



VIRGINIA

REGISTER OF REGULATIONS

VOL. 39 ISS. 16

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

March 27, 2023

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Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. **34:8 V.A.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

Staff of the Virginia Register: Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Regulations Analyst; Rhonda Dyer, Publications Assistant; Terri Edwards, Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

April 2023 through April 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 (Tuesday)	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Suzanne Williams.

Nature of Petitioner's Request: The petitioner requests that the Board of Dentistry amend 18VAC60-21-250 C 8 to include Pacific Medical Training as an approved continuing education sponsor for the topics required in 18VAC60-21-250 B.

Agency Decision: Request denied.

Statement of Reason for Decision: The board considered the petition at its March 3, 2023, meeting and decided to take no action. On October 14, 2022, the board's regulatory committee recommended deleting the listed providers from 18VAC60-21-250 C 8 as part of the amendments following the periodic review of 18VAC60-21. The committee further recommended that the approved entities be added to a guidance document once the regulatory action is approved to allow for greater flexibility in adding approved entities. The board adopted the regulatory committee's recommendation on December 2, 2022, and the action has been submitted to the Office of the Attorney General for review. The action will be viewable by the public when it moves to the Department of Planning and Budget for review. The board will consider adding this entity to the approved providers once the list of providers can be moved to a guidance document.

Agency Contact: Jamie Sacksteder, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4581, or email jamie.sacksteder@dhp.virginia.gov.

VA.R. Doc. No. PFR23-14; Filed March 3, 2023, 11:17 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-520, Biomass Energy Generator General Permit for a Pilot Test Facility**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated January 23, 2023, to support this decision.

This regulation enhances the board's ability to ensure compliance with the specific requirements under state law through the approval of a general permit to construct and operate a new or modified facility with actual emissions of 99 tons per year or less of particulate matter, nitrogen oxides, sulfur dioxide, carbon monoxide, and volatile organic compounds.

The regulation is necessary to (i) protect public **health** and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; and (ii) provide a streamlined administrative mechanism to impose general regulatory requirements on the construction and operation of nonmajor sources in certain source categories without burdensome and costly permit application, review, and issuance procedures. Furthermore, the efficient operation of this type of facility controls emissions of harmful pollutants while enabling the facility to perform in a cost effective manner.

The board has determined that the regulation is clearly written and easily understandable by the individuals and entities affected by the regulation. It is written so as to permit only one reasonable interpretation, to adequately identify the affected entity, and, insofar as possible, in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment. This regulation continues to be needed. No comments were received that indicate a need to repeal or revise this regulation.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The board, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Karen G. Sabastanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-530, Electric Generator Voluntary Demand Response General Permit**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 13, 2023, to support this decision.

This regulation enhances the board's ability to ensure compliance with all specific requirements under state law through the approval of a general permit to construct and operate a new or modified facility with actual emissions of 99 tons per year or less of regulated pollutants.

The regulation is necessary to (i) protect public **health** and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) provide a streamlined administrative mechanism to impose general regulatory requirements on the construction and operation of nonmajor sources in certain source categories without burdensome and costly permit application, review, and issuance procedures; and (iii) meet specific requirements of the Virginia Air Pollution Control Law. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected by the regulation. It is written so as to permit only one reasonable interpretation, to adequately identify the affected entity, and, insofar as possible, in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment. This regulation continues to be needed. No comments were received that indicate a need to repeal or revise this regulation. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was most recently reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective

Periodic Reviews and Small Business Impact Reviews

means to determine the level and impact of excess emissions and to control those excess emissions.

The board, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-540, Emergency Generator General Permit**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 15, 2023, to support this decision.

This regulation enhances the board's ability to ensure compliance with all specific requirements under state law through the approval of a general permit to construct and operate a new or modified facility with actual emissions of 99 tons per year or less of regulated pollutants.

The regulation is necessary to (i) protect public **health** and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) provide a streamlined administrative mechanism to impose general regulatory requirements on the construction and operation of nonmajor sources in certain source categories without burdensome and costly permit application, review, and issuance procedures; and (iii) meet specific requirements of the Virginia Air Pollution Control Law. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, to adequately identify the affected entity, and, insofar as possible, in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment. This regulation continues to be needed. No comments were received on whether the regulation should be retained or amended. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The board, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC15-70, Small Renewable Energy Projects (Combustion) Permit by Rule**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, 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; and (iii) is clearly written and easily understandable.

