VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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.

PUBLICATION SCHEDULE AND DEADLINES

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

May 2016 through July 2017

Volume: Issue	Material Submitted By Noon*	Will Be Published On
32:20	May 11, 2016	May 30, 2016
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 **(Tuesday)**	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 **(Monday)**	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Derek Phillips.

Nature of Petitioner's Request: If deemed appropriate by the pharmacist, a patient may receive, upon request, drug quantities in excess of the face amount of a prescription for a Schedule VI substance, up to the total amount authorized.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on May 30, 2016. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov; comment is requested until June 29, 2016. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for September 7, 2016, and the petitioner will be informed of the board's decision on his request after that meeting.

Public Comment Deadline: June 29, 2016.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R16-27; Filed May 6, 2016, 4:04 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-120, General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests**. The purpose of the proposed action is to amend and reissue the existing general permit that expires February 25, 2018. The general permit covers point source discharges of (i) wastewaters from sites contaminated by petroleum products and chlorinated hydrocarbon solvents and (ii) hydrostatic test wastewaters resulting from the testing of petroleum and natural gas storage tanks and pipelines.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) is designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; and (v) overlaps, duplicates, or conflicts with federal or state law or regulation. Additional consideration will be given to the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: June 29, 2016.

Agency Contact: Matthew Richardson, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4195, FAX (804) 698-4032, or email matthew.richardson@deq.virginia.gov.

VA.R. Doc. No. R16-4715; Filed May 4, 2016, 8:37 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 Water Control Board intends to consider amending **9VAC25-196, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons per Day or Less**. The purpose of the proposed action is to amend and reissue the existing general permit that expires March 1, 2018. The general permit regulation governs point source discharges of 50,000 gallons per day or less of noncontact cooling water and cooling equipment blow down to surface waters. This regulatory action is needed for existing facilities to be covered under this general permit regulation. Other issues that need consideration are effluent limitations, clarification of definitions, review of water quality standards, municipal separate storm sewer system notification requirements, potential expansion of coverage to facilities with discharges greater than 50,000 gallons per day, and any other issues that arise as a result of this notice and during technical advisory committee meetings.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) is designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; and (v) overlaps, duplicates, or conflicts with federal or state law or regulation. Additional consideration will be given to the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: June 29, 2016.

Agency Contact: Matthew Richardson, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4195, FAX (804) 698-4032, or email matthew.richardson@deq.virginia.gov.

VA.R. Doc. No. R16-4714; Filed May 4, 2016, 8:32 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-40).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and § 4.1-111 of the Code of Virginia. Section 4.1-111 also provides the board with broad authority to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia.

Purpose: The prohibition against advertising alcoholic beverages in college publications as currently found in 3VAC5-20-40 A 2 was held to be in violation of the First Amendment to the United States Constitution by the U.S. Court of Appeals for the Fourth Circuit in the case of Educational Media Co. v. Insley, 731 F.3d 291. The amendment will remove the language from the existing regulation found to be in violation of the First Amendment. The amendment to 3VAC5-20-40 A 3 removes language referring back to the deleted subdivision A 2, which is no longer necessary. 3VAC5-20-40 A 4 does not violate the First Amendment under the reasoning of Educational Media Co. v. Insley. However, with the deletion of subdivision A 2, it is no longer necessary to authorize the forum of advertising in college student publications described in subdivision A 4.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because the agency is only proposing to amend the regulation to comply with the ruling of the U.S. Court of Appeals for the Fourth Circuit in the case of Educational Media Co. v Insley and modify the rest of the regulation for consistency.

Substance: The removal of the prohibition of advertising alcoholic beverages in college student publications will bring the regulation into compliance with the decision of the U.S. Court of Appeals for the Fourth Circuit.

Issues: The primary advantage for the agency is the removal of the language in 3VAC5-20-40 that the U.S. Court of Appeals for the Fourth Circuit found to be in violation of the First Amendment and making the rest of the regulation consistent with the court's ruling. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a court ruling,[1] the Alcoholic Beverage Control Board (Board) proposes to remove language from this regulation that prohibits the advertising of alcoholic beverages in college newspapers.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Current regulatory language prohibits advertising of alcoholic beverages in college student publications except in reference to a dining establishment. Presumably, the Board promulgated this rule because they felt that allowing alcoholic beverage advertisements in publications meant to be read by a population that is largely under the age of 21 might encourage underage drinking. Because this was ruled a violation of the free speech rights of college newspapers, the Board now proposes to eliminate the prohibition from this regulation.

This change will benefit alcohol manufacturers and distributers as they will have more choices as to where they can legally advertise their products, so as to maximize both current and future profits, and will benefit college publications as they will be able to widen the array of companies they can sell ads to. The state will also benefit from this change as it will bring regulation into compliance with the U.S. Constitution and thus avoid future lawsuits that might be costly to defend. No individuals will likely be harmed by this change because individuals under the age of 21 likely already see alcoholic beverage ads on billboards and in magazines and newspapers of general circulation. The state also has other means of preventing underage drinking as businesses that sell alcoholic beverages are required by law to check the identification of individuals purchasing those beverages to make sure they are not underage.

Businesses and Entities Affected. This proposed regulatory change will affect all manufacturers, wholesalers and retailers as well as any college newspapers who would like to accept

ads from those entities. Board staff reports that there are more than 10,000 entities that will be affected and that the majority of those entities are small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This proposed regulatory change is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulatory change may increase the value of the non-profit corporations that own college newspapers if ad revenues increase on account of alcoholic beverage ads being allowed in their publications. The present and/or future value of alcoholic beverage manufacturers, wholesalers and retailers businesses may increase also if ads in college publications increase present sales or increase brand loyalty so that future sales increase.

Real Estate Development Costs. This proposed regulatory change is unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

Alternative Method that Minimizes Adverse Impact. Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

Adverse Impacts:

Businesses. Businesses are unlikely to incur any costs on account of this proposed regulatory change.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities. No other entities are likely to be adversely affected by this proposed change.

[1] Educational Media Co. v. Insley which can be found here: http://www.ca4.uscourts.gov/Opinions/Published/122183.P.pdf

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendments remove the prohibition from advertising alcoholic beverages in college student publications to conform the regulation to the decision of the U.S. Court of Appeals for the Fourth Circuit in the case of Educational Media Co. v. Insley (731 F.3d 291).

3VAC5-20-40. Advertising; print and electronic media.

A. Alcoholic beverage advertising in the print or electronic media is permitted with the following requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser.

~~2. Advertisements of alcoholic beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.~~

~~3.~~ 2. Advertisements of alcoholic beverages are prohibited in publications not of general circulation ~~which~~ that are distributed or intended to be distributed primarily to persons under 21 years of age~~, except in reference to a dining establishment as provided in subdivision 3; notwithstanding the above mentioned provisions, all~~ All advertisements of alcoholic beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.

~~4. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication which is distributed or intended to be distributed primarily to persons over 18 and under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message and contains no pictures of the sponsor's product. Any public service advertisement involving alcoholic beverages shall contain a statement specifying the legal drinking age in the Commonwealth.~~

B. As used in the section, "electronic media" shall mean any system involving the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, television, electromagnetic, photo-electronic, or photo-optical system, including, but not limited to, radio, television, electronic mail, and the Internet.

VA.R. Doc. No. R16-4585; Filed May 11, 2016, 9:38 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-30).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Subdivision 9 of § 4.1-103 of the Code of Virginia provides that the Alcoholic Beverage Control Board has the power to determine the nature, form, and capacity of all containers used for holding alcoholic beverages to be kept or sold under Title 4.1 of the Code of Virginia and prescribe the form and content of all labels and seals to be placed on the containers.

Subdivisions B 17, B 18, and B 19 of § 4.1-111 of the Code of Virginia were amended by Chapter 404 of the 2015 Acts of Assembly and require the board to incorporate the amendments to those subdivisions into 3VAC5-40-30.

Purpose: The amendments are intended to meet specific statutory directives enacted by Chapter 404 of the 2015 Acts of Assembly to modernize regulations on business practices by retail on-premises and off-premises licensees and gourmet shop licensees. The amendments enhance public safety by placing limitations on the outlined practices in order to prevent overconsumption by consumers.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking process is expected to be noncontroversial because the agency is responding to specific statutory mandates. The agency has minimal discretion.

Substance: The proposed amendment redefines a growler as a resealable container made of glass, metal, ceramic, or other materials approved by the board and also provides for:

- Beer and cider sold for off-premises consumption by persons licensed to sell beer and cider for off-premises consumption may be sold in growlers with a maximum capacity of 128 fluid ounces or, for metric sizes, four liters.

- Wine may be sold for off-premises consumption in growlers with a maximum capacity of 64 fluid ounces or two liters if metric sizes. Wine may be sold in growlers only by persons licensed to sell wine for both on-premises and off-premises consumption or gourmet shop licensees; wine sold by gourmet shop licensees in growlers shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces, and (iv) the name and address of the retailer.

Retail licensees authorized to sell wine and beer for both on-premises and off-premises consumption and gourmet shop licensees may sell wine and beer in sealable containers made of metal or other materials approved by the board with a maximum capacity of 32 fluid ounces or one liter if in metric size, provided the alcoholic beverages are placed in the container following an order from the consumer.

Issues: The primary advantage of the proposal is to meet the legislative mandate. The proposal modernizes the board's regulations and permits certain licensees to sell wine, beer, and cider in growlers and in sealable containers with limitations. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 404 of the 2015 Acts of Assembly, the Alcoholic Beverage Control Board proposes to amend this regulation to allow certain alcoholic beverage licensees to sell beer, wine, and cider in larger growlers or in new types of containers for off-premises consumption.

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

Estimated Economic Impact. Chapter 404 of the 2015 Acts of Assembly amended Virginia Code section 4.1-111(B)(17,18,19) to 1) increase the amount of beer and cider that can be sold for off-premises consumption from 64 ounces or two liters to 128 ounces or four liters in a growler by a beer and cider retailer licensed to sell only for off-premises consumption; 2) allow the sale of wine for off-premises consumption up to 64 ounces or two liters in a growler by a wine retailer licensed to sell only for off-premises consumption; and 3) allow the sale of wine or beer for off-premises consumption up to 32 ounces or one liter in a sealed container made of metal or other types of materials by a wine and beer retailer or a gourmet shop licensed to sell for on or off-premises consumption. Thus, the proposed regulation will allow in general only for off-premises consumption certain licensees to sell beer, cider, or wine in larger quantities or allow them to be sold in new types of containers in addition to growlers.

While the proposed changes could be expected to increase the sales of wine, beer, or cider in the Commonwealth, the Department of Alcoholic Beverage Control notes that the licensees currently could achieve the same sales goals by selling smaller but a larger number of growlers, but has no information on the likely magnitude of such impact. In that sense, the proposed regulation provides greater flexibility to achieve the same sales goals. In addition, the proposed regulation is identical in substance to the statute and therefore no significant effect is expected upon promulgation of these changes as the affected licensees are already allowed to sell

beer, wine, and cider under the statute. Thus, while higher sales could be reasonably expected to benefit the affected licensees, no significant economic impact is likely for them or on public consumption upon promulgation of this regulation, other than improving clarity through consistency between the regulation and the Code of Virginia.

Businesses and Entities Affected. The proposed regulation applies to approximately 8,000 retail and gourmet shop licensees.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed amendments could be expected to increase sales of wine, beer, and cider and increase the demand for labor employed in production and sales. However, the statute has been in effect and any such impact is probably already realized. Thus, no significant impact on employment is expected upon promulgation of this regulation.

Effects on the Use and Value of Private Property. Allowing the sale of larger quantities of wine, beer, and cider provides more flexibility in achieving same sales goals and may have had a positive revenue impact on affected licensees and their asset values when the statute has authorized them to do so.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The vast majority of the 8,000 retail and gourmet shops are estimated to be small businesses. The proposed regulation does not impose costs on them. The proposed regulation simply conforms to the statute, which may have had a positive impact on sales.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation simply conforms to the statute allowing consumers to purchase beer, wine, and cider in larger and new type of containers from certain retailers.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendments redefine the term "growler" and conform the limitations on growlers to Chapter 404 of the 2015 Acts of Assembly.

3VAC5-40-30. Wine and beer containers; sizes and types; on-premises and off-premises limitations; cooler-dispensers; novel containers; carafes and decanters.

A. Wine and beer may be sold at retail only in or from the original containers of the sizes that have been approved by the appropriate federal agency, except that farm winery licensees may conduct barrel tastings at the winery, at which samples of wine not yet bottled may be sold to visitors to the winery. Each farm winery conducting a barrel tasting shall measure the wine withdrawn for the tasting, maintain full and complete records, and remit the taxes imposed by § 4.1-234 of the Code of Virginia.

B. Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original container with closure. Beer dispensed for on-premises consumption shall not be removed from authorized areas upon the premises. No wine or beer shall be sold for off-premises consumption in any container upon which the original closure has been broken, except for a growler. A "growler" is defined as a ~~reusable~~ resealable container made of glass, ceramic, ~~or~~ metal ~~container having a capacity of not more than 64 fluid ounces (or two liters if a metric-sized container) that has a resealable closure. Growlers may only be used by persons licensed to sell beer or wine for both on-premises and off-premises consumption, or by gourmet shop licensees. Growlers sold by gourmet shop licensees must be labeled with (i) the manufacturer's name or trade name; (ii) the place of production; (iii) the net contents in fluid ounces; and (iv) the name and address of the retailer~~, or other materials approved by the board as well as resealable containers approved by the board.

1. Beer and cider may be sold for off-premises consumption by persons licensed to sell beer and cider for off-premises consumption in growlers with a maximum capacity of 128 fluid ounces or if in metric size containers, four liters.

2. Wine may be sold for off-premises consumption in growlers with a maximum capacity of 64 fluid ounces or, for metric size containers, two liters. Wine sold in growlers may only be sold by persons licensed to sell wine for both on-premises and off-premises consumption and by gourmet shop licensees. Wine sold by gourmet shop licensees shall be labeled with the (i) manufacturer's name or trade name, (ii) place of production, (iii) net contents in fluid ounces, and (iv) name and address of the retailer.

3. Retail licensees licensed to sell wine and beer for both on-premises and off-premises consumption and gourmet shop licensees licensed for off-premises consumption may sell wine and beer in sealed containers made of metal or other materials approved by the board with a maximum

capacity of 32 fluid ounces or if in metric size containers, one liter, provided that the alcoholic beverages are placed in the container following an order from the consumer.

C. Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual, the board may consider, but is not limited to, the following factors: (i) nature and composition of the container; (ii) length of time it has been employed for the purpose; (iii) the extent to which it is designed or suitable for those uses; (iv) the extent to which the container is a humorous representation; and (v) whether the container is dutiable for any other purpose under customs laws and regulations.

D. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 80 fluid ounces in capacity.

VA.R. Doc. No. R16-4588; Filed May 11, 2016, 9:39 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-60).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Subdivisions B 11 and B 20 of § 4.1-111 of the Code of Virginia require that the Alcoholic Beverage Control Board promulgate a regulation that (i) prescribes the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20 liters and (ii) permits mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the board.

Subdivision A 14 of § 4.1-201 of the Code of Virginia was amended to allow a mixed beverage licensee, his agent, or his employee to offer for sale or sell for one price to any person to whom alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples of not more than five different spirits products. Pursuant to the general authority outlined in § 4.1-111 A, which allows the board to promulgate regulations as deemed necessary, regulatory action is intended to implement the statutory language.

Purpose: The amendments are intended to respond to specific statutory directives in Chapter 404 of the 2015 Acts of Assembly to modernize business practices by the retail mixed beverage licensee sector of the regulated community. The proposed regulation enhances public safety by placing limitations on the outlined practices in order to prevent overconsumption by consumers.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking process is expected to be noncontroversial because the proposal closely follows the statutory requirement. The agency has minimal discretion.

Substance: The proposal (i) gives retail mixed beverage licensees the authority to sell up to five samples of spirits each no more than one-half ounce in size; (ii) increases the container size for infused spirits to 20 liters; and (iii) permits the sale of premixed containers of sangria and other mixed beverages in pitchers, with certain limitations.

Issues: The primary advantage of the proposal is to meet the legislative mandate to promulgate regulations that provide guidance to the regulated community. The proposed regulation enhances public safety by placing limitations on the outlined practices in order to prevent overconsumption by consumers. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 404 of the 2015 Acts of Assembly, the Alcoholic Beverage Control Board proposes to allow retail mixed beverage licensees to mix spirits in larger containers and to allow the sale of mixed beverages in pitchers and in flights.

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

Estimated Economic Impact. Chapter 404 of the 2015 Acts of Assembly amended Virginia Code section 4.1-111(B)(11, 20) to: 1) increase the size of containers retail mixed beverage licensees may use for infusion of spirits from two to twenty liters in volume, and 2) allow the sale of premix containers of sangria and other mixed beverages in pitchers subject to limitations (i.e., cannot be sold in pitchers greater than 32 ounces, a pitcher may not be served to a single patron, and the containers must be labeled as to the type of and quantity of the ingredients it contains). The legislation also amended § 4.1-201(A)(15) to allow a mixed beverage licensee to offer for sale a flight of distilled spirits consisting of up to five different types, each not exceeding one-half of one ounce by volume for one price. Thus, the proposed regulation will allow in general more flexibility to the licensees in making and selling of mixed beverages.

