



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 39 ISS. 19

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

May 8, 2023

### TABLE OF CONTENTS

<b>Register Information Page .....</b>	<b>2315</b>
<b>Publication Schedule and Deadlines .....</b>	<b>2316</b>
<b>Petitions for Rulemaking .....</b>	<b>2317</b>
<b>Periodic Reviews and Small Business Impact Reviews .....</b>	<b>2319</b>
<b>Notices of Intended Regulatory Action .....</b>	<b>2321</b>
<b>Regulations .....</b>	<b>2324</b>
4VAC20-950. Pertaining to Black Sea Bass (Final) .....	2324
12VAC5-90. Regulations for <b>Disease</b> Reporting and Control (Proposed) .....	2324
16VAC5-80. Adjudication (Fast-Track) .....	2345
16VAC15-60. Regulation Governing On-the-Job Training Programs or Other Training Programs (Proposed) .....	2349
18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (Forms) .....	2353
18VAC105-20. Regulations Governing the Practice of Optometry (Forms) .....	2354
18VAC110-20. Regulations Governing the Practice of Pharmacy (Forms) .....	2355
18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (Forms) .....	2355
18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (Forms) .....	2356
22VAC30-120. Adult Services Approved Providers (Final) .....	2357
24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (Proposed) .....	2368
<b>Governor .....</b>	<b>2375</b>
<b>Guidance Documents .....</b>	<b>2376</b>
<b>General Notices .....</b>	<b>2377</b>

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.



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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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](http://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 VA.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; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; 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.**

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### May 2023 through June 2024

<b><u>Volume: Issue</u></b>	<b><u>Material Submitted By Noon*</u></b>	<b><u>Will Be Published On</u></b>
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 ( <b>Tuesday</b> )	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
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Agency Decision

**Title of Regulation:** 9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule.

**Statutory Authority:** § 10.1-1197.6 of the Code of Virginia.

**Name of Petitioner:** Joni Lam.

**Nature of Petitioner's Request:** The following facts and deficiencies are submitted in response to Energix Renewable Energies 30-day comment period notice for the period November 9, 2022, through December 9, 2022, for a 15.68-megawatt Endless Caverns North Project utility scale solar site in Endless Caverns (and related Endless Caverns South). This comment period forms part and parcel of Energix's Permit by Rule (PBR) application to the Department of Environmental Quality (DEQ) dated October 2022. Because of Energix Renewable Energies' systematic abuse of the PBR process, this document is also a petition for DEQ to amend its existing regulation of solar project notices of intent (NOI). A copy of this PBR deficiency filing and included § 2.2-4007 of the Administrative Process Act petitions for new or amended regulations; opportunity for public comment has been filed with the DEQ, Governor of Virginia, the State Attorney General, and the petitioner's state and local representatives, as well as other interested parties.

Energix subverted community stakeholder interests and did not properly notify DEQ by its filing of a NOI until five months after its simultaneous December 8, 2021, preliminary site plan filing and the special use permit (SUP) vote. DEQ should mandate that all notices of intent for solar utilities under PBR be filed at least three months before the mandatory public meeting or six months before any county board of supervisor vote is taken on a special use permit. "As early in the project development process as practicable" should be further defined as "and at least three months before the mandatory public meeting or six months before any county board of supervisor vote." Any refile of notices of intent after a special use permit is issued should trigger a restart of the public meeting and SUP vote, or DEQ will not consider the SUP submitted with PBRs as valid.

Energix has faced denial of permits or has been forced to withdraw its applications in New Kent County (New Kent Solar LLC, November 2022), Pulaski County (Energix Helios Solar LLC, October 2022), Caroline County (Energix Racehorse Solar, September 2022), Dinwiddie County (Energix Lily Pond Solar, October 2021), and Franklin County. It appears that Energix is trying to mislead communities about its record by filing materially misleading NOIs or filing them too late in the process to have any impact on permitting. DEQ should mandate that all notices of intent

list the name of the owner-operator and the address of the official headquarters of the owner-operator, as opposed to misleading shared office space addresses.

As in Endless Caverns, Energix appears to be inundating counties and DEQ with proposed solar sites and with misleading NOIs in order to avoid HB206 environmental protections, which are to commence in 2024. DEQ should flag for extra scrutiny Energix PBR applications that have misleading NOIs or that have "out of sequence" document chronologies in order to protect communities from environmental harm.

Rockingham County stakeholders value the contribution of their farmers and property owners too much to allow Energix to hurt farmers who support repairs that DEQ has mandated. This PBR must fail because Energix appears to weaponize DEQ-mandated repair actions against innocent parties, and DEQ has no policies in place to protect landowners. DEQ should amend its administrative procedures so that operators of solar utilities are not allowed to financially jeopardize landowners cooperating with DEQ-mandated repairs.