Public comment period begins March 27, 2023, and ends April 17, 2023.

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 published in the Virginia Register of Regulations.

Contact Information: Susan Tripp, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470.



TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Manufactured Housing Board conducted a periodic review and a small business impact review of **13VAC6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 2023, to support this decision.

The regulation was adopted to provide a means to implement state law regarding the licensing of manufacturers, dealers, brokers, and salespersons of manufactured homes. The regulation also provides a method to hear and resolve complaints between affected parties. It has been determined that the regulation and its language and provisions are clear and easily understandable and are in compliance with their statutory directive.

No public comment has been received, and stakeholders and affected parties have not requested or indicated any necessary changes; therefore, the decision is to retain the regulation with no change.

The regulation was updated in 2019 and 2021. The changes in 2019 removed unnecessary provisions, and the changes in 2021 addressed complying with certain provisions in state law regarding damages. The regulation is necessary to continue to implement statutory directives regarding licensing and resolution of complaints for manufactured housing. No public comment was received. The regulation does not appear to be overly complex, duplicate, or conflict with other federal or state law. The regulation was last updated in 2019 and 2021.

No comment has been received regarding the regulation, and the fee structure will remain in its current form, minimizing any impacts to small businesses.

Contact Information: Jeff Brown, Director of State Building Codes Office, Virginia Manufactured Housing Board, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-7161.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider promulgating a new regulation to replace **18VAC15-20, Virginia Asbestos Licensing Regulations**. The purpose of the proposed action is to (i) repeal the existing regulation (18VAC15-20) and replace it with a new chapter; (ii) ensure the new regulation complements current Virginia law and meets applicable federal requirements; (iii) make the regulation more organized, clear, and understandable; (iv) ensure the regulation provides minimal burden on regulants while still protecting the public; and (v) reduce regulatory requirements. In addition, the review will ensure the regulation reflects current procedures and policies of the Department of Professional and Occupational Regulation and includes all other changes determined to be necessary and appropriate.

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

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Comment Deadline: April 26, 2023.

Agency Contact: Trisha L. Lindsey, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R23-7460; Filed February 23, 2023, 10:52 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-260).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

May 9, 2023 - 3 p.m. - Department for Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor Conference Center, Board Room 2, Richmond, Virginia 23233

Public Comment Deadline: May 26, 2023.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the Code of Virginia and necessary for the licensure of contractors.

Purpose: As the construction industry has evolved, more contractors are moving away from the fixed-price contract concept. A significant number of new home builders have shifted to cost-plus contracts, and an equally significant number of trade-related and repair contractors have moved to time and materials contracts. The expansion of the use of types of contracts has been exacerbated by the volatility of the construction materials market. Proposed amendments to 18VAC50-22-260 include provisions for different contracts available within the industry for licensees to utilize.

One of the requirements of the licensee when using cost-plus and time and material contracts will be to include certain information within the licensee's contract to educate the consumer on the type of contract being presented to the consumer. This will allow the consumer to make an informed decision as to whether the consumer wants to enter into that type of contract or not. This regulatory change, while currently used and accepted throughout the industry, will eliminate regulatory violations. This change is reducing regulatory burden on licensees while not increasing the risk to the public of (i) unsafe building repairs or construction work or (ii) deceptive practices.

Substance: The proposed amendments provide the minimum requirements of a written contract for licensees engaged in residential contracting, as defined in the regulation. One of those requirements provided is a statement of the total cost of the contract. The proposed amendment would add specific language to include cost-plus and time and material contracts.

Issues: The advantage to the public of this action is to allow the consumer to make an informed decision about entering into a certain type of contract. Consumers would not be required to sign any particular type of contract. It would be up to the contractor and the consumer to agree. Even though it eliminates risk for the licensee, the resulting cost for the consumer may be lower. The advantage to the agency of this action is to align the board and agency with industry standards and the types of contracts currently in use throughout the construction industry. This could reduce the number of regulatory violations related to contracts. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation. The Board for Contractors (Board) proposes to amend 18VAC50-22, Board for Contractors Regulations (regulation) to allow time and material contracts as well as cost-plus contracts.²

Background. The current regulation lists "statement of the total cost of the contract" as one of the minimum requirements for contracts in residential contracting.³ Up until June 2021, the Board had responded to accurate complaints⁴ concerning contracts that did not contain a statement of the total cost of the contract by assessing fines.⁵ The average fine for contract violations is \$450.⁶ It was brought to the Board's attention that cost-plus contracts and time and materials contracts were becoming more commonly used in residential contracting.⁷ For those two types of contracts, the total cost cannot be precisely known ahead of time. Once this was brought to the Board's attention, it stopped assessing fines for cost-plus contracts and time and materials contracts that did not contain a statement of the total cost of the contract.⁸

