphorus was also developed for the South River only. These TMDLs were approved by EPA on August 10, 2004, for the Upper South River, December 3, 2009, for the South River, and May 31, 2002, for Christians Creek and are available on DEQ's website at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.aspx>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

DEQ and DCR will hold a final public meeting on Wednesday, October 20, 2010, at 7 p.m. to inform the public of the IP development and to solicit comments on the draft document. The meeting will be held in the Waynesboro City Council Chambers at 503 West Main Street, Waynesboro, VA.

The draft IP will be available for review no later than October 20, 2010, at <http://www.deq.virginia.gov/tmdl/iprpts.html>. The public comment period for this final public meeting will end on Friday, November 19, 2010. Questions or information requests should be addressed to Nesha McRae, Department of Conservation and Recreation, 44 Sangers Lane, Suite 102, Staunton, VA 24401, telephone (540) 332-9238, or email [nesha.mcrae@dcr.virginia.gov](mailto:nesha.mcrae@dcr.virginia.gov). Written comments should also include the name, address, and telephone number of the person submitting the comments and also should be sent to Nesha McRae.

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# General Notices/Errata

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## STATE LOTTERY DEPARTMENT

file print copies of proposed, final, fast-track, and emergency regulatory packages.

### Director's Order

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on September 20, 2010. The order 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 Seventy-Nine (10)

Virginia Lottery's "The Price Is Right Sweepstakes" Final Rules for Game Operation (effective September 20, 2010)

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumulatab.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