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** Based on public comment and staff analysis, the Director of the Department of Environmental Quality is denying the petition for rulemaking for the following reasons:

1. The petition arrived during an active rulemaking to amend the solar PBR, and it is during that rulemaking that the concerns of the petitioner may be addressed, as appropriate.
2. All entities conducting business in the Commonwealth of Virginia must be registered with the Virginia State Corporation Commission (SCC). Owners of limited liability companies can be identified by performing an online search through the SCC's Business Entity Lookup. The business record will list the owner's name, status (whether the entity is in good standing with the state), annual report filing history, and registered agent.
3. DEQ does not have the authority to reject a permit application outright due to perceived past indiscretions by an applicant. Every complete permit application will be reviewed in accordance with the solar PBR regulation.

**Agency Contact:** Susan Tripp, Renewable Energy Permit-by-Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email [susan.tripp@deq.virginia.gov](mailto:susan.tripp@deq.virginia.gov).

V.A.R. Doc. No. PFR23-16; Filed April 11, 2023, 4:30 p.m.



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# Petitions for Rulemaking

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHYSICAL THERAPY

#### Initial Agency Notice

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

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

Name of Petitioner: Joseph Gianfortoni.

Nature of Petitioner's Request: The petitioner requests that the Board of Physical Therapy amend its regulations to define "invasive procedure." The petitioner additionally requests that the board amend its regulations to define the "practice of pelvic floor therapy" as a noninvasive procedure.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on May 8, 2023. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which will open on May 8, 2023, and will close on June 7, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment; currently that meeting is scheduled for August 10, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: June 7, 2023.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4674, or email [ptboard@dhp.virginia.gov](mailto:ptboard@dhp.virginia.gov).

VA.R. Doc. No. PFR23-28; Filed April 13, 2023, 2:17 p.m.

### BOARD OF COUNSELING

#### Initial Agency Notice

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.**

Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Kathy Johnson.

Nature of Petitioner's Request: The petitioner requests that qualified mental health professionals (QMHPs) who are dually registered to work with both children and adults; who have been exempted from certain requirements; who hold a Master's Degree or higher in social work, human services, or psychology; and who have more than 10 years professional work experience in mental or behavioral health should be

considered qualified supervisors for qualified mental health professional trainees.

The petitioner also requests that those who meet the requirements in this petition should be able to practice independently.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on May 8, 2023. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which will open on May 8, 2023, and will close on June 7, 2023. The Board of Counseling will consider the petition and all comments in support or opposition at the next meeting after the close of public comment; that meeting is currently scheduled for July 21, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: June 7, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

VA.R. Doc. No. PFR23-26; Filed April 5, 2023, 1:50 p.m.



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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### 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: **1VAC30-41, Regulation for the Certification of Laboratories Analyzing Drinking Water**. 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 May 8, 2023, and ends May 29, 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: Rhonda Bishton, Executive Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311.

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## TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

### VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **3VAC5-10, Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers; 3VAC5-11, Public Participation Guidelines; 3VAC5-20, Advertising; 3VAC5-30, Tied-House; 3VAC5-40, Requirements for Product Approval; 3VAC5-50, Retail Operations; 3VAC5-60, Manufacturers and Wholesalers Operations; and 3VAC5-70, Other Provisions.**

The notices of intended regulatory action to amend **3VAC5-10, 3VAC5-11, 3VAC5-20, 3VAC5-30, 3VAC5-40, 3VAC5-50, 3VAC5-60, and 3VAC5-70**, which are published in this issue of the Virginia Register, serve as the agency notices of announcement.

Contact Information: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

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## TITLE 9. ENVIRONMENT

### 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: **9VAC15-40, Small Renewable Energy Projects (Wind) 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 May 8, 2023, and ends May 29, 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, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470.

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# Periodic Reviews and Small Business Impact Reviews

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## STATE WATER CONTROL BOARD

### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC25-580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements;** and **9VAC25-590, Petroleum Underground Storage Tank Financial Responsibility Requirements.**

The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each 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 May 8, 2023, and ends May 29, 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: Renee T. Hooper, Tank Regulatory Programs Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1352.

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## TITLE 12. **HEALTH**

### STATE BOARD OF **HEALTH**

#### 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: **12VAC5-215, Rules and Regulations Governing **Health** Data Reporting.** 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 May 8, 2023, and ends May 29, 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: Kindall Bundy, Policy Analyst, Virginia Department of **Health**, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-191, Background Checks for Child Welfare Agencies**, and determined that this regulation should be amended. The board is publishing its report of findings dated October 19, 2022, to support this decision.

The regulation meets the criteria set forth in Executive Order 19 (2022). It provides the requirements for the protection of **health**, safety, and welfare of children and youth receiving services from child welfare agencies. The regulation is clearly written and easy to understand. The board recommends amending the regulation to clarify practice and align with the Code of Virginia.

No complaints or comments were received concerning the regulation. This regulation is not complex and does not duplicate or conflict with any federal or state law or regulation. It was last evaluated in 2016, and no factors have changed that impact the regulation. There is no economic impact of the regulation on small businesses, as background checks are already required in the Code of Virginia.

Contact Information: Alisa Foley, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7138.