Instead of requiring a "statement of the total cost of the contract," the proposed regulation would require a: "statement

regarding total cost of the project with regards to the type of contract being specified:

- (1) Standard total value project: a statement of the total cost of the contract
- (2) Cost plus: a statement identifying the type of cost plus contract, fee or percentage, and a cap at which the total dollar amount cannot exceed
- (3) Time and materials: A fixed price for labor that includes wages, overhead, general and administrative costs and mark-up for profit and the cost of materials."

Estimated Benefits and Costs. According to DPOR, as the construction industry has evolved, more contractors are moving away from the fixed price contract concept (standard total value project). A significant number of new home builders have shifted to cost-plus contracts and an equally significant number of trade-related and repair contractors have moved to time and materials contracts.⁹ This has been exacerbated by the volatility in costs of construction materials, particularly copper and lumber.

If a contractor signs a standard total value contract, and the prices of construction materials increase substantially before he can purchase the materials, he may be committed to a project where he would lose money or it would not be worth his time and effort if he knew the profit would be so small. On the other hand, if the contractor quotes a very high price for a standard total value contract to take account for the possibility of big increases in the cost of construction materials, he risks losing business. The cost-plus and time and materials contracts largely eliminate the possibility of losing money on the projects since the customer is charged more than the cost of the materials in both of these type of contracts. Thus, allowing these types of contracts is beneficial for contractors.

By amending the language to include provisions for the two additional types of contracts, contractor licensees would legally be able to utilize all types of contracts largely available within the industry nationally.¹⁰ Consumers would not be required to sign any particular type of contract, though. It would be up to the contractor and the consumer to agree. One of the requirements of the licensee when using cost-plus and time and material contracts would be to include certain information within their contract to educate the consumer on the type of contract being presented to them. This would allow the consumer to make an informed decision if they want to enter into that type of contract or not. Thus, the proposed amendments do not in practice introduce costs.

To the extent that the addition in allowable types of contracts increases the likelihood that licensees and consumers can find contracts that both are willing to sign, consumers may benefit as well. For example, as described, licensees may only be willing to quote a very high price if they are restricted to only using a standard total value contract. With the cost-plus contract, the licensee could include the very high price as the cap at which the total dollar amount cannot exceed. The consumer may be more agreeable to the latter contract because,

even though it eliminates risk for the licensee, the resulting cost for the consumer may be lower.

Businesses and Other Entities Affected. The proposed amendments potentially affect the 54,179 licensed contractors¹¹ in the Commonwealth, as well as their potential customers. According to DPOR, a significant number of new home builders have shifted to cost-plus contracts, and an equally significant number of trade-related and repair contractors have moved to time and materials contracts. Thus, these types of contractors would likely be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹² An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments do not introduce cost. Thus, an adverse impact is not indicated.

Small Businesses¹³ Affected.¹⁴ The proposed amendments do not appear to adversely affect small businesses.

Localities¹⁵ Affected.¹⁶ The proposed amendments neither disproportionately affect any particular locality nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments may increase the use of time and material contracts as well as cost-plus contracts in the Commonwealth. This may in turn increase net profits for these firms, increasing their value. The proposed amendments do not increase costs for real estate development.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

²With a cost-plus contract, the contractor gets paid for all expenses of a project plus either an agreed-upon profit, which is usually defined as a percentage of the contract's total costs, or a fixed fee.

³More specifically, failure to have a "statement of the total cost of the contract" in the written contract is listed as a prohibited act.

⁴An accurate complaint is when the Board agrees that the contract did not contain a statement of the total cost of the contract. If someone made such a complaint, but the Board thought the wording was such that it did contain a statement of the total cost, no fine would be assessed.

⁵Source: Department of Professional and Occupational Regulation

⁶Ibid

⁷Ibid

⁸Ibid

⁹Ibid

¹⁰In practice, despite the current language in the regulation, contractors in the Commonwealth have already been using the two additional types of contracts.

Regulations

¹¹Data source: Department of Professional and Occupational Regulation

¹²Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹³Pursuant to § 2.2-4007.04, 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."