While the proposed changes could be expected to increase the sales of mixed beverages in the Commonwealth, the Department of Alcoholic Beverage Control notes that the

licensees currently could achieve the same sales goals by a larger number of transactions, or infuse the same quantity by a larger number of mixings, but has no information on the likely magnitude of such impact. In that sense, the proposed regulation provides greater flexibility to achieve the same sales and production goals.

Businesses and Entities Affected. The proposed regulation applies to approximately 6,600 retail mixed beverage restaurant licensees.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. Allowing mixed beverages for sale in pitchers and in flights could be expected to increase sales of mixed beverages and demand for labor associated with increased production and sales. On the other hand, allowing larger containers for mixing could be expected to reduce the demand for labor used in production to some extent.

Effects on the Use and Value of Private Property. Allowing the sale and mixing of larger quantities of spirits may increase revenues and reduce production costs, which in turn would have a positive impact on affected licensees and their asset values.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The majority of the 6,600 retail mixed beverage restaurant licensees are estimated to be small businesses. Some of the chain restaurants are owned by large corporations. The proposed regulation does not impose costs on them. The effects on small businesses are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation allows consumers to purchase mixed beverages in pitchers and in flights.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendments (i) permit retail mixed beverage licensees to sell up to five samples of spirits each no more than one-half ounce in size; (ii) increase the container size for infused spirits to 20 liters; and (iii) permit the sale of premixed containers of sangria and other mixed beverages in pitchers, with certain limitations. The amendments conform the regulation to Chapter 404 of the 2015 Acts of Assembly.

3VAC5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.

A. No mixed beverage restaurant or carrier licensee shall:

~~1. Prepare, other than frozen drinks, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.~~

~~2.~~ 1. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D, and E of this section.

~~3.~~ 2. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.

2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.

3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time, except that a mixed beverage licensee may sell to a patron who may lawfully purchase mixed beverages a flight of distilled spirits products consisting of samples of not more than five different spirits products. Each distilled spirits product shall contain no more than one-half ounce of distilled spirits.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.

2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.

2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed ~~two~~ 20 liters in volume, will be labeled with the following information:

a. Date of infusion;

b. Brand of spirits; and

c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

G. Mixed beverage licensees may premix containers of sangria and other mixed beverages and serve such alcoholic beverages in pitchers subject to the following limitations:

1. Pitchers of mixed beverages may only be sold in containers with a maximum capacity of 32 fluid ounces or one liter if the container is in metric size containing a spirits product mixed with nonalcoholic beverages.

2. A pitcher of mixed beverages may only be served to two or more patrons. A licensee shall not allow any two patrons to possess more than one pitcher at any one time.

3. Containers of premixed sangria and other mixed beverages must be labeled as to the type of mixed beverage and the quantities of the products used to produce the mixed beverage.

VA.R. Doc. No. R16-4476; Filed May 11, 2016, 9:40 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-160).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Subdivision B 15 of § 4.1-111 of the Code of Virginia requires the Alcoholic Beverage Control Board to promulgate regulations that permit a mixed beverage licensee to advertise the products featured during a happy hour promotion and to serve pitchers and flights of mixed beverages to patrons. Section 4.1-111 also provides the board with broad authority to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia.

Subdivisions 13 and 18 of § 4.1-103 of the Code of Virginia authorize the board to promulgate regulations and to do all acts necessary to carry out the provisions of Title 4.1 of the Code of Virginia.

Purpose: These amendments respond to specific statutory requirements. The amendments enhance public safety by placing limitations on the outlined practices in order to prevent overconsumption by consumers.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking process is expected to be noncontroversial because the proposed amendments closely follow the statutory requirements. The agency has minimal discretion.

Substance: The proposed amendment provides for retail on-premises licensees to have the option of listing the alcoholic beverage products featured during a happy hour promotion in any lawful advertisement. In addition, retail on-premises licensees may serve a flight of five samples of wine or beer to a patron. Mixed beverage licensees may also serve a flight of five mixed beverage samples and pitchers of mixed beverages to patrons during a happy hour in accordance with the regulations of the board.

Issues: The primary advantage to the public is accomplishing the legislature's stated goal to permit certain activities. The amendments include safeguards to prevent overconsumption by placing limitations on the amounts of alcoholic beverages that can be served. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 404 of the 2015 Acts of Assembly, the Alcoholic Beverage Control Board (Board) proposes to relax the limitations on happy hour promotions.

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

Estimated Economic Impact. Chapter 404 of the 2015 Acts of Assembly amended Virginia Code section 4.1-111(B)(15) requiring the Board to prescribe the limitations for happy hour promotions. In addition, Chapter 826 of the 2006 Acts of Assembly amended Virginia Code section 4.1-201(A)(11) and (14) to allow flights of wine and beer to be sold subject to certain restrictions. Currently, a person is not allowed more than two drinks at any one time during a happy hour. The Board now proposes to allow mixed beverage retail licensees: 1) to permit patrons to possess a flight of wine, beer or mixed beverages consisting of no more than five sample products provided each sample of distilled spirits contains no more than one half ounce of spirits, 2) to sell pitchers of mixed beverages during a happy hour in accordance with limitations established by the Board, and 3) to list the alcoholic beverage products featured during a happy hour in any lawful advertisement. Thus, the proposed regulation will allow in general more flexibility to the licensees in the sale and promotion of alcoholic beverages during a happy hour. The proposed changes will likely increase the sales of mixed beverages during happy hour.

Businesses and Entities Affected. The proposed regulation applies to approximately 6,000 retail licensees authorized to sell for on-premises consumption.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed amendments could be expected to increase sales of mixed beverages during happy hours and demand for labor employed in production and sales.

Effects on the Use and Value of Private Property. Allowing more flexibility in the sale and promotion of alcoholic beverages during a happy hour may have a positive revenue impact on affected licensees and their asset values.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Approximately 75 percent of the 6,000 retail licensees are estimated to be small businesses. The proposed regulation does not impose costs on them. The effects on small businesses are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendments permit (i) retail on-premises licensees to list the alcoholic beverage products featured during a happy hour promotion in any lawful advertisement and serve flights of five samples of wine or beer to a patron and (ii) mixed beverage licensees to serve flights of five mixed beverage samples and pitchers of mixed beverages to patrons during a happy hour.

3VAC5-50-160. Happy hour and related promotions; definitions; exceptions.

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

1. "Happy ~~Hour." A~~ hour" means a specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. "Drink~~." Any~~ " means any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;

2. Allowing a person to possess more than two drinks at any one time during a happy hour, with the exception of flights of wine and beer consisting of samples of not more than five different wines or beers or samples of five different distilled spirits products provided each distilled spirits sample contains no more than one-half ounce of distilled spirits;

3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;

4. Selling two or more drinks for one price, such as "two for one" or "three for one";

5. Selling pitchers of mixed beverages except in accordance with 3VAC5-50-60;

6. Giving away drinks;

7. Selling an unlimited number of drinks for one price, such as "all you can drink for $5.00";

8. Advertising happy hour anywhere other than within the interior of the licensed premises, except that a licensee may use the term "Happy Hour" or "Drink Specials," ~~and,~~ a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement; or

9. Establishing a customary retail price for any drink at a markup over cost significantly less than that applied to other beverages of similar type, quality, or volume.

C. This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

VA.R. Doc. No. R16-4586; Filed May 11, 2016, 9:40 a.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-100).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and § 4.1-111 of the Code of Virginia. Section 4.1-111 also provides the board with broad authority to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia.

Purpose: The purpose of this proposal is to amend 3VAC5-70-100 to conform to the language found in §§ 4.1-325 A 14 and 4.1-325.2 A of the Code of Virginia, which authorizes representatives of manufacturers and wholesalers to provide samples to retail licensees. Currently, 3VAC5-70-100 authorizes wholesale licensees as the only entities that can provide samples to retail licensees. The amendments enhance public safety by placing limitations on the outlined practices in order to prevent overconsumption by consumers.

Rationale for Using Fast-Track Rulemaking Process: This proposal is expected to be noncontroversial as both the wholesale and manufacturing segments of the alcoholic beverage industry are in support of the amendment.

Substance: The proposed amendment provides that representatives of manufacturers and importers of wine and beer products will be permitted to provide samples of wine and beer to retail licensees in addition to wholesale licensees.

Issues: The primary advantage for the agency and regulated community is to amend the current language of 3VAC5-70-100 to bring it into compliance with §§ 4.1-325 A 14 and 4.1-325.2 A of the Code of Virginia. In addition the agency is proactively being responsive to segments of the regulated community that are supportive of this amendment. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to allow representatives of wineries, farm wineries, breweries and beer and wine importers to give away samples of wine or beer to retail licensees that do not currently sell the products sampled. The proposed regulation will allow such sample gifts so long as the samples are obtained from wholesalers or retail licensees located in the Commonwealth.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Current regulation allows licensed wholesalers to give samples of their wine or beer to retail licensees so long as 1) the retail licensee does not already carry the product being sampled, 2) the product is in a container that does not exceed 52 fluid oz., or 1.5 liters, in volume, 3) the retail licensee does not sell the sample, 4) the sample "bears the word 'Sample' in letters of a reasonable size," and 5) the sample comes from the wholesaler's own stock (to assure that all excise tax has been paid). The Board now proposes to also allow representatives of wineries, farm wineries, breweries and beer and wine importers to also give samples to retail licensees so long as they follow all the same rules as wholesalers with one change; because representatives would not have stocks of wine and beer for which excise taxes have already been paid, the Board proposes to allow samples given to retail licensees by these entities to be obtained either from licensed wholesalers or from retail licensees in the Commonwealth.

This change will benefit wineries, farm wineries, breweries and wine and beer importers as it will allow them to directly market their products to retail licensees. The change will also

likely benefit retail licensees as a greater number of businesses will be authorized to give them samples.

Businesses and Entities Affected. This proposed regulatory change will affect all manufacturers, wholesalers and retailers of beer and wine. Board staff reports that there are more than 1,000 entities that will be affected and that all of those entities are small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This proposed regulatory change is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that this proposed change allows wineries, farm wineries, breweries and beer and wine importers to more effectively market their products and increase their revenues, the value of these businesses may increase.

Real Estate Development Costs. This proposed regulatory change is unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

Alternative Method that Minimizes Adverse Impact. Small businesses are unlikely to incur any costs on account of this proposed regulatory change.

Adverse Impacts:

Businesses. Businesses are unlikely to incur any costs on account of this proposed regulatory change.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities. No other entities are likely to be adversely affected by this proposed change.

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs.

Summary:

The amendments allow representatives of wineries, farm wineries, breweries, beer importers, and wine importers to give away samples of wine or beer to retail licensees that do not currently sell the products sampled. The amendments permit such sample gifts provided that the samples are obtained from wholesalers or retail licensees located in the Commonwealth.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, 4.1-205, 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A representative of a wholesaler, winery, brewery, or importer may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer~~, which such wholesaler otherwise may sell to such retail licensee,~~ if (i) the licensee is licensed to sell such product, provided that in the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and (ii) the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container. Samples must be obtained from licensed wholesalers or purchased from retail licensees in the Commmonwealth.

3. Hospitality rooms; conventions. The following activities are permitted:

a. A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including alcoholic beverage tastings; research; licensee associations. Manufacturers, importers, bottlers, brokers, and wholesalers may donate alcoholic beverages to:

a. A convention, trade association or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism; and

d. Official associations of alcoholic beverage industry members when conducting a bona fide educational program concerning alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

5. Conditions. Exceptions authorized by subdivisions 3 b and 4 of this subsection are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such activity; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a gourmet shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

VA.R. Doc. No. R16-4624; Filed May 11, 2016, 9:41 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-508. Regulations Governing the Virginia Physician Loan Repayment Program (amending 12VAC5-508-10, 12VAC5-508-50, 12VAC5-508-60, 12VAC5-508-70, 12VAC5-508-80, 12VAC5-508-110, 12VAC5-508-120, 12VAC5-508-130, 12VAC5-508-160, 12VAC5-508-180, 12VAC5-508-220, 12VAC5-508-230, 12VAC5-508-250, 12VAC5-508-260, 12VAC5-508-270; adding 12VAC5-508-75, 12VAC5-508-135, 12VAC5-508-165, 12VAC5-508-175; repealing 12VAC5-508-20, 12VAC5-508-30, 12VAC5-508-40, 12VAC5-508-90, 12VAC5-508-100, 12VAC5-508-140, 12VAC5-508-150, 12VAC5-508-170, 12VAC5-508-190, 12VAC5-508-200, 12VAC5-508-210, 12VAC5-508-240).**

Statutory Authority: §§ 32.1-12 and 32.1-122.6:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Adrienne McFadden, MD, JD, Director, Office of Minority Health and Health Equity, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7425, FAX (804) 864-7440, or email adrienne.mcfadden@vdh.virginia.gov.

Basis: The regulation is promulgated under the authority of §§ 32.1-12 and 32.1-122.6:1 of the Code of Virginia. Section 32.1-12 grants the board the legal authority "to make, adopt, promulgate and enforce such regulations... necessary to carry out the provisions of this title..." Section 32.1-122.6:1 requires that the board establish a physician loan repayment program for graduates of accredited medical schools who have a specialty in the primary care areas of family practice medicine, general internal medicine, pediatrics and obstetrics/gynecology, or who are currently employed in a geriatrics fellowship.

Purpose: To fulfill the statutory mandate to review regulations and to protect the citizens of the Commonwealth, the Virginia Department of Health conducted a periodic review of 12VAC5-508 (Regulations Governing the Virginia Physician Loan Repayment Program). As a result of this review, the department plans to begin the regulatory process to amend the chapter. During the review, it was noted by the department that amendments were required to update the chapter and conform the chapter to other similar regulatory programs within the department, remove unnecessary sections, and provide greater clarity. The chapter is mandated by the Code of Virginia and increases the availability of adequate quality primary care in medically underserved areas in the Commonwealth. Further, facilities within medically underserved areas will be better positioned to retain qualified physicians because of the obligation created by accepting the loan repayment funds.

Rationale for Using Fast-Track Rulemaking Process: The amendments update the regulations to conform to similar regulatory programs within the department. Similar regulatory programs have recently undergone amendments to update the programs. Those regulatory updates have not been controversial and have received no public comment; as these amendments are substantially similar, the department does not expect that this regulatory action will be controversial.

Substance:

12VAC5-508-10. Definitions: Amend this section to update outdated definitions. Add missing definitions. Add clarifying language. These amendments include updating the definition of "full-time" to at least 32 hours per week for 45 weeks per year to conform more closely to industry standard employment contracts.

12VAC5-508-50. Eligible applicants: Clarifying language inserted.

12VAC5-508-60. Application requirement: 12VAC5-508-140 and 12VAC5-508-150 was updated to reflect the current practice of similar regulatory programs.

12VAC5-508-70. Selection criteria: Minor clarifying language was inserted.

12VAC5-508-75. Loans qualifying for repayment: The substantive elements of this section were previously located in 12VAC5-508-90. The section was updated to reflect the current practice of similar regulatory programs. Insertion of minor clarifying language.

12VAC5-508-80. Loan repayment terms: 12VAC5-508-140 and 12VAC5-508-150 were combined and rearranged for reduced redundancy. Clarifying language was inserted. Maximum loan repayment dollar amounts were increased from $50,000 to $60,000 for the first two years of service and renewal amounts were increased from $35,000 to $40,000 per year for the third and fourth years. These increases bring the Virginia Physician Loan Repayment program into conformity with the award terms for the National Health Service Corps Loan Repayment Program and other similar programs.

12VAC5-508-110. Release of information: Insertion of minor clarifying language.

12VAC5-508-120. Practice site: This section was updated to reflect the current practice of similar regulatory programs.

12VAC5-508-135. Terms of service: The substantive elements of this section were previously located in 12VAC5-508-200. Unnecessary language was removed and minor clarifying language was inserted.

12VAC5-508-160. Compensation during service: Minor clarifying language inserted.

12VAC5-508-165. Conditions of practice: The substantive elements of this section were previously located in 12VAC5-508-210.

12VAC5-508-175. Change of practice site: The substantive elements of this section were previously located in 12VAC5-508-190. Clarifying language was inserted.

12VAC5-508-180. Monitoring during service: Minor clarifying language was inserted.

12VAC5-508-220: Loan repayment contract. Minor clarifying language was inserted.

12VAC5-508-230: Breach of contract. Minor clarifying language inserted and removal of terms duplicated elsewhere. Language regarding financial damages was removed from 12VAC508-130 and moved to this section.

12VAC5-508-250: Deferment or waiver of service. Language regarding default due to death or permanent disability was amended to reflect language and current practice of similar regulatory chapters.

12VAC5-508-260: Cash reimbursement and penalty. The section was reformatted to reflect current practice of similar regulatory chapters.

12VAC5-508-270: Reporting requirements. Minor clarifying language was inserted.

The agency proposes repealing all other sections in 12VAC5-508.