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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

### VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-10, Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation, correcting any contradictions to the Code of Virginia.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

V.A.R. Doc. No. R23-7490; Filed April 13, 2023, 2:46 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-11, Public Participation Guidelines**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to remove from the regulation provisions that are in statute.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

V.A.R. Doc. No. R23-7506; Filed April 13, 2023, 2:47 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-20, Advertising**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

V.A.R. Doc. No. R23-7508; Filed April 13, 2023, 2:48 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-30,**

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# Notices of Intended Regulatory Action

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**Tied-House.** The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

VA.R. Doc. No. R23-7509; Filed April 13, 2023, 2:49 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-40, Requirements for Product Approval**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

VA.R. Doc. No. R23-7511; Filed April 13, 2023, 2:50 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-50, Retail Operations**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

VA.R. Doc. No. R23-7512; Filed April 13, 2023, 2:51 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-60, Manufacturers and Wholesalers Operations**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures, to clarify and consolidate the regulation, and to correct references to statute.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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

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# Notices of Intended Regulatory Action

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regulation (i) is necessary for the protection of public **health**, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

VA.R. Doc. No. R23-7513; Filed April 13, 2023, 2:51 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Alcoholic Beverage Control Authority (ABC) intends to consider amending **3VAC5-70, Other Provisions**. The purpose of the proposed action is to comprehensively review the regulation to conform it to current ABC processes and procedures and to clarify and consolidate the regulation.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: July 7, 2023.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email [latonya.hucks-watkins@virginiaabc.com](mailto:latonya.hucks-watkins@virginiaabc.com).

VA.R. Doc. No. R23-7514; Filed April 13, 2023, 2:53 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF OPTOMETRY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to put in place regulatory requirements mandated by the third enactment clause of Chapters 16 and 17 of the 2022 Acts of Assembly, which require the board to promulgate regulations regarding annual reporting by optometrists to the board of certain, specified information. The changes being considered establish a reporting system on the board's website to collect the following information: (i) any disciplinary action taken against a person licensed by the board in another state or in a federal **health** institution or voluntary surrender of a license in another state while under investigation; (ii) any malpractice judgment against a person licensed by the board; (iii) any settlement of a malpractice claim against a person licensed by the board; and (iv) any evidence that indicates a reasonable belief that a person licensed by the board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient, has or may have engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of optometry.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Comment Deadline: June 7, 2023.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

VA.R. Doc. No. R23-7539; Filed April 10, 2023, 10:54 a.m.



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

**Statutory Authority:** § 28.1-201 of the Code of Virginia.

**Effective Date:** May 1, 2023.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

#### Summary:

*The amendments establish season dates for the 2023 recreational black sea bass fishery.*

#### **4VAC20-950-45. Recreational possession limits and seasons.**

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from May 15 through ~~December 11~~ July 6 and August 9 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

VA.R. Doc. No. R23-7524; Filed April 25, 2023, 3:23 p.m.

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Proposed Regulation

**Title of Regulation:** **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-10, 12VAC5-90-80, 12VAC5-90-90, 12VAC5-90-103, 12VAC5-90-107, 12VAC5-90-140, 12VAC5-90-215, 12VAC5-90-225, 12VAC5-90-280, 12VAC5-90-370).**

**Statutory Authority:** §§ 32.1-12, 32.1-35, and 32.1-42 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** July 7, 2023.

**Agency Contact:** Kristin Collins, Policy Analyst, Office of Epidemiology, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7298, or email [kristin.collins@vdh.virginia.gov](mailto:kristin.collins@vdh.virginia.gov).

**Basis:** The State Board of Health is authorized by § 32.1-12 of the Code of Virginia to adopt such regulations as are necessary to carry out provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by the board, the State Health Commissioner, or the Virginia Department of Health (VDH). Section 32.1-35 of the Code of Virginia directs the board to promulgate regulations specifying which diseases occurring in the Commonwealth are to be reportable and the method by which they are to be reported. Section 32.1-42 of the Code of Virginia authorizes the board to promulgate regulations and orders to prevent a potential emergency caused by a disease dangerous to public health.

**Purpose:** The proposed changes are essential to protect the health and safety of citizens because the changes will improve the ability of VDH to conduct surveillance and implement disease control for conditions of public health concern. The changes will position VDH to better detect and respond to these illnesses to protect the health of the public.