¹⁴If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁵"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁶Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Contractors concurs with the approval of the economic impact analysis created by Department of Planning and Budget.

Summary:

The proposed amendments (i) allow contractors to provide to consumers time and material contracts and cost-plus contracts, in addition to the currently allowable total cost contract; and (ii) stipulate what each type of contract must include, such as specific hourly rates, percentage markups, and caps on the total cost, to align the regulation with industry standards.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or ~~his~~ the licensee's agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract that contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement ~~of the~~ regarding total cost of the project with regards to the type of contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment; being specified:

(1) Standard total value project: a statement of the total cost of the project;

(2) Cost plus: a statement identifying the type of cost-plus contract, fee or percentage, and a cap at which the total dollar amount cannot exceed; or

(3) Time and materials: a fixed price for labor that includes wages, overhead, general and administrative costs, and cost of materials;

c. The amounts and schedule for progress payments, including a specific statement on the amount of the down payment;

d. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

~~e.~~ e. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating timeframes for payment or performance;

~~f.~~ f. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

~~g.~~ g. Disclosure of the cancellation rights of the parties;

~~h.~~ h. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that ~~he~~ the consumer has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to ~~him~~ consumers through the Board for Contractors;

~~i.~~ i. Contractor's name, address, license number, class of license, and classifications or specialty services;

~~j.~~ j. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and

~~k.~~ k. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's

address of record shall constitute a violation of this regulation.

14. Abandonment, defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee, or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of ~~his~~ the employee's duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee, or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or non-marijuana misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any non-marijuana misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body, including action by the Virginia Department of **Health**, which action shall be reviewed by the board before it takes any disciplinary action of its own.

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25. Failure to abate a violation of the Virginia Uniform Statewide Building Code (13VAC5-63).

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or ~~his~~ the licensee's agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.

35. Failure of a residential building energy analyst firm to maintain the general liability **insurance** required in 18VAC50-22-62 C at any time while licensed by the board.

36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, Virginia Department of **Health**, or Virginia Department of Forensic Science.

37. Failure of a contractor to appropriately classify all workers as employees or as independent contractors as provided by law.

VA.R. Doc. No. R22-6909; Filed March 8, 2023, 8:45 a.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Final Regulation

Title of Regulation: 18VAC80-20. Hearing Aid Specialists Regulations (amending 18VAC80-20-70).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: May 1, 2023.

Agency Contact: Kelley Palmatier, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hasopt@dpor.virginia.gov.

Summary:

The amendments adjust the board's licensing fee structure to comply with § 54.1-113 of the Code of Virginia.

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

18VAC80-20-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date which will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge established by the department.

The following fees apply:

Application Fee	\$30 <u>\$125</u>	To be paid by all applicants for initial licensure
Temporary Permit Fee	\$30 <u>\$125</u>	
Renewal	\$20 <u>\$125</u>	
Reinstatement	\$50 <u>\$125</u>	

D. The written examination fee shall be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The practical examination fee shall be established by the department that is sufficient to cover expenses for the administration of the examination in compliance with subdivision A 4 of § 54.1-201 of the Code of Virginia.

VA.R. Doc. No. R20-5959; Filed February 22, 2023, 2:16 p.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Appraiser Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-130, 18VAC130-20-250).

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: May 1, 2023.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments extend the temporary fee reduction the Real Estate Appraiser Board put in place in 2021 for another two years to comply with § 54.1-113 of the Code of Virginia.

18VAC130-20-130. Fees for renewal and reinstatement.

A. All fees are nonrefundable.

B. National Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the Act), \$80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser, and an appraiser trainee include a \$37.50 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

Certified general real estate appraiser	\$205
Certified residential real estate appraiser	\$205
Licensed residential real estate appraiser	\$205
Appraiser trainee	\$125
Registered business entity	\$120
Certified instructor	\$150

For licenses expiring on May 31, ~~2024~~ 2023, and before May 1, ~~2023~~ 2025, the renewal fees are as follows:

Certified general real estate appraiser	\$140
Certified residential real estate appraiser	\$140
Licensed residential real estate appraiser	\$140
Appraiser trainee	\$60
Registered business entity	\$25
Certified instructor	\$25

D. Reinstatement fees are as follows:

Certified general real estate appraiser	\$385
Certified residential real estate appraiser	\$385
Licensed residential real estate appraiser	\$385
Appraiser trainee	\$250
Registered business entity	\$280
Certified instructor	\$300

For licenses expiring on May 31, ~~2024~~ 2023, and before May 1, ~~2023~~ 2025, the reinstatement fees shall be as follows:

Certified general real estate appraiser	\$320
Certified residential real estate appraiser	\$320
Licensed residential real estate appraiser	\$320
Appraiser trainee	\$155
Registered business entity	\$185
Certified instructor	\$25

18VAC130-20-250. Reapproval of courses required.