Issues: The primary advantages of the regulatory action to the public, the agency, and the Commonwealth is clearer and updated regulations, as well as consistency across regulatory programs. There are no known disadvantages related to the regulatory action.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review, the State Board of Health (Board) proposes to amend the Regulations Governing the Virginia Physician Loan Repayment Program to 1) update outdated definitions, 2) add clarifying language, 3) rearrange requirements in this regulation to make them easier to find, 4) allow physicians with geriatrics specialties to apply for the program, 5) redefine "full time" as 32 hours (rather than 40 hours), and 6) increase the maximum loan repayment amount for both the first two-year contract period and the renewal period(s).

Result of Analysis. Benefits likely outweigh costs for most proposed regulatory changes. There is insufficient information to ascertain whether benefits will likely outweigh costs for the two substantive regulatory changes in this action.

Estimated Economic Impact. Most of the changes proposed by the Board are not substantive. For instance, the Board proposes to add a definition for "geriatrics fellowship" and update language in the definition of "accredited residency" to correct the names of accrediting boards. Changes such as these are unlikely to increase costs for any affected entity but will likely benefit these entities by making this regulation easier to understand and comply with.

In addition to these clarifying changes, the Board proposes one change to conform this regulation to legislation passed in 2013. The regulation currently allows physicians with specialties in family medicine, general internal medicine, general pediatrics, obstetrics/gynecology, osteopathic general practice or psychiatry to apply to this program. Chapter 255 of the 2013 Acts of the Assembly authorized physicians with a geriatrics specialty to also take part. The Board now proposes to add geriatrics to the list of specialties a doctor may have in order to exchange loan repayment for service in medically underserved areas of the Commonwealth. Currently, this program is not funded but if it becomes funded in the future, this change may benefit senior citizens in underserved areas as it may increase the number of physicians with geriatrics specialties practicing near them. If the number of such specialists increases it would likely make it easier for senior citizens to find appropriate care without travelling long distances.

The Board also proposes two substantive discretionary changes in this action. Current regulation requires doctors

who are participating in this loan repayment plan to work 40 hours per week for 45 weeks each qualifying year. The Board proposes to reduce this requirement so that these doctors will only have to work 32 hours per week for 45 weeks per year to qualify for loan repayment. Board staff reports that this change reflects industry norms for standard employment contracts. This change will mean that taxpayers, and patients served by these doctors, would get 20% fewer hours of work each year from doctors who are part of this program. There is insufficient information to ascertain whether the benefits of conforming requirements in this regulation to standard physician contracts will outweigh the costs to patients who will be able to access doctors covered by this regulation for 20% fewer hours each year.

Finally, current regulation allows doctors in this program to receive up to $50,000 toward repayment of their student loans, and other qualified student expenses, for their first two years of service and $35,000 per year for a third and fourth year of service (for a total of up to[1] $120,000 of repayment funds). The Board proposes to increase these amounts so that doctors in the program will receive up to $60,000 in repayment funds for their first two-year contract and will receive up to $40,000 per year for their third and fourth years of service (for a total of up to $140,000 of repayment funds). In theory, this change will 1) increase the amount of money paid out to qualifying doctors (and induce a greater number of doctors to participate) if total dollars paid out of the program is below the total amount allocated or 2) decrease the number of doctors in the program but allow participating doctors to receive more money if expenditures tend to be at or close to the total dollar cap for the program. Board staff reports, however, that this program has not been funded by the General Assembly since fiscal year 2009. If this program becomes funded again in the future, the amount of taxpayer dollars used for this program may increase, or the number of physicians who take part in the program may decrease, from the levels they would be under current regulatory restrictions. There is insufficient information to ascertain which effect would dominate and whether the benefits of this change will outweigh its costs.

Businesses and Entities Affected. Virginia Department of Health staff reports that there are 241 designated health professional shortage areas in the Commonwealth. Staff further reports that no physicians are currently having loans repaid via this program because the program has not been funded since 2009.

Localities Particularly Affected. No locality will be particularly affected by this regulatory change.

Projected Impact on Employment. These regulatory changes are unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Small businesses are unlikely to incur any costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. Small businesses are unlikely to incur any costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. Businesses are unlikely to incur any costs on account of these proposed regulatory changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities. Reducing the number of hours that doctors in this program must work each week will likely reduce the medical care received by targeted populations by about 20%. Increasing the allowable payout amounts for this program may increase the total amount of taxpayer dollars spent or reduce the number of doctors participating in the program. These effects will not occur until and unless the program is funded again.

[1] Subject to fund availability and with the restriction that doctors may not receive more money than their total qualifying expenses add to.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health (VDH) generally concurs with the result of the economic impact analysis, specifically that the benefits likely outweigh costs for most proposed regulatory changes.

VDH has no significant disagreement with the statement contained in the economic impact analysis that if this program becomes funded again in the future, increasing the loan repayment amount could reduce the number of physicians participating and/or increase the need for more appropriated dollars to meet the needs of the applications for the program.

However, VDH believes that it is questionable for the economic impact analysis to identify as an adverse impact that community members will receive a 20% reduction in access to these physicians. VDH notes that the proposed amendment to the definition of "full-time" at 12VAC5-508-10, from 40 hours to 32 hours, is not intended to be strictly interpreted that the physician can only work 32 hours. Thirty-two hours as full-time status is a reflection of the industry standard "floor" of what constitutes full-time hours, and not the "ceiling" on the number of hours that may be worked.

Each physician employment contract is different and will vary based upon specialty and facility of employment.

Summary:

The amendments (i) pursuant to Chapter 255 of the 2013 Acts of Assembly, allow physicians with geriatrics specialties to apply for the loan repayment program, (ii) redefine "full-time" as 32 hours per week for 45 weeks per year, (iii) increase the maximum loan repayment amount for the first two years of service to $60,000 and renewal amounts to $40,000 for the third and fourth years, (iv) update outdated definitions, (v) add clarifying language, and (vi) rearrange the order of requirements.

Part I

Definitions ~~and General Information~~

12VAC5-508-10. Definitions.

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

~~"Accredited~~ "Approved residency" means a graduate medical education program in family practice medicine, general internal medicine, pediatric medicine, or obstetrics and gynecology~~, or psychiatry accredited by~~ approved by the board. In determining whether a course of study is acceptable, the board may consider the reputation of the program and whether it is approved or accredited by (i) a regional or national educational or professional association, including such organizations as the ~~Liaison Committee on~~ Accreditation Council for Graduate Medical Education, Liaison Committee on Medical Education, Council on Postgraduate Training of the American Osteopathic Association, Council on Osteopathic College Accreditation, College of Family Physicians of Canada, Committee for the Accreditation of Canadian Medical Schools, Education Commission on Foreign Medical Graduates, or Royal College of Physicians and Surgeons of Canada, or their appropriate subsidiary agencies; (ii) any appropriate agency of the United States government; or (iii) any other organization approved by the board.

"Board" or "Board of Health" means the State Board of Health.

"Commercial loans" means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and either financial or credit institutions that are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the state in which the lender has its principal place of business.

"Commissioner" means the State Health Commissioner.

"Department" means Virginia Department of Health.

"Full-time" means at least ~~40~~ 32 hours per week for 45 weeks per year.

"Geriatrics fellowship" means a geriatrics subspecialty training program following residency approved by the board. In determining whether a course of study is acceptable, the board may consider the reputation of the program and whether it is approved or accredited by (i) a regional or national educational or professional association, including such organizations as the Accreditation Council for Graduate Medical Education, Liaison Committee on Medical Education, Council on Postgraduate Training of the American Osteopathic Association, Council on Osteopathic College Accreditation, College of Family Physicians of Canada, Committee for the Accreditation of Canadian Medical Schools, Education Commission on Foreign Medical Graduates, or Royal College of Physicians and Surgeons of Canada, or their appropriate subsidiary agencies; (ii) any appropriate agency of the United States government; or (iii) any other organization approved by the board.

"Health ~~Professional Shortage Area"~~ professional shortage area" or "HPSA" means ~~a geographic~~ an area in Virginia designated by the ~~Bureau of Primary Health Care, Health Resources and Services Administration~~ U.S. Secretary of Health and Human Services as ~~medically underserved~~ having a shortage of health professionals in accordance with the procedures of the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part ~~5.2)~~ 5).

"Participant" ~~or "loan repayment participant"~~ means an eligible primary care physician or ~~an eligible psychiatrist~~ a physician currently employed in a geriatrics fellowship who enters into a contract with the commissioner and participates in the loan repayment program.

"Penalty" means ~~the amount of money equal to~~ twice the amount of all monetary ~~loan repayment~~ payments paid to the ~~loan repayment~~ participant, less any service obligation completed.

"Practice" means the practice of medicine by a ~~recipient~~ participant in a geriatrics fellowship or in one of the designated primary care specialties in a specific ~~geographic~~ area determined to ~~be fulfillment of~~ fulfill the r~~ecipient's~~ participant's loan repayment obligation.

"Primary care" means the specialties of family practice medicine, general internal medicine, pediatric medicine, and obstetrics and gynecology~~, and psychiatry~~.

"Reasonable educational expenses" means the costs of education, exclusive of tuition, that are considered to be required by the school's degree program or an eligible program of study, such as fees for room, board, transportation and commuting costs, books, supplies, educational equipment and materials, and ~~clinical~~ travel~~, which~~ that was a part of the estimated student budget of the school in which the participant was enrolled.

"State or local institution" means any Virginia state agency or local government agency that may require services of a primary care practitioner. This includes, but is not limited to, the Department of Health, the Department of Behavioral Health and Developmental Services, the Department of

Corrections, the Department of Juvenile Justice, and local community services boards.

"Virginia medically underserved area" or "VMUA" means ~~a geographic~~ an area in Virginia designated by the State Board of Health in accordance with the Rules and Regulations for the Identification of Medically Underserved Areas in Virginia (12VAC5-540) ~~or~~ and § 32.1-122.5 of the Code of Virginia~~, or designated as a federal health professional shortage area (HPSA) in Virginia by the Bureau of Primary Health Care, Health Resources and Services Administration in accordance with the procedures of the Public Health Service Act (42 USC § 254e) and implementing regulations (42 CFR Part 5.2)~~.

12VAC5-508-20. ~~General information and purpose of chapter.~~ (Repealed.)

~~These regulations set forth the criteria for eligibility for the Virginia Physician Loan Repayment Program; the general terms and conditions applicable to the obligation of each loan repayment recipient to practice in a state or local institution or a medically underserved area of Virginia, as identified by the Board of Health by regulation or a federal HPSA in Virginia, designated by the Bureau of Primary Health Care, Health Resources and Services Administration; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Physician Loan Repayment Program.~~

~~The purpose of the Virginia Physician Loan Repayment Program is to improve the recruitment and retention of primary care practitioners in underserved areas of Virginia and in state and local institutions. A limited number of loan repayment participation contracts will be signed with participants in return for service in a designated Virginia Medically Underserved Area (VMUA) or HPSA, and targeted at practitioners located in non-profit community based or hospital based primary care centers. Private for profit entities will be eligible depending on the insurance status of the patient population. State and local institutions are eligible. Loan repayment benefits are to be used to repay outstanding qualifying medical educational loans and are based on the availability of funds.~~

12VAC5-508-30. ~~Compliance with the Administrative Process Act.~~ (Repealed.)

~~Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia (the Administrative Process Act) governs the promulgation and administration of this chapter and applies to any appeal of a case decision made pursuant to or based upon this chapter.~~

Part II
Administration of the Virginia Physician Loan Repayment Program

12VAC5-508-40. ~~Administration.~~ (Repealed.)

~~The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from these regulations shall be considered on an individual basis by the board in regular session.~~

12VAC5-508-50. Eligible applicants.

Eligible applicants for the Virginia Physician Loan Repayment Program ~~must~~ shall:

1. Be a ~~citizen of the~~ United States citizen, national, or a qualified alien pursuant to 8 USC § 1621;

2. Have graduated from an accredited medical school;

~~2.~~ 3. Be an allopathic (M.D.) or osteopathic (D.O.) physician who is enrolled in the final year of an approved residency program in allopathic medicine~~,~~ or osteopathic medicine, ~~psychiatry,~~ or already in practice~~;~~, and who will have completed post-graduate training in an ~~accredited~~ approved residency ~~in specialties of family practice medicine, general internal medicine, general pediatrics, obstetrics/gynecology, osteopathic general practice or psychiatry~~ or be employed or accepted in a geriatrics fellowship when the period of obligated service begins~~. Note that obstetrics/gynecology practitioners must provide prenatal care and obstetric service to be eligible for the Virginia Physician Loan Repayment Program. Practitioners who practice only gynecology are not eligible to participate in the loan repayment program~~;

~~3.~~ 4. Have a valid unrestricted Virginia license to practice medicine, a copy of which shall be furnished to the Virginia Physician Loan Repayment Program;

~~4.~~ 5. Have submitted a completed application to participate in the Virginia Physician Loan Repayment Program; ~~and~~

~~5. Have signed and submitted a written contract agreeing to repay educational loans and to serve for the applicable period of obligated service in an area of defined need.~~

6. Have no other contractual service obligation unless completely satisfied before the physician loan repayment program contract has been signed;

7. Not have an active military obligation;

8. Be employed or have a contract for employment in an HPSA, a VMUA, an approved geriatrics fellowship, or a state or local institution within a month of the completion of the approved residency program or within a month of the application date, whichever is later;

9. Not have a history of failing to comply with, or inability to comply with, service or payment obligations;

10. Not have a history of noncompliance within any other state or federal scholarship or loan repayment program; and

11. Have an educational loan balance that can be verified.

12VAC5-508-60. Application requirement ~~and restrictions~~.

The applicant ~~must~~ shall submit a completed application for loan repayment ~~on a form provided by~~, including documentation of eligibility requirements, to the Virginia Physician Loan Repayment Program ~~between the dates of January 1 and May 1 of the year in which the applicant intends to initiate practice in a medically underserved area.~~

~~The applicant must agree to serve for not less than two years and up to four years~~, and the application shall be received in the department by July 31. The application form shall be available on the department's website.

12VAC5-508-70. Selection criteria.

Applicants shall be competitively reviewed and selected for participation in the Virginia Physician Loan Repayment Program based upon the following criteria:

1. Commitment to serve. The individual's stated commitment to serve in ~~a designated medically underserved area of Virginia~~ an HPSA, a VMUA, an approved geriatrics fellowship, or ~~in~~ a state or local institution.

2. Virginia ~~residents/graduates~~ residents or Virginia graduates. Preferential consideration ~~will~~ shall be given to individuals who are or have been Virginia residents~~,~~ or graduates of Virginia medical schools (verification ~~will~~ shall be obtained by the Virginia Physician Loan Repayment Program)~~, or natives of rural or designated medically underserved areas~~.

3. Residents of HPSAs or VMUAs. Preferential consideration shall be given to individuals who reside in HPSAs or VMUAs (verification shall be obtained by the Virginia Physician Loan Repayment Program).

~~3.~~ 4. Availability for service. Individuals who are immediately eligible and available for service ~~will~~ shall be given higher consideration.

~~4.~~ 5. Length of proposed commitment. Preferential consideration ~~will~~ shall be given to individuals who commit to longer periods of service.

~~5.~~ 6. Selection for participation. All of an individual's professional qualifications and competency to practice in an underserved area ~~will~~ shall be considered, including board eligibility or specialty certification, professional achievements, and other indicators of competency received from supervisors, program directors, or other individuals who have agreed to enter into an employment contract with the individual.

~~6. No other obligations. Individuals shall have no other obligation for health professional service to the federal government or state government unless such obligation will be completely satisfied prior to the beginning of service under the Virginia Physician Loan Repayment Program.~~

12VAC5-508-75. Loans qualifying for repayment.

A. Based on the availability of funds, the loan repayment program shall pay for the cost of education necessary to obtain a medical degree. The program shall pay toward the outstanding principal, interest, and related expense of verifiable federal, state, or local government loans and commercial loans obtained by the participant for:

1. Tuition expenses; and

2. Other reasonable educational expenses.

B. All loan repayment awards shall be applied only to outstanding educational loans secured while attending an accredited medical school. Qualifying outstanding educational loans shall:

1. Have sufficient documentation verifying the educational use of the loans;

2. Not exceed the "reasonable" levels as determined by the school's standard budget in the year the loan was made; and

3. Not include loans from friends and relatives.

C. The department shall be the final authority in determining qualifying educational loans.

12VAC5-508-80. Loan repayment ~~amount~~ terms.

~~The amount that the Commonwealth agrees to repay will depend upon availability of funds and the applicant's indebtedness, but no amount will exceed the total indebtedness. For each year of participation, the Commonwealth will repay loan amounts according to the following schedule: two years of service will receive up to $50,000 (minimum requirement); three years of service will receive up to $85,000; and four years of service will receive up to $120,000.~~

A. Repayment of loans shall begin after the commissioner has received notification that the participant has officially accepted placement and has begun the required service obligation.

B. The applicant shall agree to serve a minimum of two years for a loan repayment amount of up to $60,000 with an option for a renewal in the third and fourth years. Renewals shall only be granted if the applicant can show a reduction in his educational loan balances. The loan repayment amount shall depend upon availability of funds and the applicant's indebtedness. In no event shall the amount of the loan repayment exceed the total indebtedness.