**Substance:** Amendments to current regulation will (i) add, remove, and update definitions to enhance clarity; (ii) specify new timelines for submission of isolates or specimens for state public health laboratory testing; (iii) remove the list of isolates or specimens that must be forwarded for public health laboratory testing from 12VAC5-90-90 in this amendment because the list was added to 12VAC5-90-80 in another regulatory action; (iv) remove the requirement that physicians and directors of medical care facilities submit weekly counts of cases of influenza; (v) replace reporting by way of the Epi-



1 form with reporting through VDH's online morbidity reporting portal; (vi) add language that states that if a laboratory ascertains that the reference laboratory that tests a specimen reports to VDH electronically, then those reference laboratory findings do not need to be reported by the laboratory of origin; (vii) add language that clarifies that if a facility director reports on behalf of the laboratory, the laboratory is still responsible for submitting isolates or specimens for public health testing unless the laboratory has submitted an exemption request that has been approved by the department, thereby providing a process for opting out of the specimen forwarding requirement; (viii) remove language referencing the commissioner's role in enforcement of isolation and quarantine because it has been removed from the Code of Virginia; (ix) modify language to refer only to medications that are available in the United States for the treatment of ophthalmia neonatorum; (x) clarify that confirmatory testing is not required for blood lead levels that are below the Centers for Disease Control and Prevention (CDC) reference range on screening test; (xi) limit the reporting of select agents to only an annual report and those scenarios in which such agents are released, lost, or stolen; and (xii) require that health care facilities share with VDH any data they supply to CDC as a result of a requirement of the Centers for Medicare and Medicaid Services and not limited to the Hospital Inpatient Quality Reporting Program of that agency

Issues: The primary advantages to the public are the improved ability of the agency to control the risk of disease in the community based on timelier reporting through VDH's online morbidity reporting portal as well as removing the requirement to report weekly influenza counts or to report routine, nonemergency changes in select agent inventory. No disadvantages have been identified.

The primary advantage to the agency is that the proposed changes improve the focus of surveillance and ability of VDH to conduct surveillance and implement disease control for conditions of public health concern in a timely manner. The changes will position the agency to better detect and respond to these illnesses to protect the health of the public. No disadvantages have been identified.

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

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to: 1) reduce the required time within which laboratories must submit specimens to the Division of Consolidated Laboratory Services when specified diseases are detected, 2) amend the frequency of influenza reporting, 3) require laboratories to submit results of tests for tuberculosis infection, 4) change the required method of reporting morbidity (electronic rather than paper), 5) eliminate redundant reporting, 6) amend one of the criteria for testing a child's blood level, and 7) make several clarifying amendments.

Background. The Regulations for Disease Reporting and Control provide information about the process and procedures for reporting diseases to the Virginia Department of Health (VDH), including what diseases must be reported, who must report them and other details related to reporting and disease control.

Estimated Benefits and Costs. Under the current regulation, when a laboratory identifies evidence of any of numerous conditions listed in the regulation, it must submit the initial isolate (preferred) or other initial specimen to the Division of Consolidated Laboratory Services within seven days of identification. The Board proposes to instead require that the initial isolate be submitted within five days or the clinical specimen within two days of a positive result.

Under the current regulation, each individual case of influenza does not need to be reported to VDH (only the number of cases). Under the proposed regulation, each individual confirmed case of influenza would need to be reported to VDH.

The Board also proposes to newly require that laboratories submit results of tests for tuberculosis infection. VDH does not believe that this will require significant additional staff time. As the majority of major hospital systems and commercial labs in Virginia report to VDH electronically, these systems would need to update their algorithm to include results of tests for tuberculosis infection in the reports that they send.

These three proposed changes are moderately more burdensome for regulated entities, but enable VDH to more quickly be aware of disease outbreaks and to take appropriate action.

The Board proposes to change the required method of reporting morbidity from paper to electronic. According to VDH, the time required to complete a report through their electronic portal is comparable to that required to complete the paper form. Reporters are able to save time and money as entering into the portal removes the need to mail the paper form.

The current regulation requires that laboratory directors report any laboratory examination of any clinical specimen, whether performed in-house or referred to a reference laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of diseases specified in the regulation. The Board proposes to no longer require that the director of the laboratory of origin report to VDH if the laboratory director ascertains that the reference laboratory that tests a specimen reports to VDH electronically. This would save staff time for the laboratory of origin, and have no negative impact.

The Regulations for Disease Reporting and Control state that every child shall be tested to determine the blood lead level at 12 months and 24 months of age if the health care provider determines that the child meets any of the criteria listed in the regulation. Additionally, children 25 months through 72 months of age who present for medical care and meet any of the specified criteria shall also be tested if they have either not previously been tested for blood lead level or were previously tested but experienced a change since testing that has resulted

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# Regulations

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in an increased risk of lead exposure. One of the criteria under the current regulation is "The child is living in or regularly visiting a house, apartment, dwelling, structure, or child care facility built before 1960." The Board proposes to replace "1960" with "1950." According to VDH, this change is based upon the U.S. Centers for **Disease** Control and Prevention's determination that it is the homes built before 1950 that have high lead risk.

**Businesses and Other Entities Affected.** The proposed amendments potentially affect the 654 medical laboratories, 4,471 physician offices, 188 hospitals, 291 nursing homes, 184 assisted living facilities, and correctional facilities in Virginia, as well as the directors of these facilities, physicians, and administrative staff.<sup>2</sup> To the extent that the proposed amendments improve public **health**, all citizens of the Commonwealth are potentially affected.