Approval letters issued under this chapter for educational offerings shall expire two years from the last day of the month in which they were issued, as indicated in the approval letter. The reapproval fee shall be equivalent to the original approval fee specified in 18VAC130-20-240. For courses expiring on May 31, ~~2024~~ 2023, and before May 1, ~~2023~~ 2025, the course reapproval fee shall be \$25.

V.A.R. Doc. No. R23-7486; Filed March 7, 2023, 2:39 p.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

MOTOR VEHICLE DEALER BOARD

Fast-Track Regulation

Title of Regulation: 24VAC22-40. Independent Motor Vehicle Dealer Operator Recertification Regulations (repealing 24VAC22-40-10 through 24VAC22-40-70).

Statutory Authority: §§ 46.2-1503.4 and 46.2-1506.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 10, 2023.

Effective Date: May 25, 2023.

Agency Contact: William Childress, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, Extension 3002, FAX (804) 367-1053, or email william.childress@mvdv.virginia.gov.

Basis: The Motor Vehicle Dealer Board is authorized to promulgate regulations pursuant to § 46.2-1503.4 of the Code of Virginia.

Purpose: Since the recertification requirements are now codified in Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia, the primary purpose of this regulatory action is to ensure there are no conflicts between the Code of Virginia and regulation. The welfare of citizens is positively impacted due to increased frequency of educational training for dealer-operators within the motor vehicle dealer community as the provisions are codified in statute. The goal of this regulatory action is to increase accurate information and reduce confusion.

Rationale for Using Fast-Track Rulemaking Process: This action is appropriate for the fast-track rulemaking process because its repeal in entirety is due to the provisions established in the regulation being codified in §§ 46.2-1583 through 46.2-1589 of the Code of Virginia pursuant to Chapter 574 of the 2022 Acts of Assembly. Therefore, the action implementing the repeal is deemed to be noncontroversial.

Substance: Pursuant to Chapter 574 of the 2022 Acts of Assembly, the amendments repeal Independent Motor Vehicle Dealer Operator Recertification Regulations (24VAC22-40) in entirety because the provisions are codified in §§ 46.2-1583 through 46.2-1589 of the Code of Virginia.

Issues: The advantage to the public and the agency of the repeal of 24VAC22-40 is less confusion. The provisions regarding dealer community's educational requirements codified in statute are more frequent than what was in the

regulation, so the repeal removes conflict between the Code of Virginia and the regulation. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation. In response to 2022 legislation, the Motor Vehicle Dealer Board (Board) proposes to repeal 24VAC22-40 Independent Motor Vehicle Dealer Operator Recertification Regulations (regulation). An "Independent motor vehicle dealer" or an "independent dealer" is defined in the § 46.2-1583 of the Code of Virginia as "a dealer in used motor vehicles who is not also licensed as a franchise motor vehicle dealer."²

Background. This regulation, which provides the recertification requirements for independent dealer-operators (IDOs), was established on September 2, 2010, and has never been amended. The minimum qualifications for an initial IDO certificate are found in § 46.2-1511 of the Code of Virginia,³ which also exempts the initial certification process from the Administrative Process Act. More recently, Chapter 574 of the 2022 Acts of Assembly codified the requirements for IDO recertification as § 46.2-1583 through § 46.2-1589 of the Code of Virginia.⁴

Estimated Benefits and Costs. Following enactment of the 2022 legislation, the Code of Virginia now addresses all the requirements that are contained in the regulation. However, some of the requirements in the Code differ from those in the regulation. For example, in the Code of Virginia, IDO certificates of qualification are valid for 24 months, while in the regulation they are valid for 36 months. Also, some fees are higher in the Code of Virginia than in the regulation.⁵ Whenever there is conflict between statute and regulation, statute prevails. Thus, repealing the regulation would be beneficial in that it eliminates the possibility the public would be misled concerning the actual legal requirements in effect.

Businesses and Other Entities Affected. According to the Board, there are approximately 3,798 certified IDOs in the Commonwealth.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since repealing the regulation would neither increase net cost nor reduce net revenue, adverse impact is not indicated.