C. Payment shall be a lump-sum payment. Payment shall be made to the participant. A participant shall be paid one lump sum payment of up to $60,000 the first year for the minimum two-year commitment. If a participant commits to a service obligation greater than two years, he shall be paid a lump sum payment of up to $40,000 each following year depending on the availability of funds.

D. The maximum number of years of participation in the loan repayment program to which a participant may commit is four years. Verification of payment made to the lender shall be required and submitted to the department. It shall be the responsibility of the participant to negotiate with each lending institution the terms of the educational loan repayments.

12VAC5-508-90. ~~Loans qualifying for repayment.~~ (Repealed.)

~~Based on the availability of funds, the loan repayment program will pay for the cost of education necessary to obtain~~

~~a medical degree. The program will pay toward the outstanding principal, interest, and related expense of federal, state, or local government loans (not to include repayment of the Virginia Medical Scholarship Program) and commercial loans obtained by the participant for:~~

~~1. School tuition and required fees incurred by the participant;~~

~~2. Other reasonable educational expenses, including fees, books and laboratory expenses; and~~

~~3. Reasonable living expenses.~~

12VAC5-508-100. ~~Repayment restrictions.~~ (Repealed.)

~~A. The following financial debts or service obligations are not qualified for repayment by the loan repayment program:~~

~~1. Public Health Service Physician Shortage Area Scholarship;~~

~~2. Public Health and National Health Service Corps Scholarship Training Program;~~

~~3. Indian Health Service Scholarship Program;~~

~~4. Armed Forces Health Professions Scholarship Programs;~~

~~5. National Health Service Corps Scholarship Program financial damages or loans obtained to repay such damages;~~

~~6. Indian Health Corps Scholarship or loans obtained to repay such damages;~~

~~7. Financial damages or loans obtained to repay damages incurred as a result of breach of contract with any other federal, state, local agency or commercial institution;~~

~~8. Loans for which documentation verifying the educational use of the loans is not available or is not sufficient;~~

~~9. Loans or part of loans obtained for educational or personal expenses during the participant's education that exceed the "reasonable" level, as determined by the school's standard budget in the year the loan was made;~~

~~10. Loans that have been repaid in full, and loans that incur their own obligation for service which has not yet been performed;~~

~~11. Loans from friends and relatives; and~~

~~12. The Virginia Medical Scholarship Program.~~

~~B. The Department of Health will be the final authority in determining qualifying educational loans.~~

12VAC5-508-110. Release of information.

A. Applicants shall agree to execute a release of information to allow the ~~board~~ department access to loan records, credit information, and information from lenders necessary to verify eligibility and to determine loan repayments. To facilitate the process, applicants ~~should~~ shall submit ~~pay-off~~ payment statements from each lending institution.

B. Participants who have consolidated qualifying loans with other loans ~~may be asked to~~ shall submit upon request other documentation, such as copies of original loan applications, to verify the portion of the loan that qualifies for repayment.

C. The applicant ~~is required to~~ shall submit all requested loan documentation prior to approval by the ~~Commonwealth~~ department.

12VAC5-508-120. ~~Service obligation sites~~ Practice site.

All sites eligible for a participant's loan repayment ~~participation will~~ service obligation shall be located in ~~a designated medically underserved area of the Commonwealth~~ an HPSA, a VMUA, an approved geriatrics fellowship, or ~~in~~ a state or local institution. ~~All placements must be to an approved entity providing primary health care within the designated VMUA or HPSA or a state or local institution. Each applicant will be provided with~~ The department shall publish a list of preapproved areas on the department's website.

12VAC5-508-130. Effective date for start of service.

Applicants shall become participants in the loan repayment program only when the applicant and the commissioner or his designee have signed the loan repayment program contract. The effective start date of the obligated service under the contract is the date of employment or the date of the commissioner's signature on the contract, whichever is later.

~~If the contracted participant fails to begin or complete the period of professional practice to which he has agreed, the participant will be subject to the financial damages specified in the contract.~~

12VAC5-508-135. Terms of service.

The following are the terms of service for the loan repayment program:

1. The participant shall contract to provide a minimum of two years of the required service with a maximum of four years in whole year increments. Additional service beyond the two-year commitment is dependent upon the availability of state funds for the Virginia Physician Loan Repayment Program. An existing contract may be renewed for one year at a time up to a maximum of four years, as funds become available.

2. The participant shall provide full-time service.

3. No period of internship, residency, or other advanced clinical training, except an approved geriatrics fellowship, may count toward satisfying a period of obligated service under this loan repayment program.

12VAC5-508-140. ~~Repayment policy.~~ (Repealed.)

~~It will be the responsibility of the participant to negotiate with each lending institution for the terms of the educational loan repayments. Each lending institution must certify that the participant's debt is a valid educational loan prior to payment by the loan repayment program. Any penalties associated with early repayment shall be the responsibility of the participant.~~

12VAC5-508-150. ~~Disbursement procedure.~~ (Repealed.)

~~In an effort to assist loan repayment participants in reducing their educational debt with as little interest expense as is possible, the Virginia Physician Loan Repayment Program will disburse the funds in a lump sum payment. A participant will be paid one lump sum payment up to $50,000 the first year for the minimum two-year commitment within 45 days of execution of the contract. If a participant commits to a service obligation greater than two years, he will be paid a lump sum payment up to $35,000 the following year depending on availability of funds, approximately 45 days after the beginning of the subsequent year. The maximum number of years to which a participant can commit is four years.~~

12VAC5-508-160. Compensation during service.

Each participant ~~is~~ shall be responsible for negotiating his own compensation package directly with the site where he will provide primary health care services.

12VAC5-508-165. Conditions of practice.

A. The participant shall agree to provide health services without discrimination, regardless of a patient's ability to pay. Payments from Medicare and Medicaid shall be accepted by the designated practice site.

B. The participant shall agree to comply with all policies, rules, and regulations of the designated practice site.

12VAC5-508-170. ~~Tax implications.~~ (Repealed.)

~~Loan repayments are income and, therefore, are taxable by the United States Internal Revenue Service. It will be the responsibility of each participant to report the loan repayment award when preparing his tax return. Program participants should consider working with a qualified tax advisor regarding this matter.~~

~~The department will provide a form 1099 to applicants awarded loan repayment.~~

12VAC5-508-175. Change of practice site.

Should any participant find that he is unable to fulfill the required service commitment at the practice site to which he has committed to practice, he may request approval of a change of practice site. Such requests shall be made in writing. The commissioner in his discretion may approve such a request. All practice sites, including changes of practice sites, shall be selected with the approval of the commissioner.

In the event of a dispute between the participant and the practice site, every effort shall be made to resolve the dispute before reassignment will be permitted.

12VAC5-508-180. Monitoring during service.

Monitoring of the participant's service ~~by participants~~ obligation shall be conducted on an ongoing basis by department staff. Service verification forms ~~will~~ shall be submitted by the participant to the department semi-annually (every six months)~~,~~ and countersigned by a representative of the service site~~, to include, but not limited to, a~~ (e.g., the medical director, human resource coordinator, or chief executive officer), certifying continuous full-time service by the participant.

The participant ~~is required to~~ shall maintain practice records in a manner that will allow the department to readily determine if the individual has complied with or is complying with the terms and conditions of the ~~participation agreement~~ contract. Department staff reserves the right to conduct a regular survey to ensure that all participants are maintaining practices that accept Medicare and Medicaid assignment and do not discriminate based on the patient's ability to pay.

12VAC5-508-190. ~~Change of practice site.~~ (Repealed.)

~~Should any participant find that he is unable to fulfill the service commitment at the loan repayment site to which he has committed to practice, he may be placed in breach of contract status or he may be expected to continue service at another approved loan repayment site within six months from departure from the previous site. This site will be selected in consultation with the participant and with the approval of the commissioner.~~

~~In the event of a dispute between the participant and the site, every effort will be made to resolve the dispute before reassignment will be permitted.~~

12VAC5-508-200. ~~Terms of service.~~ (Repealed.)

~~The following are the terms of service for the loan repayment program:~~

~~1. The participant shall contract to provide a minimum of two years with a maximum of up to four years in whole year increments. Additional service beyond the two year commitment is dependent upon the availability of state funds for the Virginia Physician Loan Repayment Program. An existing contract may be renewed for one year at a time up to a maximum of four years, as funds become available;~~

~~2. The participant shall begin service within 12 months from entering into the contract;~~

~~3. The participant shall provide full-time service of at least 40 hours per week for 45 weeks per year to allow for continuing education, holidays, and vacation. The minimum 40-hour week must not be performed in less than four days per week, with no more than 12 hours of work performed in any 24-hour period. Time spent in an "on-call" status will not count toward the 40-hour week. Any exceptions to the "on-call" provisions of this section must be approved in advance by the commissioner prior to placement.~~

~~4. No period of internship, residency, or other advanced clinical training may count toward satisfying a period of obligated service under this loan repayment program.~~

12VAC5-508-210. ~~Conditions of practice.~~ (Repealed.)

~~A. The participant must agree to provide health services without discrimination regardless of a patient's ability to pay. Payments from Medicare and Medicaid must be accepted by the designated service site.~~

~~B. The participant must agree to comply with all policies, rules, and regulations of the designated service site.~~

Part III
Contract

12VAC5-508-220. Loan repayment contract.

Prior to becoming a participant in the Virginia Physician Loan Repayment Program, the applicant shall enter into a contract with the commissioner agreeing to the terms and conditions upon which the loan repayment is granted. The contract shall:

1. Include the terms and conditions to carry out the purposes and intent of this program;

2. Provide that the participant ~~will~~ shall be required to (i) provide primary health care services at an approved site in ~~a designated medically underserved area~~ an HPSA, a VMUA, or ~~in~~ a state or local institution for a minimum period of two years or (ii) be employed in an approved geriatrics fellowship for a minimum of two years. ~~A four-year commitment is required in order to be eligible for the maximum amount of loan repayment, depending upon availability of funds.~~ All loan repayment program participation ~~will~~ shall be contingent upon continuous, full-time practice in ~~a medically underserved area of Virginia~~ an HPSA, a VMUA, an approved geriatrics fellowship, or ~~in~~ a state or local institution; and

3. Provide for repayment of all amounts paid, plus interest~~,~~ and penalties, less any service time~~, as set out in the contract~~ in the event of breach of the contract;

4. Be signed by the applicant; and

5. Be signed by the commissioner or his designee.

12VAC5-508-230. Breach of contract.

A. The following may constitute breach of contract:

1. Participant's failure to begin or complete his term of obligated service under the terms and conditions of the Virginia Physician Loan Repayment Program contract, regardless of the length of the agreed period of obligated service;

2. Participant's falsification ~~and/or~~ or misrepresentation of information on the program application or verification forms or other required documents; or

3. ~~Participant's employment being terminated~~ Termination of participant's employment for good cause, as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the participant's control (e.g., closure of site), the participant ~~must~~ shall transfer to another approved site in ~~a designated medically underserved area~~ an HPSA, a VMUA, an approved geriatrics fellowship, or ~~in~~ a state or local institution within six months of termination. Failure of the participant to ~~accept such~~ find a transfer site within this time limit shall be deemed to be a breach of the contract~~;~~ ~~and~~.

~~4. Participant's failure to provide all reasonable, usual and customary full-time health care service for at least 45 weeks per year.~~

B. In the event of a breach of contract, the participant shall make default payments as described in 12VAC5-508-260 and in accordance with the terms of the contract. In the event of a breach of contract where the participant has partially fulfilled his obligation, the total amount of reimbursement shall be prorated by the proportion of obligation completed.

12VAC5-508-240. ~~Collection procedure.~~ (Repealed.)

~~If any person who has received funds and has been declared in breach of contract under this program at any time becomes an employee of the Commonwealth or any of its agencies, he shall be deemed to have agreed, as a condition of employment, to voluntarily or involuntarily have his wages withheld to repay the default damages.~~

~~Failure of a participant to make any repayment of the penalty when it is due shall be cause for the commissioner to refer the debt to the Attorney General of the Commonwealth of Virginia for collection. The recipient shall be responsible for any costs of collection as may be provided in Virginia law.~~

12VAC5-508-250. ~~Waiver and suspension or both~~ Deferment or waiver of service.

A. Participants have the obligation to complete full-time continuous service for the period of their ~~entire~~ commitment. Under unusual circumstances ~~(e.g., illness)~~ as described in subsection B of this section, a participant may request that the ~~commissioner~~ board agree to a ~~postponement~~ deferment of the service obligation. This ~~postponement~~ deferment, if granted, ~~will~~ shall not relieve the participant of the responsibility to complete the remaining portion of the obligation. Such ~~postponement will~~ deferment shall not be permitted as a matter of course, but may be allowed in the most compelling cases.

~~Waiver of the default provisions may be considered if the participant suffers from a physical or mental disability that occurs after the participant's commitment and results in the total and permanent inability of the participant to perform the obligated service (as determined by the commissioner), or if the participant dies during the period of obligated service.~~

B. Individual cases may be considered by the board for a variance of payment or service, pursuant to § 32.1-12 of the Code of Virginia, if it finds compliance with the applicable service requirements or default repayment would pose an undue hardship on the participant.

C. If the participant is in default due to death or disability so as not to be able to engage in medical practice in an HPSA, a

VMUA, an approved geriatrics fellowship, or a state or local institution in the Commonwealth, the participant or his personal representative may be relieved of his obligation under the contract to engage in medical practice, upon repayment to the Commonwealth of the total amount of loan repayment received plus interest and penalty as stated in the contract. For participants completing part of the required service obligation prior to becoming permanently disabled or in the event of death, the total amount of loan repayment funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of the participant or the participant's representative to the board.

D. All requests for deferments, waivers, or variances must be submitted in writing to the department for consideration and final disposition by the board.

12VAC5-508-260. Cash reimbursement and penalty.

~~Regardless of the length of the agreed period of obligated service, participants~~ Participants who serve less than ~~the two-year minimum (but at least one year) are~~ their obligated service shall be liable ~~to pay monetary damages~~ for repayment, including interest and penalty, to the Commonwealth ~~of Virginia~~ as stated in the contract, reduced by the proportion of obligated years served. ~~The default penalty will require the participant to repay twice the total amount of the award received. (For example, if a recipient owes $50,000, he would have to repay a total of $100,000.)~~

Part IV
Records and Reporting

12VAC5-508-270. Reporting requirements.

Reporting requirements of the ~~loan repayment~~ participant are as follows:

1. Each participant shall at any time provide information as required by the ~~commissioner~~ department to verify compliance with the practice requirements of the Virginia Physician Loan Repayment Program~~, e.g., verification of employment, see 12VAC5-508-180~~.

2. Each participant shall promptly notify the ~~commissioner~~ department, in writing, within 30 days ~~before~~ of any of the following events ~~occur~~:

a. Participant changes name;

b. Participant changes address;

c. Participant changes practice site;

d. Participant no longer intends or is no longer able to fulfill service obligation as a primary care health care provider in ~~a designated medically underserved area~~ an HPSA, a VMUA, an approved geriatrics fellowship, or a state or local institution; or

e. Participant ceases to practice as a physician.

VA.R. Doc. No. R16-3996; Filed April 29, 2016, 3:15 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-1000; adding 12VAC30-120-1012, 12VAC30-120-1062, 12VAC30-120-1072, 12VAC30-120-1082).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Effective Date: June 29, 2016.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

Item 301 III of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, authorizes the Department of Medical Assistance Services to establish a 25% higher reimbursement rate, within the intellectual disability waiver program, for congregate residential services for individuals with complex medical or behavioral needs currently residing in an institution and unable to transition to integrated settings in the community due to the need for services that cannot be provided within the maximum allowable rate or for individuals whose needs present imminent risk of institutionalization, and enhanced waiver services are needed beyond those available with the maximum allowable rate. The amendments conform the regulation to these requirements.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part X
Intellectual Disability Waiver

Article 1
Definitions and General Requirements

12VAC30-120-1000. Definitions.

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Activities of daily living" or "ADLs" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"ADA" means the [~~American~~ Americans] with Disabilities Act pursuant to 42 USC § 12101 et seq.

"Agency-directed model" means a model of service delivery where an agency is responsible for providing direct support staff, for maintaining individuals' records, and for scheduling the dates and times of the direct support staff's presence in the individuals' homes.

~~"ADA" means the American with Disabilities Act pursuant to 42 USC § 12101 et seq.~~

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Applicant" means a person (or his representative acting on his behalf) who has applied for or is in the process of applying for and is awaiting a determination of eligibility for admission to a home and community-based waiver or is on the waiver waiting list waiting for a slot to become available.

"Assistive technology" or "AT" means specialized medical equipment and supplies, including those devices, controls, or appliances specified in the Individual Support Plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform ADLs, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Barrier crime" means those crimes listed in §§ 32.1-162.9:1 and 63.2-1719 of the Code of Virginia.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under [~~§ 37.2-100~~ § 37.2-600] of the Code of Virginia that plans, provides, and evaluates mental health, intellectual disability (ID), and substance abuse services in the locality that it serves.