The proposals to reduce the required time within which laboratories must submit specimens, and to newly require that laboratories submit results of tests for tuberculosis infection, would moderately increase costs for labs. The proposal to require that each individual confirmed case of influenza be reported would moderately increase costs for physician offices and other medical facilities. The proposal to change the required method of reporting morbidity from paper to electronic would save reporting entities time and money as entering into the portal removes the need to mail the paper form. The proposal to no longer require that the director of the laboratory of origin report to VDH if the laboratory director ascertains that the reference laboratory that tests a specimen reports to VDH electronically would save staff time for the laboratory of origin.

**Localities<sup>3</sup> Affected.**<sup>4</sup> The proposed amendments potentially affect all localities, and are not known to disproportionately affect particular localities. To the extent that some of the affected entities may be associated with local governments, the proposed amendments that affect costs, either positively or negatively as described above, would affect local governments.

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

**Effects on the Use and Value of Private Property.** The proposed amendments do not substantially affect the use and value of private property. The proposed amendments do not affect real estate development costs.

**Adverse Effect on Small Businesses.**<sup>5</sup>

**Types and Estimated Number of Small Businesses Affected.** The proposed amendments potentially affect the 651 small medical laboratories, 4,466 small physician offices, 134 small hospitals, 290 small nursing homes, 180 small assisted living facilities, and correctional facilities in the Commonwealth, as well as the directors of these facilities, physicians, and administrative staff.<sup>6</sup>

**Costs and Other Effects.** The proposals to reduce the required time within which laboratories must submit specimens, and to newly require that laboratories submit results of tests for tuberculosis infection, would moderately increase costs for small labs. The proposal to require that each individual confirmed case of influenza be reported would moderately increase costs for small physician offices and other small medical facilities.

**Alternative Method that Minimizes Adverse Impact.** There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

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<sup>2</sup>Data source: Virginia Employment Commission

<sup>3</sup>"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.

<sup>4</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>5</sup>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."

<sup>6</sup>Data source: Virginia Employment Commission

**Agency's Response to Economic Impact Analysis:** The Virginia Department of **Health** agrees with the findings of the economic impact analysis (EIA), with one clarification. The EIA prepared by the Department of Planning and Budget states that "Under the proposed regulation, each individual confirmed case of influenza with individual specific information would need to be reported to the local **health** department." VDH would like to clarify that is only intended for laboratory-confirmed tests, which would not include rapid point-of-care influenza tests such as those conducted in many physician offices; therefore, the burden on providers is expected to be minimal, as many conduct rapid influenza tests.

## Summary:

*The proposed amendments include (i) updating and clarifying terms and definitions; (ii) specifying new timelines for the submission of isolates or specimens for state public **health** laboratory testing; (iii) removing the list of isolates or specimens that must be forwarded for public **health** laboratory testing from 12VAC5-90-90 to avoid redundancy with 12VAC5-90-80; (iv) removing the requirement to report weekly counts of influenza diagnoses; (v) establishing morbidity reporting through the Virginia Department of **Health** (VDH) online reporting portal instead of reporting by way of the Form Epi-1, Confidentiality Morbidity Report; (vi) providing that reference laboratory findings do not need to be reported by the laboratory of origin if the laboratory ascertains that the reference laboratory reports to VDH electronically; (vii) clarifying that if a facility director reports on behalf of the laboratory, the laboratory is still responsible for submitting isolates or specimens for public **health** testing unless the laboratory has submitted an exemption request that has been approved by*



the department; (viii) referring only to medications that are available in the United States for the treatment of ophthalmia neonatorum; (ix) clarifying that confirmatory testing is not required for blood lead levels that are below the U.S. Centers for **Disease** Control and Prevention (CDC) reference range on screening test; (x) limiting the reporting of select agents to only an annual report and those scenarios in which such agents are released, lost, or stolen; and (xi) requiring that **health** care facilities share with VDH data supplied to CDC due as a result of a requirement of the U.S. Centers for Medicare and Medicaid Services and not limited to the Hospital Inpatient Quality Reporting Program of that agency.

*This action was originally submitted as a fast-track rulemaking action in 2019 that received more than 10 comments objecting to the use of the fast-track rulemaking process. The majority of commenters objected to the Virginia Department of **Health** receiving reports, which include personal information, of their influenza data. This action does not add any influenza reporting requirements. Instead, this amendment will strike "influenza should be reported by number of cases only (and type of influenza, if available)" to clarify that only confirmed influenza cases are required to be reported.*

## 12VAC5-90-10. Definitions.

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

"Affected area" means any part or the whole of the Commonwealth, which has been identified as where persons reside, or may be located, who are known to have been exposed to or infected with, or who are reasonably suspected to have been exposed to or infected with, a communicable **disease** of public **health** threat. "Affected area" shall include, ~~but not be limited to~~, cities, counties, towns, and subsections of such areas, public and private property, buildings, and other structures.

"Arboviral infection" means a viral illness that is transmitted by a mosquito, tick, or other arthropod. This includes, ~~but is not limited to~~, chikungunya (CHIK), dengue, eastern equine encephalitis (EEE), LaCrosse encephalitis (LAC), also known as California encephalitis, St. Louis encephalitis (SLE), West Nile virus (WNV), and Zika virus (Zika) infection.