Small Businesses⁷ Affected.⁸ The repeal of the regulation would not adversely affect small businesses.

Localities⁹ Affected.¹⁰ The repeal of the regulation would neither disproportionately affect any particular locality, nor affect costs for local governments.

Projected Impact on Employment. The repeal of the regulation would not affect employment.

Effects on the Use and Value of Private Property. The repeal of the regulation would not affect the use and value of private property or real estate development costs.

Summary:

Chapter 574 of the 2022 Acts of Assembly codifies independent dealer-operator (IDO) requirements in §§ 46.2-1583 through 46.2-1589 of the Code of Virginia, therefore the amendments repeal Independent Motor Vehicle Dealer Operator Recertification Regulations (24VAC22-40) in entirety to eliminate conflict between regulation and statute and redundancy of IDO requirements existing in two places.

VA.R. Doc. No. R23-7367; Filed February 16, 2023, 8:31 a.m.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

²See <https://law.lis.virginia.gov/vacode/title46.2/chapter15/section46.2-1583/>

³See <https://law.lis.virginia.gov/vacode/title46.2/chapter15/section46.2-1511/>

⁴See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0574>

⁵The recertification application fee is \$50 in the Code of Virginia, and \$25 in the regulation. In the Code of Virginia, course providers may charge applicants a course fee of no more than \$300. In the regulation course providers may charge applicants a course fee of no more than \$250.

⁶Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁷Pursuant to § 2.2-4007.04, 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."

⁸If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the Economic Impact Analysis: The Motor Vehicle Dealer Board concurs with the Department of Planning and Budget's economic impact analysis.

GENERAL NOTICES

STATE AIR POLLUTION CONTROL BOARD

Public Comment Opportunity for Air Quality Plan

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public comment period on a proposed second maintenance plan for the Fredericksburg 1997 ozone National Ambient Air Quality Standard (NAAQS) maintenance area. The plan shows that emission reductions of nitrogen oxides (NO_x) and volatile organic compounds (VOC) in the area will continue such that air quality is expected to further improve. The Commonwealth intends to submit the plan as a revision to the Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comments on the maintenance plan for the Fredericksburg 1997 ozone maintenance area, which consists of the Counties of Stafford and Spotsylvania and the City of Fredericksburg.

Public comment period: March 27, 2023, to April 26, 2023.

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

Description of proposal: The proposal consists of the following:

1. An air quality maintenance plan for the Fredericksburg 1997 ozone maintenance area consisting of the Counties of Stafford and Spotsylvania and the City of Fredericksburg.
2. A comprehensive attainment year inventory of actual emissions from all sources of relevant ozone precursor pollutants (NO_x and VOC) for the year 2014.
3. Air quality data from 2001 to 2021 showing that the area is attaining the 1997 ozone NAAQS with a significant margin of safety.
4. Contingency measures in the unlikely situation where air quality monitors within the area record an exceedance of the 1997 ozone NAAQS.
5. Assurance that the Commonwealth will continue to operate an ozone monitoring network in accordance with 40 CFR Part 58 within the area.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations

(40 CFR 51.102). The proposal will be submitted as a revision to the Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. A cover page with the recipient's full mailing address as listed in this notice must be part of each fax. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. Comments must be submitted to Doris A. McLeod, Air Quality Planner, Department of Environmental Quality, 22nd Floor, 1111 East Main Street, P.O. Box 1105, Richmond, VA 23219, telephone (804) 659-1990, FAX (804) 698-4178, email doris.mcleod@deq.virginia.gov. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices website at <https://www.deq.virginia.gov/permits-regulations/public-notices/air>. The documents may also be obtained by contacting the DEQ representative provided in this notice. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA 23219, telephone (804) 659-1990, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3800.

Contact Information: Doris McLeod, Air Quality Planner, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 659-1900, FAX (804) 698-4178.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Town of Elkton

An enforcement action has been proposed for the Town of Elkton for the Elkton sewage treatment plant. Department of Environmental Quality (DEQ) proposes to issue an amendment with injunctive relief to Elkton to address upgrade requirements at the plant. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov from March 27, 2023, to April 25, 2023.