"Behavioral specialist" means a person who possesses any of the following credentials: (i) endorsement by the Partnership for People with Disabilities at Virginia Commonwealth University as a positive behavioral supports facilitator; (ii) board certification as a behavior analyst (BCBA) or board certification as an associate behavior analyst (BCABA) [as required by § 54.1-2957.16 of the Code of Virginia]; or (iii) licensure by the Commonwealth as either a psychologist, a licensed professional counselor (LPC), a licensed clinical social worker (LCSW), or a psychiatric clinical nurse specialist.

~~"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.~~

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the Individual Support Plan; assisting the individual directly for the purpose of locating, developing, or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the Individual Support Plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the Individual Support Plan.

"Case manager" means the person who provides case management services on behalf of the community services board or behavioral health authority, as either an employee or a contractor, possessing a combination of (ID) work experience and relevant education that indicates that the individual possesses the knowledge, skills, and abilities as established by DMAS in 12VAC30-50-450.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, ID, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means a person who provides companion services for compensation by DMAS.

"Companion services" means nonmedical care, support, and socialization provided to an adult (ages 18 years and over). The provision of companion services does not entail routine hands-on care. It is provided in accordance with a therapeutic outcome in the Individual Support Plan and is not purely diversional in nature.

"Complex behavioral needs" means conditions requiring exceptional supports in order to respond to the individual's significant safety risk to self or others and documented by the Supports Intensity Scale (SIS) Virginia Supplemental Risk Assessment form (2010) as described in 12VAC30-120-1012.

"Complex medical needs" means conditions requiring exceptional supports in order to respond to the individual's significant health or medical needs requiring frequent hands-on care and medical oversight and documented by the Supports Intensity Scale (SIS) Virginia Supplemental Risk Assessment form (2010) as described in 12VAC30-120-1012.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care information by the case manager and is used as a basis for the development of the Individual Support Plan.

"Congregate residential support" or "CRS" means those supports in which the residential support services provider renders primary care (room, board, general supervision) and residential support services to the individual in the form of continuous (up to 24 hours per day) services performed by paid staff who shall be physically present in the home. These supports may be provided individually or simultaneously to more than one individual living in that home, depending on the required support. These supports are typically provided to an individual living (i) in a group home, (ii) in the home of the ID Waiver services provider (such as adult foster care or

sponsored residential), or (iii) in an apartment or other home setting.

"Consumer-directed model" means a model of service delivery for which the individual or the individual's employer of record, as appropriate, is responsible for hiring, training, supervising, and firing of the person or persons who render the direct support or services reimbursed by DMAS.

"Crisis stabilization" means direct intervention to individuals with ID who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

[DARS" means the Department for Aging and Rehabilitative Services.]

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DBHDS staff" means persons employed by or contracted with DBHDS.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by or contracted with DMAS.

[~~"DRS" means the Department of Rehabilitative Services.~~]

"Day support" means services that promote skill building and provide supports (assistance) and safety supports for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his highest potential level of functioning.

"Developmental risk" means the presence before, during, or after an individual's birth, of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, as appropriate - for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's and the individual's family/caregivers, as appropriate, use of the providers' services.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer directed model. The EOR may be the individual enrolled in the waiver, or a family member, caregiver or another person, as appropriate, when the individual is unable to perform the employer functions.

"Enroll" means that the individual has been determined by the case manager to meet the level of functioning requirements for the ID Waiver and DBHDS has verified the availability of an ID Waiver slot for that individual. Financial eligibility determinations and enrollment in Medicaid are set out in 12VAC30-120-1010.

"Entrepreneurial model" means a small business employing a shift of eight or fewer individuals who have disabilities and usually involves interactions with the public and coworkers who do not have disabilities.

"Environmental modifications" or "EM" means physical adaptations to a primary place of residence, primary vehicle, or work site (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards. Such EM shall be of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines (that prescribe preventive and treatment services for Medicaid eligible children) as defined in 12VAC30-50-130.

"ES service authorization" means the process of approving an individual, by either DMAS or its designated service authorization contractor, for the purpose of receiving exceptional supports. ES service authorization shall be obtained before exceptional supports to the individual are rendered.

"Exceptional reimbursement rate" or "exceptional rate" means a rate of reimbursement for congregate residential supports paid to providers who qualify to receive the exceptional rate set out in 12VAC30-120-1062.

"Exceptional supports" or "exceptional support services" means a qualifying level of supports, as more fully described in 12VAC30-120-1012, that are medically necessary for individuals with complex medical or behavioral needs, or both, to safely reside in a community setting. The need for exceptional supports is demonstrated when the funding required to meet the individual's needs has been expended on a consistent basis by providers in the past 90 days for medical

or behavioral supports, or both, over and above the current maximum allowable CRS rate in order to support the individual in a manner that ensures his health and safety.

"Fiscal employer/agent" means a state agency or other entity as determined by DMAS to meet the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act (Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia).

"Freedom of choice" means the right afforded an individual who is determined to require a level of care specified in a waiver to choose (i) either institutional or home and community-based services provided there are available CMS-allocated and state-funded slots; (ii) providers of services; and (iii) waiver services as may be limited by medical necessity.

"Health planning region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, safety, and welfare standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written individual plan for supports, and that services can be safely provided in the community.

"Home and community-based waiver services" or "waiver services" means the range of community services approved by the CMS, pursuant to § 1915(c) of the Social Security Act, to be offered to persons as an alternative to institutionalization.

"IDOLS" means Intellectual Disability Online System.

"In-home residential support services" means support provided in a private residence by a DBHDS-licensed residential provider to an individual enrolled in the waiver to include: (i) skill building and supports and safety supports to enable individuals to maintain or improve their health; (ii) developing skills in daily living; (iii) safely using community resources; (iv) being included in the life of the community and home; (v) developing relationships; and (vi) participating as citizens of the community. In-home residential support services shall not replace the primary care provided to the individual by his family and caregiver but shall be supplemental to it.

"Incremental step-down provisions" means procedures normally found in plans for supports in which an individual's supports are gradually altered or reduced based upon progress towards meeting the goals of the individual's behavior plan.

"Individual" means the person receiving the services or evaluations established in [~~these regulations~~ this chapter].

"Individual Support Plan" or "ISP" means a comprehensive plan that sets out the supports and actions to be taken during the year by each service provider, as detailed in the provider's Plan for Supports, to achieve desired outcomes. The Individual Support Plan shall be developed by the individual enrolled in the waiver, the individual's family/caregiver, as appropriate, other service providers such as the case manager, and other interested parties chosen by the individual, and shall contain essential information, what is important to the individual on a day-to-day basis and in the future, and what is important for the individual to be healthy and safe as reflected in the Plan for Supports. The Individual Support Plan is known as the Consumer Service Plan in the Day Support Waiver.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Intellectual disability" or "ID" means a disability as defined by the American Association on Intellectual and Developmental Disabilities (AAIDD) in the Intellectual Disability: Definition, Classification, and Systems of Supports (11th edition, 2010).

~~"ICF/ID"~~ "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an ~~Intermediate Care Facility for the Intellectually Disabled~~ intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Licensed practical nurse" or "LPN" means a person who is licensed or holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice practical nursing as defined.

"Medicaid Long-Term Care Communication Form" or "DMAS-225" means the form used by the case manager to report information about changes in an individual's situation.

"Medically necessary" means an item or service provided for the diagnosis or treatment of an individual's condition consistent with community standards of medical practice as determined by DMAS and in accordance with Medicaid policy.

"Parent" or "parents" means a person or persons who is or are biologically or naturally related, a foster parent, or an adoptive parent to the individual enrolled in the waiver.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DBHDS.

"Person-centered planning" means a fundamental process that focuses on the needs and preferences of the individual to create an Individual Support Plan that shall contain essential information, a personal profile, and desired outcomes of the individual to be accomplished through waiver services and included in the providers' Plans for Supports.

"Personal assistance services" means assistance with ADLs, IADLs, access to the community, self-administration of medication or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services shall be limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision.

"Personal profile" means a point-in-time synopsis of what an individual enrolled in the waiver wants to maintain, change, or improve in his life and shall be completed by the individual and another person, such as his case manager or family/caregiver, chosen by the individual to help him plan before the annual planning meeting where it is discussed and finalized.

"Plan for Supports" means each service provider's plan for supporting the individual enrolled in the waiver in achieving his desired outcomes and facilitating the individual's health and safety. The Plan for Supports is one component of the Individual Support Plan. The Plan for Supports is referred to as an Individual Service Plan in the Day Support and Individual and Family with Developmental Disability Services (IFDDS) Waivers.

"Prevocational services" means services aimed at preparing an individual enrolled in the waiver for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance at work, task completion, problem solving, and safety. Compensation for the individual, if provided, shall be less than 50% of the minimum wage.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual enrolled in the waiver to live successfully in the community without compensation for providing such care.

"Qualified mental retardation professional" or "QMRP" for the purposes of the ID Waiver means the same as defined at 12VAC35-105-20.

"Qualifying individual" means an individual who has received an ES service authorization from DMAS or its service authorization contractor to receive exceptional supports.

"Registered nurse" or "RN" means a person who is licensed or holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Residential support services" means support provided in the individual's home by a DBHDS-licensed residential provider or a VDSS-approved provider of adult foster care services. This service is one in which skill-building, supports, and safety supports are routinely provided to enable individuals to maintain or improve their health, to develop skills in daily living and safely use community resources, to be included in the community and home, to develop relationships, and to participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Review committee" means DBHDS staff, including a trained SIS® specialist approved by DBHDS, a behavior specialist, a registered nurse, and a master's level social worker, and other staff as may be otherwise constituted by DBHDS, who will evaluate and make a determination about applications for the congregate residential support services and CRS exceptional reimbursement rate for compliance with regulatory requirements.

"Risk assessment" means an assessment that is completed by the case manager to determine areas of high risk of danger to the individual or others based on the individual's serious medical or behavioral factors. The required risk assessment for the ID Waiver shall be found in the state-designated assessment form which may be supplemented with other information. The risk assessment shall be used to plan risk mitigating supports for the individual in the Individual Support Plan.

"Safety supports" means specialized assistance that is required to assure the health and welfare of an individual.

"Service authorization" means the process of approving by either DMAS or its designated service authorization contractor, for the purpose of DMAS' reimbursement, the service for the individual before it is rendered.

"Services facilitation" means a service that assists the individual or the individual's family/caregiver, or EOR, as appropriate, in arranging for, directing, and managing services provided through the consumer-directed model of service delivery.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual or the individual's family/caregiver, or EOR, as appropriate, by collaborating with the case manager to ensure the development and monitoring of the CD Services Plan for Supports, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Significant change" means, but shall not be limited to, a change in an individual's condition that is expected to last longer than 30 calendar days but shall not include short-term

changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclical pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing services" means both skilled and hands-on care, as rendered by either a licensed RN or LPN, of either a supportive or health-related nature and may include, but shall not be limited to, all skilled nursing care as ordered by the attending physician and documented on the Plan for Supports, assistance with ADLs, administration of medications or other medical needs, and monitoring of the health status and physical condition of the individual enrolled in the waiver.

"Slot" means an opening or vacancy in waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supports" means paid and nonpaid assistance that promotes the accomplishment of an individual's desired outcomes. There shall be three types of supports: (i) routine supports that assist the individual in daily activities; (ii) skill building supports that help the individual gain new abilities; and (iii) safety supports that are required to assure the individual's health and safety.

"Supported employment" means paid supports provided in work settings in which persons without disabilities are typically employed. Paid supports include skill-building supports related to paid employment, ongoing or intermittent routine supports, and safety supports to enable an individual with ID to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Supports Intensity Scale®" or "SIS®" means a tool, developed by the American Association on Intellectual and Developmental Disabilities that measures the intensity of an individual's support needs for the purpose of assessment, planning, and aligning resources to enhance personal independence and productivity.

"Therapeutic consultation" means covered services designed to assist the individual and the individual's family/caregiver, as appropriate, with assessments, plan design, and teaching for the purpose of assisting the individual enrolled in the waiver.

"Transition services" means set-up expenses as defined in 12VAC30-120-2010.

"VDSS" means the Virginia Department of Social Services.

12VAC30-120-1012. Individuals enrolled in the ID waiver who are receiving congregate residential support services and require exceptional levels of supports.

A. Exceptional supports shall be available for individuals who:

1. Are currently enrolled in or are qualified to enroll in the ID waiver;

2. Are currently receiving or qualify to receive congregate residential support; and

3. Have complex medical or behavioral needs, or both, and who require additional staffing support or professional services enhancements (i.e., the ongoing involvement of medical or behavioral professionals).

B. In addition to the requirements in subsection A of this section, in order for an individual to qualify for the receipt of exceptional supports, the individual shall either:

1. Currently reside in an institution, such as a training center or a nursing facility, and be unable to transition to integrated community settings because the individual cannot access sufficient community waiver supports due to the individual's complex medical or behavioral needs, or both. In addition to meeting the requirements of this section, in order to qualify for exceptional support, case managers for an individual who is currently residing in a training center or nursing facility shall document in the individual's ES service authorization request to DMAS or its service authorization contractor that, based on supports required by the individual in the last 90 days while [~~he resided~~ residing] in a training center or nursing facility, the individual is unable to transition to the community. This inability to transition shall be due to the anticipated need for services that cannot be provided within the maximum allowable CRS rate upon discharge into the community; or

2. Currently reside in the community and the individual's medical or behavioral needs, or both, present an imminent risk of institutionalization [,] and an exceptional level of congregate residential supports is required to maintain the individual in the community. In addition to meeting the requirements in subsection C of this section, in order to qualify for exceptional supports, an individual currently residing in the community shall provide, as a part of the ES service authorization request, documented evidence for the 90 days immediately prior to the exceptional supports request that one or more of the following has occurred:

a. Funding has been expended on a consistent basis by providers in the past 90 days for medical or behavioral supports, or both, over and above the current maximum allowable CRS rate in order to ensure the health and safety of the individual;

b. The residential services plan for supports has been approved and authorized by DMAS or its service authorization contractor for the maximum number of

hours of support [~~,~~ ( ] as in 24 hours per day seven days a week [~~,~~)] yet the individual still remains at imminent risk of institutionalization;

c. The staff to individual ratio has increased in order to properly support the individual (e.g., the individual requires a 2:1 staff to individual ratio for some or all of the time); or

d. Available alternative community options have been explored and utilized but the individual still remains at imminent risk of institutionalization.

C. In addition to the requirements in subsections A and B of this section, in order to qualify for exceptional supports individuals shall have the [~~following~~] numbered assessment values on the most recently completed Supports Intensity Scale® (SIS) Virginia Supplemental Risk Assessment form (2010) [~~:~~ as described in this subsection and subsection D of this section.]

1. The individual requires frequent hands-on staff involvement to address critical health and medical needs (#1a), and the individual has medical care plans in place that are documented in the ISP process (#1c);

2. The individual has been found guilty of a crime or crimes related to severe community safety risk to others through the criminal justice system (#2a) (e.g., convicted of actual or attempted assault or injury to others, property destruction due to fire setting or arson, or sexual aggression), and the individual's severe community safety risk to others requires a specially controlled home environment, direct supervision at home or direct supervision in the community, or both (#2b), and the individual has documented restrictions in place related to these risks through a legal requirement or order (#2c);

3. The individual has not been found guilty of a crime related to a severe community safety risk to others (e.g., actual or attempted assault or injury to others, property destruction due to fire setting or arson, or sexual aggression) but displays the same severe community safety risk as a person found guilty through the criminal justice system (#3a), and the individual's severe community safety risk to others requires a specially controlled home environment, direct supervision at home or direct supervision in the community, or both (#3b), and the individual has documented restrictions in place related to these risks within the ISP process (#3c); or

4. The individual engages in self-directed destructiveness related to self-injury, pica (eating nonfood substances), or suicide attempts, or all of these, with the intent to harm self (#4a), the individual's severe risk of injury to self currently requires direct supervision during all waking hours (#4b), and the individual has prevention and intervention plans in place that are documented within the ISP process (#4c) [~~:~~ ~~and.~~]

[~~5. The~~ D. In addition to the requirements of subsection C of this section, the] individual [~~demonstrates~~ must demonstrate] a score of 2 (extensive support needed) on any two items in the AAIDD Supports Intensity Scale® (version 2010) in either:

[~~a.~~ 1.] Section #3a Exceptional Medical and Behavioral Support Needs: Medical Supports Needed except for item 11 (seizure management) or item 15 (therapy services); or

[~~b.~~ 2.] Section #3b Exceptional Medical and Behavioral Support Needs: Behavioral Supports Needed except for item 12 (maintenance of mental health treatments).

[~~D.~~ E.] The entire SIS® submitted as documentation in support of the individual's ES service authorization request shall have been completed no more than 12 months prior to submission of the ES service authorization request.

[~~E.~~ F.] The individual's case manager shall submit an ES service authorization request to DMAS or its service authorization contractor that shall make the final determination as to whether the individual qualifies for exceptional supports. If the ES service authorization request fails to demonstrate that the individual's support needs meet the criteria described in this section, the ES service authorization shall be denied. Individuals may appeal the denial of an ES service authorization request in accordance with the DMAS client appeal regulations, 12VAC30-110-10 through 12VAC30-110-370.