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

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"CDC" means the Centers for **Disease** Control and Prevention of the U.S. Department of **Health** and Human Services.

"Child care center" means a child day center, child day program, family day home, family day system, or registered family day home as defined by § 63.2-100 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Commissioner" means the State **Health** Commissioner or ~~his~~ the State **Health** Commissioner's duly designated officer or agent, unless stated in a provision of this chapter that it applies to the State **Health** Commissioner in ~~his~~ the State **Health** Commissioner's sole discretion.

"Communicable **disease**" means an illness due to an infectious agent or its toxic products ~~which that~~ is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Communicable **disease** of public **health** significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes ~~but is not limited to~~ infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State **Health** Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public **health** significance.

"Communicable **disease** of public **health** threat" means an illness of public **health** significance, as determined by the State **Health** Commissioner in accordance with this chapter, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.

"Companion animal" means, consistent with the provisions of § 3.2-6500 of the Code of Virginia, any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this chapter.

"Condition" means any adverse **health** event, such as a **disease**, an infection, a syndrome, or as indicated by a procedure ~~including but not limited to~~ the results of a physical exam, laboratory test, or imaging interpretation,

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# Regulations

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suggesting that an exposure of public **health** importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact services" means a broad array of services that are offered to persons with infectious diseases and their contacts. Contact services include contact tracing, providing information about current infections, developing risk reduction plans to reduce the chances of future infections, and connecting to appropriate medical care and other services.

"Contact tracing" means the process by which an infected person or **health** department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Coronavirus infection, severe" means suspected or confirmed infection with severe acute respiratory syndrome (SARS)-associated coronavirus (SARS-CoV), Middle East respiratory syndrome (MERS)-associated coronavirus (MERS-CoV), or another coronavirus causing a severe acute illness.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy hazardous substances or organisms from a person, surface, or item to the point that such substances or organisms are no longer capable of causing adverse **health** effects and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the State Department of **Health**, also referred to as the Virginia Department of **Health** (VDH).

"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State **Health** Commissioner, to act on behalf of the commissioner or the board.

"Ehrlichiosis/Anaplasmosis" means human infections caused by Ehrlichia chaffeensis (formerly included in the category "human monocytic ehrlichiosis" or "HME"), Ehrlichia ewingii or Anaplasma phagocytophilum (formerly included in the category "human granulocytic ehrlichiosis" or "HGE").

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Essential needs" means basic human needs for sustenance, including ~~but not limited to~~ food, water, clothing, and **health** care (e.g., medications, therapies, testing, and durable medical equipment).

"Exceptional circumstances" means the presence, as determined by the commissioner in ~~his~~ the commissioner's sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable **disease** of public **health** threat. Factors to be considered include ~~but are not limited to:~~ (i) characteristics or suspected characteristics of

the **disease**-causing organism or suspected **disease**-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of **disease** spread, the potential for extensive **disease** spread, and the existence and availability of demonstrated effective treatment; (ii) known or suspected risk factors for infection; (iii) the potential magnitude of the effect of the **disease** on the **health** and welfare of the public; and (iv) the extent of voluntary compliance with public **health** recommendations. The determination of exceptional circumstances by the commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.

"Foodborne outbreak" means two or more cases of a similar illness acquired through the consumption of food contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include ~~but are not limited to~~ heavy metal intoxication, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Shiga toxin-producing Escherichia coli infection.

~~"Healthcare-associated~~ **"Health** care-associated infection" (also known as nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent ~~or agents~~ or its toxin ~~or toxins~~ that (i) occurs in a patient in a **health** care ~~setting facility~~ (e.g., a ~~hospital~~ medical care facility or outpatient clinic), ~~and~~ (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, ~~and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.~~

~~"Hepatitis C, acute" means the following clinical characteristics are met: (i) discrete onset of symptoms indicative of viral hepatitis and (ii) jaundice or elevated serum aminotransferase levels and the following laboratory criteria are met: (a) serum alanine aminotransferase levels (ALT) greater than 200 IU/L; (b) IgM anti HAV negative (if done); (c) IgM anti HBc negative (if done); and (d) hepatitis C virus antibody (anti HCV) positive, HCV antigen positive, or HCV RNA positive by nucleic acid test.~~

~~"Hepatitis C, chronic" means that the laboratory criteria specified in clauses (b), (c) and (d) listed above for an acute case are met but clinical signs or symptoms of acute viral hepatitis are not present and serum alanine aminotransferase (ALT) levels do not exceed 200 IU/L. This category will include cases that may be acutely infected but not symptomatic.~~

"Immunization" means a procedure that increases the protective response of an individual's immune system to specified pathogens.

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including

fine needle aspiration biopsy and bone marrow specimen examination services, ~~which that~~ reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Individual" means a person or companion animal. When the context requires it, "person ~~or persons~~" shall be deemed to include any individual.

"Infection" means the entry and multiplication or persistence of a **disease**-causing organism (prion, virus, bacteria, fungus, parasite, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).