Contact Information: Celeste Horton, Regional Enforcement Specialist Senior, Department of Environmental Quality, 4411

Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Proposed Enforcement Action for Energix EPC US LLC, Caden Energix Axton LLC, Caden Energix Pamplin LLC, and Caden Energix Rives Road LLC

An enforcement action has been proposed for Energix EPC US LLC, Caden Energix Axton LLC, Caden Energix Pamplin LLC, and Caden Energix Rives Road LLC for violations of State Water Control Law and regulations at multiple solar facilities in Appomattox, Buckingham, Henry, King William, Prince George, and Wythe Counties in Virginia. The proposed order is available from the Department of Environmental Quality (DEQ) contact or at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The DEQ contact will accept written comments from March 27, 2023, to April 26, 2023.

Contact Information: Kristen Sadtler, Enforcement Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone 804-664-3864, or email kristen.sadtler@deq.virginia.gov.

Proposed Consent Special Order for Joseph Kauffman - Buckingham County

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Joseph Kauffman for alleged violation of the State Water Control Law at the property located at 2968 Buckingham Springs Road (Parcel 188-1-3), Dillwyn, Virginia (Latitude 37.4140, Longitude -78.4925). A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments from March 27, 2023, to April 26, 2023.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Proposed Consent Order for RMS Holding LLC

An enforcement action has been proposed for RMS Holding LLC for the Rockbridge Rivermont School wastewater treatment facility. Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty and injunctive relief to RMS Holding to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov from March 27, 2023, to April 25, 2023.

Contact Information: Celeste Horton, Regional Enforcement Specialist Senior, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Public Comment Opportunity for Environmental Variance - Loudoun County

Notice of action: The Department of Environmental Quality (DEQ) is considering the issuance of an order granting a local variance for data centers located in Loudoun County. A variance is an exception to a general rule. This notice is given in accordance with the requirements of § 10.1-1307 A and C of the Code of Virginia. A previous version of this variance received notice, comment, and a public hearing on February 27, 2023. The proposed variance is being revised based on the comments that DEQ received.

Regulations affected: The primary regulation affected by this action is 9VAC5-80-1110 C (at the definition of "emergency").

Purpose of notice: DEQ is seeking comments on the proposed variance.

Public comment period: The original notice called for a comment period from January 26, 2023, through March 14, 2023. This notice extends the comment period through April 21, 2023.

Public hearing: A public hearing was previously conducted on February 27, 2023. A new public hearing will be conducted, at 11 a.m. on April 6, 2023, at the Department of Environmental Quality, Northern Regional Office, Conference Room, 13901 Crown Court, Woodbridge VA.

Description of proposal: Data center operation relies on the use of large amounts of electricity from the grid. DEQ is concerned that Loudoun County is an area in which there may not be a sufficient amount of electricity for data centers due to severe, localized constraints in electricity transmission. A transmission constraint issue exists in the area that may affect the ability to provide enough electricity to data centers through 2025. In particular, the period between March and July 2023 has been identified as a time of potentially acute stress on the transmission capacity of the grid.

This proposed order and local variance would provide data centers located in Loudoun County a measure of relief from existing regulations and permit provisions that limit the use of Tier II and Tier IV emergency generators to periods of a Pennsylvania-New Jersey-Maryland Interconnection (PJM) declared emergency. This order proposes to allow such Tier II and Tier IV generators to operate during periods that PJM has initiated a "Maximum Generation Emergency/Load Management Alert" for the area under procedures established in Section 2.3 of the PJM Manual 13: Emergency Operations Revision 86, November 3, 2022. This order also proposes to allow such Tier II and Tier IV generators to operate during periods that PJM has declared a "Post Contingency Local Load Relief Warning" for Loudoun County under procedures established in Section 5.4 of PJM Manual 13. A "Maximum Generation Emergency/Load Management Alert" is called by PJM in anticipation of an imminent emergency but does not itself constitute a declaration of emergency under PJM's

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Manual 13. Likewise, a "Post Contingency Local Load Relief Warning" does not constitute a declared emergency by PJM either. The order would authorize onsite generators for the data centers to operate during times that fall short of a PJM declared emergency but when transmission constraints and strain on the electric grid nevertheless would be acute, thereby allowing the data centers to continue to serve their customers, maintain the integrity of the Internet, and alleviate demand on the electric grid during periods of stress. This order is being issued as a precautionary and redundant measure in the event that transmission constraints have a negative impact in the area.

Data centers would be required under the order and local variance to notify the department when the data centers are operating a Tier II or Tier IV emergency generator under the order's provisions and to calculate the air pollution emitted by each generator during those times. The proposed variance would not relieve data centers of any federal Environmental Protection Agency (EPA) environmental regulations or requirements, and each data center would still be subject to the annual emissions limits contained in their permits.