12VAC30-120-1062. Exceptional rate congregate residential supports provider requirements.

A. In addition to the general provider requirements set out in 12VAC30-120-1040, in order to qualify for exceptional rate reimbursement, providers shall meet the requirements of this section.

B. Providers shall receive the exceptional rate only for exceptional supports provided to qualifying individuals. Providers shall not contest the determination that a given individual is not eligible for exceptional support services.

C. Providers requesting approval to provide and receive reimbursement for exceptional supports shall have a DBHDS license in good standing per 12VAC35-105. Provisional licenses shall not qualify a provider for the receipt of the exceptional rate. Providers shall demonstrate in writing on the exceptional rate application that they can meet the support needs of a specified qualifying individual through qualified staff trained to provide the extensive supports required by the qualified individual's exceptional support needs. Providers may qualify for exceptional rate reimbursement only when the CRS providers staff (either employed or contracted) directly performs the support activity or activities required by a qualifying individual.

D. Providers shall work with local case managers in order to file an application for exceptional rate reimbursement. Provider requests for the exceptional rate shall be set out on the DBHDS-designated exceptional rate application and shall

be directed to the CSB case manager for the qualifying individual requesting services from the provider. The qualifying individual's case manager shall consult with the DBHDS staff if the individual is currently residing in a training center. Case managers shall work directly with those qualifying individuals who are residing in the community. The case manager shall refer the provider's exceptional rate application to the DBHDS review committee, which shall make a determination on the application within 10 business days.

1. The review committee shall deny an exceptional rate application if it determines that:

a. A provider has not demonstrated that it can safely meet the exceptional support needs of the qualifying individual;

b. The provider's active protocols for the delivery of exceptional supports to the qualifying individual are not sufficient;

c. The provider fails to meet the requirements of this section; or

d. The application otherwise fails to support the payment of the exceptional rate.

2. If the review committee denies an exceptional rate application, it shall notify the provider in writing of such denial and the reason or reasons for the denial.

E. Providers requesting the exceptional reimbursement rate shall describe the exceptional supports the providers have the capacity to provide to a qualifying individual on the exceptional rate application. Providers shall ensure that the exceptional reimbursement rate application has been approved by DBHDS prior to submitting claims for the exceptional rate. Payment at the exceptional reimbursement rate shall be made to the CRS provider effective the date of DBHDS approval of the provider's exceptional rate application and upon completion of the ES service authorization for the individual, whichever comes later. Providers may appeal the denial of a request for the exceptional rate in accordance with the DMAS provider appeal regulations, 12VAC30-20-500 through 12VAC30-20-560.

F. Requirements for providers currently providing exceptional supports to qualifying individuals.

1. Providers who have been approved to receive the exceptional rate and are currently supporting qualifying individuals shall document in each of the qualifying individuals' plans for supports how that provider will respond to the individuals' specific exceptional needs. Providers shall update the Plans for Supports as necessary to reflect the current status of these individuals. Providers shall address each complex medical and behavioral support need of the individual through specific and documented protocols that may include, for example (i) employing additional staff to support the individual or (ii) securing additional professional support enhancements, or both, beyond those planned supports reimbursed through the maximum allowable CRS rate. Providers shall document in a qualifying individual's record that the costs of such additional supports exceed those covered by the standard CRS rate.

2. CRS providers delivering exceptional rate supports for qualifying individuals due to their medical support needs shall employ or contract with a registered nurse (RN) for the delivery of exceptional supports. The RN shall be licensed in the Commonwealth or hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia and shall have a minimum of two years of related clinical experience. This related clinical experience may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or an ICF/IID. The RN shall administer or delegate in accordance with 18VAC90-20-430 through 18VAC90-20-460 the required complex medical supports.

a. All staff who will be supporting a qualifying individual shall receive individual-specific training regarding the individual's medical condition or conditions, medications (including training about side effects), risk factors, safety practices, procedures that staff are permitted to perform under nurse delegation, and any other training the RN deems necessary to enable the individual to be safely supported in the community. The provider shall arrange for the training to be provided by qualified professionals and document the training in the provider's record.

b. The RN shall also monitor the staff including, but not limited to, observing staff performing the needed complex medical supports [and shall document the observations in the provider's record].

3. Providers providing exceptional supports for a qualifying individual due to the individual's behavior support needs shall consult with a qualified behavioral specialist. This qualified behavior specialist shall develop a behavior plan based upon the qualifying individual's needs and train the provider's staff in its implementation consistent with the requirements defined in 12VAC30-120-1060. Both the behavior plan and staff receipt of training shall be documented in the provider record.

4. Providers who will be supporting a qualifying individual with complex behavioral issues shall have training policies and procedures in place and demonstrate that staff has received appropriate training including, but not limited to, positive support strategies, in order to support an individual with mental illness or behavioral challenges, or both.

a. Staff who will be supporting qualifying individuals shall be identified on the exceptional rate application with a written description of the staff's abilities to meet

the needs of qualifying individuals and the training received related to such needs.

b. Providers shall ensure that the physical environment of the home is appropriate to accommodate the needs of the qualifying individual with respect to the [individual's] behavioral and medical challenges [~~typical to this population~~].

5. Providers shall have on file crisis stabilization plans for all qualifying individuals with complex behavioral needs. These plans shall provide direct interventions that avert emergency psychiatric hospitalizations or institutional placement and include appropriate admission to crisis response services that are provided in the Commonwealth. These plans shall be approved by DBHDS and reviewed by the review committee as set out in this section.

6. The provider and the case manager records shall also contain the following for each qualifying individual to whom they are providing services:

a. The active protocol for qualifying individuals currently enrolled in the ID waiver that demonstrates extensive supports are being delivered in the areas of extensive support needs in the SIS®. For those qualifying individuals who are new to the waiver, a protocol shall be developed;

b. An ISP developed by the qualifying individual's support team that [(i)] demonstrates the needed supports and [~~contains~~ (ii) identifies the] support activities [necessary] to address [~~these~~ the supports]; and

c. Evidence of the provider's ability to meet the qualifying individual's exceptional support needs for all that apply: documentation of staff training, employment of or contract with an RN, involvement of a behavior or psychological consultant or crisis team [~~involvement~~], and other additional requirements as set forth in this section.

12VAC30-120-1072. Exceptional CRS rate reimbursement for certain congregate residential support services.

A. CRS providers that obtain authorization to receive the exceptional reimbursement rate for qualifying individuals shall receive the rate only for services provided in accordance with a qualifying individual's Plan for Supports.

B. At any time that there is a significant change in the qualifying individual's medical or behavioral support needs, the provider shall notify the qualifying individual's case manager and document such changes in the qualifying individual's Plan for Supports. Upon receiving provider notification, the case manager shall confer with DBHDS about these changes to determine what modifications are indicated in the Plan for Supports, including whether the individual continues to qualify for receipt of the exceptional supports.

C. This exceptional rate shall be established in the DMAS fee schedule as posted on http://www.dmas.virginia.gov/Content_pgs/pr-ffs_new.aspx.

D. As of November 1, 2014, this exceptional CRS rate reimbursement is 25% higher than the standard CRS rate.

12VAC30-120-1082. Exceptional rate utilization review.

A. In addition to the utilization review and level of care review requirements in 12VAC30-120-1080, the case manager shall conduct face-to-face monthly contacts with the qualifying individual.

B. The case manager shall provide to DBHDS updated versions of the required documentation consistent with the requirements of 12VAC30-120-1012 at least every three years or whenever there is a significant change in the qualifying individual's needs or status. The provider shall be responsible for transmitting this information to the case manager.

1. This updated version shall include:

a. A review of the qualifying individual's response to the provision of exceptional supports developed with the qualifying individual and the CRS provider; and

b. A description of the incremental step-down provisions included in the qualifying individual's Plan for Supports.

2. The DBHDS review committee shall make a determination about the provider's continued eligibility for exceptional rate reimbursement for a given qualifying individual.

VA.R. Doc. No. R15-3839; Filed April 28, 2016, 12:41 p.m.

Final Regulation

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-120).**

Statutory Authority: §§ 32.1-325 and 32.1-351 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: June 29, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

Summary:

The amendments remove the exclusion of otherwise eligible, by income and residency, state employees who have access to subsidized health insurance coverage from enrolling their dependent children in the Family Access to Medical Insurance Security (FAMIS) Plan and allow low-income state employees whose children are eligible for the FAMIS Plan to be enrolled in the program.

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

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

Part III

Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;

2. Be under 19 years of age;

3. Be residents of the Commonwealth;

4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;

5. Be uninsured, that is, not have comprehensive health insurance coverage; and

~~6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and~~

~~7.~~ 6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid Services. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance. Each redetermination of eligibility shall also document inquiry about current health insurance.

b. Health insurance does not include Medicare, Medicaid, FAMIS, or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-120. Children ineligible for FAMIS.

A. If a child is:

1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, he shall be ineligible for FAMIS;~~

~~3.~~ 2. An inmate of a public institution as defined in 42 CFR 435.1009, he shall be ineligible for FAMIS; or

~~4.~~ 3. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, he shall be ineligible for FAMIS.

B. If a child's parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the child shall be ineligible for FAMIS.

C. If a child, if age 18, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. The child, if age 18, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

VA.R. Doc. No. R15-4206; Filed April 28, 2016, 12:43 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption 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: **14VAC5-345. Rules Governing Rate Stabilization in Property and Casualty Insurance (adding 14VAC5-345-10 through 14VAC5-345-70).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: July 1, 2016.

Agency Contact: Phyllis Oates, Principal Insurance Market Examiner, Property and Casualty Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9279, FAX (804) 371-9279, or email phyllis.oates@scc.virginia.gov.

Summary:

The proposed new rules implement the provisions of § 38.2-1906 F of the Code of Virginia, including the amendments enacted in Chapter 277 of the 2016 Acts of Assembly, that allow limits on rate increases and decreases. The new rules establish uniform standards for all rate stabilization plans, filing requirements, and prohibited actions for insurers that elect to set limits on rates.

AT RICHMOND, MAY 5, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00071

Ex Parte: In the matter of Adopting
New Rules Governing Rate Stabilization
in Property and Casualty Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: http://www.scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules at Chapter 345 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Rate Stabilization in Property and Casualty Insurance," which are recommended to be set out at 14VAC5-345-10 through 14VAC5-345-70 with forms.

These proposed new rules are necessary to implement the provisions of § 38.2-1906 F of the Code, in particular the amendments enacted in Chapter 277 of the 2016 Acts of Assembly (HB 324) that allow limits on rate increases and rate decreases. These new rules establish standards, filing requirements and prohibited actions for insurers who wish to set limits on rates. The amendments to the Code will go into effect September 1, 2016.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 345 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of September 1, 2016.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Rate Stabilization in Property and Casualty Insurance," recommended to be set out at 14VAC5-345-10 through 14VAC5-345-70 with forms, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of proposed Chapter 345 shall file such comments or hearing request on or before July 1, 2016, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/case. All comments shall refer to Case No. INS-2016-00071.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before July 1, 2016, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Rebecca Nichols, who forthwith shall give further notice of the proposal by mailing a copy of this Order, together with the proposal, to all insurers licensed in Virginia to sell property and casualty insurance, and to all interested persons.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: http://www.scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

CHAPTER 345
RULES GOVERNING RATE STABILIZATION IN PROPERTY AND CASUALTY INSURANCE

14VAC5-345-10. Purpose and applicability.

A. The purpose of this chapter is to establish rules for the implementation of the provisions of § 38.2-1906 F of the Code of Virginia that allows an insurer to file with the commission rate or supplementary rate information to limit rate increases or rate decreases on (i) its renewal policies; (ii) policies acquired by an insurer from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iii) policies acquired by an agent book of transfer. This practice shall be known as a rate stabilization plan or capping.

B. This chapter shall apply to the classes of insurance defined in §§ 38.2-110 through 38.2-118, 38.2-120, 38.2-121, 38.2-122, 38.2-124 through 38.2-128, and 38.2-130 through 38.2-133 of the Code of Virginia and all insurers subject to the scope of Chapter 19 (§ 38.2-1900 et seq.) of Title 38.2 of the Code of Virginia as identified in § 38.2-1902 of the Code of Virginia. This chapter does not apply to workers' compensation and employers' liability insurance.

14VAC5-345-20. Definitions.

"Commission" means the State Corporation Commission.

"Rate" means any rate of premium, policy fee, membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance. The term "rate" shall not include a membership fee paid to become a member of an organization or association, one of the benefits of which is the purchasing of insurance coverage.

"Rate stabilization plan" or "capping" means a way to control or cap the impact of premium changes to renewals due to the insurer's (i) revision of its own rating plan; (ii) introduction of a new rating plan that replaces an existing rating plan; (iii) acquisition from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iv) acquisition by an agent book of transfer.

"Rate stabilization rule" means the rating methodology filed by an insurer to describe the application of a rate stabilization plan.

"Renewal" means the continuation of an insurer's current policies; policies acquired by an insurer from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or policies transferred by an agent or agency pursuant to an agent book of transfer.

"Supplementary rate information" includes any manual or plan of rates, experience rating plan, statistical plan, classification, rating schedule, minimum premium, or minimum premium rule, policy fee, rating rule, rate-related underwriting rule, and any other information not otherwise inconsistent with the purposes of Chapter 19 (§ 38.2-1900 et seq.) of Title 38.2 of the Code of Virginia, this chapter, or as required by the commission.

"Tier" means mutually exclusive pricing levels within the same insurer that are based on an indivisible group of risk characteristics.

14VAC5-345-30. General standards.

A. An insurer may utilize rate capping to stabilize insurance rates charged to (i) its renewal policies; (ii) policies acquired from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iii) policies acquired by an agent book of transfer.

B. A rate stabilization plan shall be unambiguous and applied uniformly and fairly to all renewal policies affected by such plan.

C. A rate stabilization plan may cap increases in premium only or increases and decreases in premium, but not decreases only. Caps on increases and decreases are not required to be equivalent.

D. A rate stabilization plan is expected to result in individual policy premiums converging with the insurer's uncapped rates. A rate stabilization plan shall achieve this result within five years unless the insurer initially requests a shorter period or justifies a longer period in the rate stabilization plan filing.

E. A rate stabilization rule may be amended within the original rate stabilization plan period.

F. A rate stabilization rule may be filed in conjunction with a routine rate filing or as a separate rule filing.

G. In each rate filing subsequent to the implementation of a rate stabilization plan, the insurer shall demonstrate that the actuarial indication does not redundantly measure rate need by demonstrating that premiums at current rate level underlying the actuarial indication are on an uncapped basis.

H. An insurer may file a rate level change or modify rating factors or other supplementary rate information while a rate stabilization plan is in effect. The insurer shall explain whether:

1. The existing rate stabilization plan will continue to apply for the filed duration; or

2. The rate stabilization plan will be amended.

14VAC5-345-40. Filing requirements.

A. A rate stabilization rule shall be filed as supplementary rate information in accordance with the provisions of § 38.2-1906 of the Code of Virginia.

B. A rate stabilization rule shall detail the application of the rate stabilization plan. This rule shall be clear and shall specify:

1. The source of the renewals subject to the rate stabilization plan;

2. The process to be used for the rate stabilization, including an example to illustrate the process;

3. The amount of the rate increase or increase and decrease to be limited;

4. Whether the rate stabilization plan is designed to converge with uncapped rates in subsequent rate filings;

5. The effect, if any, of the rate stabilization rule on any midterm changes;

6. Any limitations on tier movement that will be utilized for rate stabilization;

7. The commencement date of the rate stabilization plan;

8. The duration of the rate stabilization plan; and

9. The expiration date of the rate stabilization plan.

C. The filing shall clearly identify that a rate stabilization plan is included.

D. The insurer shall file and certify to the commission using the Rate Stabilization Plan Certification (Form 345-A), the impact of the proposed capped rate changes over future renewal periods until the capping period ends. The filing should include projections of the effects of the caps on premiums, percentage changes, dollar changes, and the number of policies impacted for each future renewal period. In calculating the impact, the insurer may make the assumption that its current book of business is fully retained and renewed into the future until the rate stabilization period ends.

E. If a rate stabilization plan exceeds five years, an explanatory memorandum shall be filed demonstrating the need for such plan. The explanatory memorandum shall contain details to justify the period of time identified in which the uncapped rates for each policyholder will be achieved.

14VAC5-345-50. Prohibited actions.

A. A rate stabilization rule shall not apply to any changes impacting an individual's premium other than insurer initiated rate increases or decreases.

B. A rate stabilization rule shall not apply to any decrease as a result of the application of the provisions of § 38.2-1904 D of the Code of Virginia.

C. A rate stabilization plan shall not be designed to generate more total revenue than would otherwise be generated in the absence of the plan, resulting in an undue benefit to the insurer.

D. A rate stabilization rule shall not apply to any decrease as a result of the application of the provisions of §§ 38.2-2126 (property) and 38.2-2234 (personal auto) of the Code of Virginia.