"Influenza A, novel virus" means infection of a human with an influenza A virus subtype that is different from currently circulating human influenza H1 and H3 viruses. Novel subtypes include H2, H5, H7, and H9 subtypes or influenza H1 and H3 subtypes originating from a nonhuman species or from genetic reassortment of human and animal influenza viruses.

"Invasive" means the organism is affecting a normally sterile site, including ~~but not limited to~~ blood or cerebrospinal fluid.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a **disease** occurrence.

"Isolation" means the physical separation, including confinement or restriction of movement, of ~~an individual or~~ individuals who are infected with, or are reasonably suspected to be infected with, a communicable **disease** in order to prevent or limit the transmission of the communicable **disease** to uninfected and unexposed individuals.

"Isolation, complete" means the full-time confinement or restriction of movement of an individual ~~or individuals~~ infected with, or reasonably suspected to be infected with, a communicable **disease** in order to prevent or limit the transmission of the communicable **disease** to uninfected and unexposed individuals.

"Isolation, modified" means a selective, partial limitation of freedom of movement or actions of an individual ~~or individuals~~ infected with, or reasonably suspected to be infected with, a communicable **disease**. Modified isolation is designed to meet particular situations and includes ~~but is not limited to~~ the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit **disease** transmission.

"Isolation, protective" means the physical separation of a susceptible individual ~~or individuals~~ not infected with, or not reasonably suspected to be infected with, a communicable **disease** from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent

the individual ~~or individuals~~ from acquiring the communicable **disease**.

"Laboratory" means a clinical laboratory that examines materials derived from the human body for the purpose of providing information on the diagnosis, prevention, or treatment of **disease**.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

~~"Lead, reportable levels" means any detectable blood lead level in children 15 years of age and younger and levels greater than or equal to 5 µg/dL in a person older than 15 years of age.~~

"Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from **disease** transmission.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who is licensed by the Board of Medicine as a certified professional midwife.

"National Healthcare Safety Network" or "NHSN" means a surveillance system created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with **health** care delivery.

"Nucleic acid detection" means laboratory testing of a clinical specimen to determine the presence of deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) specific for an infectious agent using any method, including hybridization, sequencing, or amplification such as polymerase chain reaction.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or **disease** that is indicative of a work-related exposure. Such conditions include ~~but are not limited to~~ silicosis, asbestosis, byssinosis, pneumoconiosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a **disease** than expected.

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# Regulations

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"Period of communicability" means the time ~~or times~~ during which the etiologic agent may be transferred directly or indirectly from an infected person to another person; or from an infected animal to a person.

"Physician" means any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.

"Quarantine" means the physical separation, including confinement or restriction of movement, of ~~an individual or~~ individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable **disease** and who do not yet show signs or symptoms of infection with the communicable **disease** in order to prevent or limit the transmission of the communicable **disease** of public **health** threat to unexposed and uninfected individuals.

"Quarantine, complete" means the full-time confinement or restriction of movement of ~~an individual or~~ individuals who do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable **disease** of public **health** threat in order to prevent the transmission of the communicable **disease** of public **health** threat to uninfected individuals.

"Quarantine, modified" means a selective, partial limitation of freedom of movement or actions of ~~an individual or~~ individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable **disease** of public **health** threat. Modified quarantine may be designed to meet particular situations and includes ~~but is not limited to~~ limiting movement to the home, work, or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit **disease** transmission.

"Reportable **disease**" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, ~~which~~ that affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or religious school that offers instruction at any level or grade from kindergarten through grade 12; and (iii) any private or religious nursery school or preschool, or any private or religious child care center required to be licensed by the Commonwealth.

"Serology" means the testing of blood, serum, or other body fluids for the presence of antibodies or other markers of an infection or **disease** process.

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public **health**

practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a **disease** or condition. Factors that affect an individual's susceptibility include ~~but are not limited to~~ physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization history, or use of medications.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical, or biological properties, to pose a substantial risk of death or impairment either immediately or over time; to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation, which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tubercle bacilli" means **disease**-causing organisms belonging to the *Mycobacterium tuberculosis* complex and includes *Mycobacterium tuberculosis*, *Mycobacterium africanum*, *Mycobacterium bovis*, ~~and *Mycobacterium africanum*~~ *Mycobacterium canetti*, *Mycobacterium microti*, *Mycobacterium caprae*, or other members as may be established by the commissioner.

~~"Tuberculin skin test (TST)" means a test for demonstrating infection with tubercle bacilli, performed according to the Mantoux method, in which 0.1 ml of 5 TU strength tuberculin purified protein derivative (PPD) is injected intradermally on the volar surface of the arm. Any reaction is observed 48-72 hours after placement and palpable induration is measured across the diameter transverse to the long axis of the arm. The measurement of the indurated area is recorded in millimeters and the significance of the measured induration is based on existing national and department guidelines.~~

~~"Tuberculosis" means a **disease** caused by tubercle bacilli.~~

"Tuberculosis, active **disease**" (also "active tuberculosis **disease**" and "active TB **disease**"), as defined by § 32.1-49.1 of the Code of Virginia, means a communicable **disease** caused by an airborne microorganism and characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or nucleic acid amplification, including preliminary identification by rapid methodologies; (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to contain tubercle bacilli as evidenced by smear, and where sufficient clinical and radiographic evidence of active tuberculosis **disease** is present as determined by a physician licensed to practice medicine in Virginia; or (iii)



sufficient clinical and radiographic evidence of active tuberculosis **disease** as determined by the commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing, or suspected of containing, tubercle bacilli is unobtainable.