This order and variance would expire by July 31, 2023.

Locality affected: Loudoun County, Virginia. The department estimates that there are approximately 4,021 diesel-fueled Tier II generators and 130 Tier IV generators located at data centers in Loudoun County. In accordance with § 10.1-1307.01 A 1 of the Code of Virginia, the likely potential pollutants from a generator could include nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), carbon monoxide (CO), volatile organic compounds (VOCs), and sulfur dioxide (SO₂). The exact number and duration of events that may occur before the end of July 2023 triggering the variance cannot be predicted. If PJM does issue a Maximum Generation Emergency/Load Management Alert or a Post Contingency Local Load Relief Warning, DEQ anticipates it will be for a localized area within the proposed locality and not the whole area; therefore it is not expected that all data centers will need to operate their onsite generators. Further, many of the generators at a data center are redundant and not all would be expected to operate. Accordingly, the number of data centers and the number of generators affected will be much smaller than the total. Since data centers seldom have needed to use their onsite generators for emergency purposes, this action is a purely precautionary measure to prevent an emergency that affects wider areas. DEQ does not anticipate that any data center will need to use this variance.

History indicates that those PJM events are rare, averaging approximately 24 hours per year over the past five years (2018 through 2022). The following table sets forth the estimated hourly average emission rates for a single generator located at data centers in Loudoun County.

Pollutant	Estimated average hourly emissions (lbs/hr)	Estimated emissions for 24 hours per year of operation (tons)
NMHC + NO _x	44.69	0.54
Particulate Matter (PM)	1.40	0.017
Particulate Matter (PM ₁₀)*	1.58	0.019
Particulate Matter (PM _{2.5})*	1.58	0.019
Carbon monoxide (CO)	24.44	0.29
Sulfur dioxide (SO ₂)	0.04	0.0005

* The EPA tier standards combine NO_x with non-methane hydrocarbons (NMHCs). NMHCs are subset of VOCs and presented above as the estimates were derived from the tier standards.

**PM₁₀/PM_{2.5} are calculated using the PM value from Tier II standards with the addition of condensables from AP-42 3.4-5.

The hourly emissions rates for a Tier IV generator is typically lower than the emissions rate of a Tier II generator when the pollution controls are fully employed, but due to the limited use in the affected area, the estimates provided are conservatively based on the Tier II emissions standards with the exception of SO₂. SO₂ estimates are based on the average fuel throughput and a sulfur content of 0.0015% by weight. A single typical Tier II generator consumes approximately 174 gallons of diesel fuel per hour of operation.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record.

To review documents: The proposal is available on the DEQ Air Public Notices website at <https://www.deq.virginia.gov/permits-regulations/public-notices/air>. The documents may also be obtained by contacting the DEQ representative named in this notice. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, Suite 1400, 1111 East Main Street, Richmond, VA, telephone (804) 698-4000, and

2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact agency staff for public comments, document requests, and additional information.

Contact Information: Karen G. Sabasteanski, Office of Air Data Analysis and Planning, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment Opportunity - Draft Eligibility Manual

Draft Eligibility Manual Transmittal #DMAS-27, which outlines updates being considered for the Medical Assistance Eligibility Manual, is available at <https://www.dmas.virginia.gov/for-applicants/eligibility-guidance/transmittals/>. Comments must be submitted by March 31, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Public Comment Opportunity for Renewal Applications - Family and Individual Supports and Building Independence Waivers

The Department of Medical Assistance Services (DMAS) welcomes public comment regarding the submission of the renewal applications of the Family and Individual Supports and Building Independence 1915(c) Home and Community-Based Services Waivers to the U.S. Centers for Medicare and Medicaid Services.

Public comment deadline: March 29, 2023.

The 1915(c) HCBS Waiver renewal application can be accessed at <https://www.dmas.virginia.gov/for-providers/long-term-care/waivers/>.

DMAS is required to submit a renewal application every five years for the continuation of home and community-based services.

Instructions for public comment submissions: Comments may be posted on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/> or sent to ddwaiver@dmas.virginia.gov. Please include "Public Comment" in the title of the email. Comments may be sent

within the body of an email or submitted as a Microsoft Word document.

Commenters can also submit comments via postal mail to Jason Perkins, Program Manager/Waiver Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 <https://commonwealthcalendar.virginia.gov>.

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.