E. A rate stabilization plan shall not apply for an undefined or unlimited period of time.

F. No more than one rate stabilization plan shall apply to any one policy at any given time.

G. A rate stabilization plan shall not be used to control increases or decreases in rates or premiums based on predicted price elasticity of demand on individual policyholders.

14VAC5-345-60. Certification.

A. In any filing proposing a rate stabilization plan, the insurer shall complete, certify, and include the Rate Stabilization Plan Certification (Form 345-A).

B. In any rate filing made subsequent to the implementation of a rate stabilization plan where historical premiums have been capped (whether increases or decreases), the insurer's actuary shall provide a signed statement certifying that the actuarial indication does not redundantly measure rate need.

14VAC5-345-70. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (14VAC5-345)

Rate Stabilization Plan Certification, Form 345-A, (eff. 9/2016)

VA.R. Doc. No. R16-4678; Filed May 5, 2016, 6:40 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

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

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.269, Appendix A-3 to 16VAC25-90-1910.269, Appendix A-5 to 16VAC25-90-1910.269, 16VAC25-90-1910.331).**

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.950, 16VAC25-175-1926.960).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: July 1, 2016.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) corrected the electrical safety-related work practices standard for general industry and the electric power generation, transmission, and distribution standards for general industry and construction to provide additional clarification regarding the applicability of the standards to certain operations, including some tree trimming work that is performed near, but that is not on or directly associated with, electric power generation, transmission, and distribution installations. OSHA also corrected minor errors in two minimum approach distance tables in the general industry and construction standards for electric power generation, transmission, and distribution work.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On March 3, 2016, the Safety and Health Codes Board adopted federal OSHA's corrections to the electrical safety-related work practices standard for general industry and the electric power generation, transmission, and distribution for general industry and construction final rule, as published in 80 FR 60033 through 80 FR 60040 on October 5, 2015, with an effective date of July 1, 2016.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
October 5, 2015	July 1, 2016

VA.R. Doc. No. R16-4670; Filed May 2, 2016, 4:19 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-400).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

The exemption for mixing, diluting, and reconstituting (MDR) from the requirements of compounding is found in § 54.1-3401 of the Code of Virginia.

Purpose: The purpose of the amended regulation is consistency with the law for compounding by pharmacists under provisions of the Drug Control Act. The amendment is essential to protect the health and safety of citizens for whom drugs are being compounded in a physician's office and to eliminate confusion about the role of a pharmacist in a physician's practice.

Rationale for Using Fast-Track Rulemaking Process: There is no controversy in the adoption of this amendment; it is recommended for consistency with advice by the Office of the Attorney General to the Board of Pharmacy and to the Board of Medicine committee reviewing regulations for MDR.

Substance: The proposed amendment to 18VAC85-20-400 eliminates the pharmacist as a practitioner who can perform a second check of mixing, diluting, or reconstituting drugs in a physician's office by a specifically trained person and also eliminates the pharmacist as a practitioner who can perform mixing, diluting, or reconstituting without a second check. A pharmacist is required by law to follow the United States Pharmacopeia - National Formulary for compounding of drug products and does not fall under the exemption for physicians and persons in physicians' practices.

Issues: The primary advantage to the public is greater protection in the compounding of sterile drug products. There are no disadvantages.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine proposes to clarify that pharmacists working in physician offices are not allowed to mix, dilute, and reconstitute drugs or perform a second check on such actions performed by another authorized practitioner.

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

Estimated Economic Impact. Pharmacists are allowed to compound drugs, but mixing, diluting, or reconstitution of drugs for the purpose of administration to a patient is not

considered compounding pursuant to § 54.1-3401 of the Code of Virginia. In contrast to the statutory definition, this regulation appears to indicate that pharmacists are allowed to mix, dilute, or reconstitute drugs at physician offices for the purpose of administration to a patient and perform a second check if mixing, diluting, or reconstituting is performed by another authorized practitioner. The proposed change will clarify that pharmacists in physician offices are allowed to compound but are not allowed to mix, dilute, or reconstitute drugs for the purpose of administration to a patient or perform a second check on such actions performed by another authorized practitioner.

The proposed change will eliminate a potential source of confusion as to the scope of pharmacists' functions in a physician office. The Department of Health Professions notes that pharmacists are always advised to follow United States Pharmacopeia-National Formulary for compounding of drugs pursuant to § 54.1-3410.2 of the Code of Virginia and does not believe mixing, diluting, or reconstitution are currently performed by pharmacists in physician offices for the purpose of administration to a patient. Thus, no significant economic effect is expected from this proposed change other than improving the clarity of the regulation and eliminating a potential source of confusion.

Businesses and Entities Affected. The proposed regulation applies to pharmacists employed in physician offices. Currently, there are 13,429 pharmacists licensed to practice in Virginia. Exactly how many of these pharmacists are employed in physician offices is not known, but estimated to be less than 100.

Localities Particularly Affected. The proposed regulation applies statewide.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation does not impose costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an impact on non-small businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

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

Summary:

The amendment eliminates the pharmacist as a practitioner who can perform (i) a second check of mixing, diluting, or reconstituting drugs in a physician's office by a specifically trained person and (ii) mixing, diluting, or reconstituting without a second check.

Part IX
Mixing, Diluting, or Reconstituting of Drugs for Administration

18VAC85-20-400. Requirements for immediate-use sterile mixing, diluting, or reconstituting.

A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products when there is no direct contact contamination and administration begins within 10 hours of the completion time of preparation shall be considered immediate-use with the exception of drugs in fat emulsion for which immediate use shall be one hour. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than 10 hours, the mixing, diluting, or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin, or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of the preparation, provided administration does not exceed the specified expiration date of a multiple use vial and there is compliance with all other requirements of this section.

B. Doctors of medicine or osteopathic medicine who engage in immediate-use mixing, diluting, or reconstituting shall:

1. Utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility in immediate-use mixing, diluting, or reconstituting;

2. Ensure that all personnel under their supervision who are involved in immediate-use mixing, diluting, or reconstituting are appropriately and properly trained in and utilize the practices and principles of disinfection techniques, aseptic manipulations, and solution compatibility;

3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine ~~or a pharmacist,~~ or by a physician assistant or a registered nurse

who has been specifically trained pursuant to subdivision 2 of this subsection in immediate-use mixing, diluting, or reconstituting. Mixing, diluting, or reconstituting that is performed by a doctor of medicine or osteopathic medicine~~, a pharmacist,~~ or by a specifically trained physician assistant or registered nurse or mixing, diluting, or reconstituting of vaccines does not require a second check;

4. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations;

5. Document or ensure that personnel under his supervision ~~documents~~ document in the patient record or other readily retrievable record that identifies the patient; the names of drugs mixed, diluted or reconstituted; and the date of administration; and

6. Develop and maintain written policies and procedures to be followed in mixing, diluting, or reconstituting of sterile products and for the training of personnel.

C. Any mixing, diluting, or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165), Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at www.cdc.gov/niosh/docs/2004-165.

VA.R. Doc. No. R16-4579; Filed April 28, 2016, 12:37 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-675. Personnel Policies for Local Departments of Social Services (amending 22VAC40-675-10, 22VAC40-675-20, 22VAC40-675-40, 22VAC40-675-50, 22VAC40-675-90 through 22VAC40-675-140, 22VAC40-675-180, 22VAC40-675-200, 22VAC40-675-210, 22VAC40-675-220).**

Statutory Authority: §§ 63.2-217 and 63.2-219 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 29, 2016.

Effective Date: July 15, 2016.

Agency Contact: Lori Schamerhorn, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264, FAX (804) 726-7027, or email lori.schamerhorn@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides the State Board of Social Services the general authority for the development of regulations to carry out the purposes of Title 63.2 of the Code of Virginia. Section 63.2-219 of the Code of Virginia gives the board authority to specify the requirements for the administration of personnel by a local department of social services under Title 63.2 of the Code of Virginia.

Purpose: The amendments are necessary to make the requirements of the regulations consistent with the requirements of state law, to accurately cite federal law, and to make technical corrections. The regulations provide the personnel policies under which local departments of social services operate. Personnel policies that comply with state and federal law ensure appropriate oversight of local department employees who are providing vital services, which protects the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: Section 2.2-4012.1 of the Code of Virginia allows state agencies to use a fast-track rulemaking process to expedite regulatory changes that are expected to be noncontroversial. The amendments to the regulations incorporate requirements of state law, cite federal law, and make technical corrections. As a result, no objections are anticipated.

Substance: The changes are necessary to make the requirements of the regulations consistent with the requirements of state law, to accurately cite federal law, and to make technical corrections. There are no substantive changes.

Issues: The advantage of this regulatory action to the agency and to the public is that it makes the requirements of the regulations consistent with the requirements of state law and clarifies the requirements for local boards and local departments. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to remove sanctions language from this regulation, clarify that the Board's approval is needed for a local department of social services to deviate from state policies, and update the rest of the regulation for clarity.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for

one change. The benefits likely exceed the costs for other proposed changes.

Estimated Economic Impact. This regulation establishes personnel policies for local departments of social services. One of the proposed changes will remove language providing authority to the Department of Social Services (DSS) to impose financial sanctions or require reimbursement of funds if a local department violates provisions of this regulation. DSS indicates that the sanctions issue will be addressed in a separate regulatory action and the Office of the Attorney General (OAG) has requested that the language be removed. According to DSS, no sanctions have been imposed at least in the last ten years. Some recoveries, though few, have been made over the years. Only two of the recoveries were significant in amount. However, DSS has declined to reveal the rationale for the proposed removal of the sanctions language from the regulation. Without knowing the issue the proposed change is intended to address, the economic impact of this change cannot be ascertained with the information available at this time.

Another proposed change will clarify that a local department is required to obtain approval from the Board to follow specific local jurisdiction policies rather than Board policies outlined in the administrative manual. According to DSS, OAG has determined that the Board's approval is mandatory for any areas listed in the regulation which cover performance evaluation, standards of conduct, leave policies, holiday schedule, inclement weather, probationary period, layoff, classification and/or compensation, affirmative action, and political activity. Previously only classification, compensation, and jurisdiction wide changes were sent to the Board for approval. Other deviations were reviewed and approved by DSS human resources staff for comparability to the Board policy; the analysis was provided to the Board, but was not submitted to the Board for approval. As a result, the proposed change which was implemented in October 2015 is expected to result in an additional five deviation requests requiring Board approval. This change may create small administrative costs associated with the required Board approval, but will also provide an additional layer of review by the Board itself.

Remaining changes update the regulation to reflect changes in the state law and state classification plan, for accurate citation of federal law, for clarity, and to correct grammatical errors. No significant economic effect is expected from these remaining changes other than improving the clarity of the regulation.

Businesses and Entities Affected. The proposed regulation applies to 120 local departments of social services. These local departments currently have 8548 employees.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment based on the information available.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected based on the information available.

Real Estate Development Costs. No impact on real estate development costs is expected based on the information available.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation does not impose costs or other effects on small businesses based on the information available.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected based on the information available.

Adverse Impacts:

Businesses. The proposed regulation does not have an impact on non-small businesses based on the information available.

Localities. The proposed regulation will not adversely affect localities based on the information available.

Other Entities. The proposed regulation will not adversely affect other entities based on the information available.

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comments.

Summary:

The amendments (i) remove sanctions language, (ii) clarify that the approval of the State Board of Social Services is necessary for a local department of social services to deviate from state policies, and (iii) make technical corrections.

Part I
General Provisions

22VAC40-675-10. Definitions.

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

"Administrative manual" means the ~~Human~~ Administrative/Human Resources Manual for Local Departments of Social Services, dated October 19, 2011, last revised May 1, 2015, Virginia Department of Social Services, which outlines the personnel policies and procedures.

"Board" means the State Board of Social Services.

"Classification" means the systematic grouping of positions based on shared characteristics.

"Commissioner" means the Commissioner of the Virginia Department of Social Services, his designee, or authorized representative.

"Department" means the ~~State~~ Virginia Department of Social Services.

"Deviate" means to adopt all or portions of the local ~~jurisdiction~~ jurisdiction's personnel policies instead of using policies and procedures outlined in the administrative manual.

"Jurisdiction" or "local jurisdiction" means the city, county, or town under which the local department is a governmental unit.

"KSA" means ~~a~~ knowledge, skill, or ability needed to perform the duties of a position.

"Local board" means the local administrative board of social services representing one or more counties or cities.

"Local compensation plan" ~~is~~ means the locally developed compensation schedule that lists occupational titles~~,~~ and salary ~~bands/tiers~~ ranges from the minimum to the maximum amounts established for each ~~bands/tiers,~~ band and tier and includes other pay actions.

"Local department" means the local department of social services of any city or county of this Commonwealth.

"Local director" means the director or his designated representative of ~~the~~ a local department of ~~the~~ social services for a city or county.

"Merit system plan" means those regulations adopted by the board in the development and operation of a system of personnel administration meeting requirements of the federal Department of Health and Human Services as relates to compliance with federal merit system standards set forth in the Code of Federal Regulations (5 CFR Part 900).

"Occupational group description" means a detailed statement that describes the characteristic elements of each occupational level within the occupational group.

"Salary range" means the range that identifies the minimum and maximum compensation rate authorized for a specific pay band and a specific tier within the pay band.

"State classification plan" means the department's classification plan that consists of approved occupational titles and their corresponding groups, ~~salary grades~~ pay bands, tiers, classification codes, equal employment opportunity codes, and effective dates.

"State compensation plan" means the department's pay plan, which provides local departments a basis for developing local compensation plans.

22VAC40-675-20. Local department designation.

~~A.~~ Local departments are designated as Levels I through ~~VI~~ III. The level of a local department is based on the occupational title assigned to the local director. The level assigned to the local director is determined by the management structure, number and types of ~~authorized~~ positions, and mandated and nonmandated social services programs in the administration of social services programs by the local department.

~~B. The levels are used in the development and approval of the local department classification and compensation plans.~~

22VAC40-675-40. Inclusion in local jurisdiction personnel plans.

A. It is the policy of the board to allow local department employees to be included in the approved local jurisdiction personnel plans instead of utilizing personnel policies outlined in the ~~Administrative Manual~~ administrative manual.

B. Comprehensive jurisdiction plans shall meet merit system standards and be comparable to personnel policies included in the ~~Administrative Manual~~ administrative manual. Specific personnel functions that must be included in ~~the~~ local jurisdiction personnel plans are listed in the ~~Administrative Manual~~ administrative manual.

C. Such plans must be documented to the satisfaction of the board.

D. The board must approve ~~a jurisdiction personnel plan prior to~~ the inclusion of local department employees in ~~the~~ a jurisdiction's personnel plan prior to inclusion.

22VAC40-675-50. Adoption of specific policies of the local jurisdiction.

A. A local department, upon approval by the local board, may request approval to ~~deviate from state policies by adopting~~ follow specific local jurisdiction policies instead of ~~using~~ the personnel policies and procedures outlined in the ~~Administrative Manual~~ administrative manual. The following local policy options may be requested on the Local Policy Request Form:

1. Performance evaluation;
2. Standards of conduct;
3. Leave policies;
4. Holiday schedule;
5. Inclement weather;
6. Probationary period; ~~or~~
7. Layoff~~.~~;
8. Classification, compensation, or classification and compensation;
9. Affirmative action; or
10. Political activity.

~~B. Local policy options also exist for classification, compensation and affirmative action.~~

~~C.~~ B. When the local department wants to exercise one or more of the allowable options, it must obtain required approvals and submit the required forms to the department in accordance with the ~~Administrative Manual~~ administrative

manual. The commissioner will provide his analysis to the board, and the deviation request shall be presented to the board for action.

~~D.~~ C. When ~~policy changes~~ a local department desires to revert from the previously approved local jurisdiction human resources policy to the personnel policy set forth in the administrative manual, the local department shall ~~submit a Local Policy Request Form to the department~~ notify the department by submitting an updated Human Resource Policy Record form.

22VAC40-675-90. Local compensation plans.

A. A local department, upon approval by the local board, shall have flexibility in developing the local compensation plan to select salary ranges within the approved state compensation plan that are suitable to local situations. The range for each occupational title shall provide local minimum and maximum rates. The local plan shall ensure that local minimum salary rates do not fall below the state compensation plan minimum salary for that occupational title. A request to modify salary ranges within the state minimum and maximum rates does not constitute a deviation as described in 22VAC40-675-110.

B. A local compensation plan shall include policies and procedures for awarding salary increments, merit increases, special compensation for child and adult protective service work, employee or position status changes, and any other type of approved increases. Salary determinations shall be rendered in a fair and consistent manner to ensure equal pay for equal work.

C. All requested position actions by local departments must be reviewed and approved by the department prior to implementation.

D. Midyear changes to the local compensation plan must be submitted to the department for review and approval.

E. Local compensation policies and practices shall comply with federal and state laws including the federal Fair Labor Standards Act (29 USC ~~§§ 201-219)~~ § 201 et seq.), the ~~Administrative Manual~~ administrative manual, and procedures provided by the department.

22VAC40-675-100. Other local compensation issues.

A. In localities where the governing body has elected to have a director of social services serve as the local board, reimbursement for governing body assigned expenses shall be in accordance with § 63.2-310 of the Code of Virginia.

B. Provisions shall be made for overtime worked in accordance with the Fair Labor Standards Act (29 USC ~~§§ 201-219)~~ § 201 et seq.). The reimbursement shall be up to the reimbursable maximum of the applicable state occupational title.

C. Provisions shall be made for other types of compensation as deemed necessary by the board and set forth in the administrative manual.

D. Local departments with approved deviating compensation plans will also be reimbursed up to the maximum of the applicable state position occupational title. When the local deviating maximum exceeds the state reimbursable maximum, local-only funds shall be used to compensate for overtime and any federal funds that are available and appropriate for such use.

~~C.~~ E. Reimbursements shall be made for absences that result from the closing of local departments' operations because of inclement weather conditions or other authorized closing.

~~D.~~ F. Bonuses for employees of local departments of social services shall be consistent with § 15.2-1508 of the Code of Virginia and with procedures provided by the department.

22VAC40-675-110. Deviations from state classification or compensation plans.

A. ~~The board may approve~~ A local department's request for deviation from the state classification plan and state compensation ~~plans~~ plan shall be made to the board.

B. Deviation requests may be either for classification, classification and compensation, or compensation only. When the local department wants to exercise one of these options, it must obtain required approvals and submit the required forms to the department in accordance with the administrative manual. The commissioner will provide his analysis to the board.

C. Local departments shall submit required forms as specified in the ~~Administrative Manual~~ administrative manual when requesting deviation from the state classification plan, classification and compensation ~~plans~~ plan, or compensation plan.

22VAC40-675-120. ~~Sanctions~~ Reviews.

A. ~~Policies~~ Personnel policies and practices by the local departments are subject to review ~~or audit~~ by the department.

B. Reviews may include ~~but not be limited to~~ the assessment and analysis of personnel data, records, reports, systems, and feedback from local department employees.

~~C. When the department finds that a local department has not complied with or has violated the provisions of this regulation, the department may impose financial sanctions or require reimbursement of funds. Funds may be withheld until such time as deemed necessary for the proper administration of the local compensation plan.~~

Part III

Recruitment and Selection of Local Department Employees

22VAC40-675-130. General hiring provision.

A. Recruitment, ~~selecting~~ selection, and ~~advancing~~ advancement of employees shall be on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for original appointment assuring fair treatment of applicants and employees in all aspects of personnel administration and with proper regard to their privacy and constitutional rights as citizens. This fair

treatment principle includes compliance with ~~the~~ federal equal employment opportunity and nondiscrimination laws.

B. The department shall determine the application process and employment forms to be used by all applicants for original appointment, promotion, demotion, transfer, and reemployment.

C. In accordance with § 63.2-325 of the Code of Virginia, the commissioner shall provide a list of eligible candidates for the position of local director to the local board or other appropriate appointing authority.

D. The board shall place the responsibility of the final selection process of local department employees with the local director and local board.

E. Local departments adopting local jurisdiction personnel plans shall follow the provisions of the city, county, or town of which they are a governmental unit.

Part IV
Employee Status

22VAC40-675-140. Employee status in the merit system plan.

A. Status defines the employee's permanency in the system as it relates to benefits and the use of grievance policies.

B. The types of employee status included in the merit system plan are probationary, ~~nonprobationary~~ regular, restricted, temporary, and emergency.

C. Local departments shall provide benefits in accordance with the requirements of the ~~Administrative Manual~~ administrative manual.

Part VI
Equal Employment Opportunity

22VAC40-675-180. Equal employment opportunity.

A. The board promotes equal employment opportunity in the recruitment and selection process by ensuring that qualification requirements are job-related and that such requirements do not limit or restrict employment opportunities because of race, color, religion, sex, age, disability, national origin, or political affiliation (except where sex or age is a bona fide occupational qualification).

B. All local departments shall prepare their own affirmative action plan in accordance with the ~~Administrative Manual,~~ administrative manual or comply with a written local jurisdiction plan that provides an aggressive, coherent management program for equal employment for all employees and applicants for employment.

C. Employees or applicants for employment who believe that they have been discriminated against may file a complaint with the Virginia Department of Human Resource Management, Office of Equal Employment Services, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

D. All local departments are required to cooperate fully with the Office of Equal Employment Services ~~when they are conducting~~ or any other official ~~investigations~~ investigation of charges of discrimination. Cooperation includes providing papers, notes, documents, and any other written material~~,~~ and responding to questions deemed necessary ~~by that office~~ to investigate the charge.

Part VIII
Grievance Procedure

22VAC40-675-200. Employee grievance procedure.

~~Local departments not included in their jurisdiction's grievance procedure shall develop their own in accordance with the Administrative Manual. This~~ A local department or local board shall adopt a grievance procedure that is either (i) adopted by the locality in which the local department or local board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization or (ii) approved by the state board. The board-approved grievance procedure in the administrative manual shall be consistent with the provisions of Chapter ~~10 (§ 2.2-1000~~ 30 (§ 2.2-3000 et seq.) of Title 2.2 of the Code of Virginia. The grievance procedure adopted by the local department or local board shall apply to employees, including local directors, of the local boards and local departments.

Part IX
Other Employee Relations Policies

22VAC40-675-210. Political activity.

A. No local department employee shall make use of his official authority or influence to:

1. Interfere with or affect the result of a nomination or election to public office or position;

2. Directly or indirectly coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

3. Be a candidate for public elective office in a ~~partisan~~ primary, general, or special election.

B. The local department's provisions on political activity ~~are~~ shall be consistent with the federal Hatch Act (5 USC §§ ~~1501-1509)~~ 1501-1508) and facilitate effective control of prohibited political activity by employees.

C. In general, the Hatch Act covers officers or employees of a state or local department if their principle employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency. An employee subject to political activity laws continues to be covered by these laws and regulations while on annual leave, sick leave, leave without pay, administrative leave, or furlough.

D. ~~Local boards shall adopt these provisions or, instead, adopt the provisions of the local governmental jurisdiction consistent with the federal Hatch Act.~~ The board shall promulgate policy consistent with these provisions. Local departments may request to deviate to local jurisdiction

political activity policy that is consistent with the federal Hatch Act. When the local department wants to exercise this option, it must obtain required approvals and submit the required forms to the department in accordance with the administrative manual. The commissioner will provide his analysis to the board, and the deviation request shall be presented to the board for action.

22VAC40-675-220. Outside employment of local department employees.

A. Employees in local departments shall not engage in any other employment, any private business, or in the conduct of a profession that interferes with their usefulness as ~~an employee~~ employees or with their work performance during normal working hours ~~and their work performance,~~ or ~~shall not~~ be in violation of Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

B. If an employee desires to seek or be engaged in outside employment, the employee must first obtain approval from the local director. If the local director desires to seek or be engaged in outside employment, the local director must first obtain approval from the local board. A local director who serves as the local board and desires to seek or be engaged in outside employment must first obtain approval from the elected governing body or its designee.

C. If an employee accepts employment outside the ~~agency~~ local department without receiving prior approval, the employee will be subject to disciplinary action under the standards of conduct.

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

FORMS (22VAC40-675)

~~Local Policy Request, Form 032-10-0161-05-eng (rev. 3/14)~~

~~Jurisdiction Wide Self-Analysis, Form 032-10-0165-02-eng (rev. 1/14)~~

~~Human Resource Policy Record, Form 032-10-0162-02-eng (eff. 11/13)~~

Classification and Compensation Self-Analysis Form for Local Departments of Social Services, 032-10-0175-00-eng (rev. 9/2015)

Human Resource Policy Record, 032-10-0162-04-eng (rev. 10/2015)

Jurisdiction Wide Self-Analysis Form, 032-10-0165-03-eng (rev. 9/2015)

Local Policy Request Form, 032-10-0161-06-eng (rev. 9/2015)

DOCUMENT INCORPORATED BY REFERENCE (22VAC40-675)

~~Human Resource Manual for Local Departments of Social Services, Virginia Department of Social Services, revised July 1, 2009.~~

Administrative/Human Resources Manual for Local Departments of Social Services, dated October 19, 2011, last revised May 1, 2015, Virginia Department of Social Services

VA.R. Doc. No. R16-3368; Filed May 2, 2016, 10:10 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

SolUnesco LLC Notice of Intent - Small Renewable Energy Project (Solar) - Mecklenburg County

SolUnesco LLC, has provided a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) west of Chase City, Virginia, pursuant to 9VAC15-60. SolUnesco and One Energy Renewables are developing a 76.8 megawatts DC, 60 megawatts AC (243,751 320W panels) solar farm located west of Chase City in Mecklenburg County, Virginia. The system will be a ground-mounted array covering five parcels of about 517 acres and will have an assumed point of interconnection near the Black Branch Substation.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Turning Point Energy Notice of Intent - Small Renewable Energy Project (Solar) - Pittsylvania County

Terracon Consultants, Inc., on behalf of Turning Point Energy, has provided a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Danville, Pittsylvania County, Virginia, pursuant to 9VAC15-60. The project will be located on an approximately 76.58-acre site (Pittsylvania County PIN #2440-70-0130) located at 2048 Kentuck Church Road in Danville, Pittsylvania County, Virginia. The project will consist of approximately 25,327 320-watt panels plus three 2-megawatt inverters which will provide no less than six megawatts of nameplate capacity.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

STATE BOARD OF HEALTH

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

12VAC5-520, Regulations Governing the Dental Scholarship and Loan Repayment Program

Agency Contact: Susan Puglisi, Policy Analyst, Virginia Department of Health, Office of Family Health Services, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7175, FAX (804) 864-7647, or email susan.puglisi@vdh.virginia.gov.

12VAC5-530, Regulations Governing the Virginia Medical Scholarship Program

Agency Contact: Adrienne McFadden, MD, JD, Director, Office of Minority Health and Health Equity, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7435, FAX (804) 864-7440, or email adrienne.mcfadden@vdh.virginia.gov.

The comment period begins May 30, 2016, and ends June 21, 2016.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF TAXATION

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

23VAC10-11, Public Participation Guidelines

23VAC10-230, Watercraft Sales and Use Tax

23VAC10-350, Forest Products Tax Regulations

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA

23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

23VAC10-300, Estate Tax

Agency Contact: Kristin Collins, Lead Tax Policy Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23261-7185, telephone (804) 371-2341, FAX (804) 371-2355, email kristin.collins@tax.virginia.gov.

The comment period begins May 30, 2016, and ends June 20, 2016.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-20, Schedule of Fees for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 27, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The board is authorized to adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and cite certifications, and this regulation complies with the board's statutory authority. These fees defray costs associated with the review of site certifications.

No public comments were received during the periodic review of this regulation.

This regulation is one in a series of regulations that are related to hazardous waste facility site certifications. Maintaining multiple regulations, each addressing a different aspect of hazardous waste facility site certification, removes complexity from the regulatory process and allows users to focus on applicable requirements.

This regulation does not overlap, duplicate, or conflict with any state or federal law. This regulation does interact with three other state regulations. The four separate regulations work together to protect public health and welfare concerning the siting of hazardous waste facilities.

This regulation last underwent a periodic review in 2012. This regulation was amended in August 2012 to update a mailing address within the regulation.

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends retaining this regulation. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of this regulation on small businesses.

Contact Information: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-30, Technical Assistance Fund Administrative Procedures**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 27, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The regulation establishes the requirements associated with the Technical Assistance Fund Board. This regulation establishes a process for a governing body of a community considering hosting a hazardous waste facility to obtain funds to assist them with obtaining technical assistance to better understand the environmental, economic, and social impact of a hazardous waste facility at a particular site. These fees defray costs associated with the review of these site certifications.

No public comments were received during the periodic review of this regulation.

This regulation is one in a series of regulations that are related to hazardous waste facility site certifications. Maintaining multiple regulations, each addressing a different aspect of hazardous waste facility site certification, removes complexity from the regulatory process and allows users to focus on applicable requirements.

This regulation does not overlap, duplicate, or conflict with any state or federal law. This regulation does interact with three other state regulations. The four separate regulations work together to protect public health and welfare concerning the siting of hazardous waste facilities.

This regulation last underwent a periodic review in 2012. This regulation was last amended in 2005 to make the regulation consistent with state statute.

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends retaining this regulation. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of this regulation on small businesses.

Contact Information: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-40, Administrative Procedures for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 27, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The regulation details administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites.

No public comments were received during the periodic review of this regulation.

This regulation is one in a series of regulations that are related to hazardous waste facility site certifications. Maintaining multiple regulations, each addressing a different aspect of hazardous waste facility site certification, removes complexity from the regulatory process and allows users to focus on applicable requirements.

This regulation does not overlap, duplicate, or conflict with any state or federal law. This regulation does interact with three other state regulations. The four separate regulations work together to protect public health and welfare concerning the siting of hazardous waste facilities.

This regulation last underwent a periodic review in 2012. This regulation was amended in July 2013 to allow for notifications to be delivered through postal or electronic means.

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends retaining this regulation. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of this regulation on small businesses. During this periodic review, technical corrections were identified that need to be made to the regulation. These corrections will be made under a separate regulatory action.

Contact Information: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-50, Hazardous Waste Facility Siting Criteria**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 27, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The board is authorized to adopt a criteria to evaluate and approve or disapprove applications for hazardous waste facility site certifications. These criteria are needed to protect human health and the environment from potential impacts from the siting of these facilities.

No public comments were received during the periodic review of this regulation.

This regulation is one in a series of regulations that are related to hazardous waste facility site certifications. Maintaining multiple regulations, each addressing a different aspect of hazardous waste facility site certification, removes complexity from the regulatory process and allows users to focus on applicable requirements.

This regulation does not overlap, duplicate, or conflict with any state or federal law. This regulation does interact with three other state regulations. The four separate regulations work together to protect public health and welfare concerning the siting of hazardous waste facilities.

This regulation last underwent a periodic review in 2012. This regulation was amended in August 2012 to update a mailing address within the regulation.

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends retaining this regulation. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of this regulation on small businesses. During this periodic review, technical corrections were identified that need to be made to the regulation. These corrections will be made under a separate regulatory action.

Contact Information: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-150, Waste Tire End User Reimbursement Regulation**, and determined that this regulation should be retained in its current form. The Virginia

Waste Management Board is publishing its report of findings dated April 27, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. This regulation promotes the use of waste tires by providing financial incentives to end users of Virginia-generated waste tire material for uses such as civil engineering, energy recovery, and recycled products. By promoting these uses, waste tires are reused or recycled instead of being disposed of in landfills or being disposed of improperly. Since 1994, the Department of Environmental Quality (DEQ) has worked to strengthen the markets for Virginia-derived waste tire material with its End User Reimbursement Program, providing a financial rebate to those who use Virginia tire material in their products or processes. Over the years, this program has provided sufficient incentives to waste tire generators, haulers, processors, and end users to capture, process, and beneficially use almost 100% of the waste tires generated in Virginia. Prior to implementing this regulation, and other programs that promote the proper management of waste tires, numerous large tires piles were found throughout the state. These tire piles were potential threats to human health and the environment if they were ignited.

No public comments were received during the periodic review.

This regulation establishes procedures for applications, processing applications, and rates of reimbursement for the end user of waste tires. This regulation is clearly written and easily understandable.

This regulation does not overlap, duplicate, or conflict with any state or federal law.

The Virginia Waste Management Board adopted the Waste Tire End User Reimbursement Regulations in 1994 and modified them in 1996, 1997, 2002, and 2011. These regulations specify the operating provisions of the program. It is estimated that 7 million waste tires are generated in Virginia every year. Over the years DEQ has assisted with the development of management strategies and markets for waste tires in Virginia. The Waste Tire End User Reimbursement Regulations have assisted with promoting the recycling and reuse of waste tires.

The agency recommends retaining this regulation. It is instrumental in encouraging the recycling and reuse of waste tires. This program does not negatively impact small businesses in Virginia. There are some changes the department is considering making to the regulation in the near future to make it consistent with state statute and to clarify requirements of the regulation. Changes to the regulation will be made as a separate regulatory process.

Contact Information: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for the County of Alleghany

An enforcement action has been proposed with the County of Alleghany for violations in Alleghany County, Virginia. The special order by consent addresses and resolves violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from May 30, 2016, to June 29, 2016.

Proposed Consent Order for Love's Travel Stops & Country Stores, Inc.

An enforcement action has been proposed for Love's Travel Stops & Country Stores, Inc. for violations in Shenandoah County, Virginia. The State Water Control Board proposes to issue a consent order to Love's Travel Stops & Country Stores, Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from May 30, 2016, to June 29, 2016.

Proposed Consent Order for Norfolk Southern Railway Company

An enforcement action has been proposed for Norfolk Southern Railway Company for violations of § 62.1-44.34:18 A of the Code of Virginia. The consent order describes a settlement to resolve these violations. A description of the proposed action is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from May 30, 2016, through June 29, 2016.

Proposed Consent Special Order for the Town of Pulaski

An enforcement action has been proposed with the Town of Pulaski for violations in Pulaski County, Virginia. The special order by consent addresses and resolves violations of environmental law and regulations. A description of the proposed action is available at the Department of

Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from May 30, 2016, to June 29, 2016.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *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/connect/commonwealth-calendar.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.