"Tuberculosis infection ~~in children age <4 years~~" means a ~~significant reaction resulting from a tuberculin skin test (TST) or other approved test for latent infection without positive result from a test for tuberculosis infection without clinical or radiographic other~~ evidence of active tuberculosis **disease**, ~~in children from birth up to their fourth birthday.~~

"Vaccinia, **disease** or adverse event" means vaccinia infection or serious or unexpected events in persons who received the smallpox vaccine or their contacts, including ~~but not limited to~~ bacterial infections, eczema vaccinatum, erythema multiforme, generalized vaccinia, progressive vaccinia, inadvertent inoculation, post-vaccinal encephalopathy or encephalomyelitis, ocular vaccinia, and fetal vaccinia.

"Waterborne outbreak" means two or more cases of a similar illness acquired through the ingestion of or other exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include ~~but are not limited to~~ giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.

## 12VAC5-90-80. Lists of diseases that shall be reported.

A. Reportable **disease** list. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (\*) require immediate communication to the local **health** department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis, unless otherwise specified in this section. Neonatal Abstinence Syndrome shall be reported as specified in subsection E of this section. Coronavirus **disease** 2019 (SARS-CoV-2) shall be reported as specified in subsection I of the section.

Amebiasis (*Entamoeba histolytica*)

\*Anthrax (*Bacillus anthracis*)

Arboviral infections (e.g., CHIK, dengue, EEE, LAC, SLE, WNV, Zika)

Babesiosis (*Babesia* spp.)

\*Botulism (*Clostridium botulinum*)

\*Brucellosis (*Brucella* spp.)

Campylobacteriosis (*Campylobacter* spp.)

Candida auris, infection or colonization

Carbapenemase-producing organism, infection or colonization

Chancroid (*Haemophilus ducreyi*)

Chickenpox (*Varicella* virus)

Chlamydia trachomatis infection

\*Cholera (*Vibrio cholerae* O1 or O139)

\*Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Coronavirus **disease** 2019 (COVID-19 or SARS-CoV-2)

Cryptosporidiosis (*Cryptosporidium* spp.)

Cyclosporiasis (*Cyclospora* spp.)

\*Diphtheria (*Corynebacterium diphtheriae*)

\***Disease** caused by an agent that may have been used as a weapon

Ehrlichiosis/Anaplasmosis (*Ehrlichia* spp., *Anaplasma phagocytophilum*)

Giardiasis (*Giardia* spp.)

Gonorrhea (*Neisseria gonorrhoeae*)

Granuloma inguinale (*Calymmatobacterium granulomatis*)

\**Haemophilus influenzae* infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

\*Hepatitis A

Hepatitis B (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza, confirmed

\*Influenza-associated deaths if younger than 18 years of age

Lead, blood levels

Legionellosis (*Legionella* spp.)

Leprosy (Hansen's **disease**) (*Mycobacterium leprae*)

Leptospirosis (*Leptospira interrogans*)

Listeriosis (*Listeria monocytogenes*)

Lyme **disease** (*Borrelia* spp.)

Lymphogranuloma venereum (*Chlamydia trachomatis*)

Malaria (*Plasmodium* spp.)

\*Measles (Rubeola)

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# Regulations

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\*Meningococcal **disease** (Neisseria meningitidis)

Mumps

Neonatal abstinence syndrome (NAS)

Ophthalmia neonatorum

\*Outbreaks, all (including foodborne, **health** care-associated, occupational, toxic substance-related, waterborne, and any other outbreak)

\*Pertussis (Bordetella pertussis)

\*Plague (Yersinia pestis)

\*Poliovirus infection, including poliomyelitis

\*Psittacosis (Chlamydophila psittaci)

\*Q fever (Coxiella burnetii)

\*Rabies, human and animal

Rabies treatment, post-exposure

\*Rubella, including congenital rubella syndrome

Salmonellosis (Salmonella spp.)

Shiga toxin-producing Escherichia coli infection

Shigellosis (Shigella spp.)

\*Smallpox (Variola virus)

Spotted fever rickettsiosis (Rickettsia spp.)

Streptococcal **disease**, Group A, invasive or toxic shock

Streptococcus pneumoniae infection, invasive if younger than five years of age

Syphilis (Treponema pallidum) report \*congenital, \*primary, \*secondary, and other

Tetanus (Clostridium tetani)

Toxic substance-related illness

Trichinosis (Trichinellosis) (Trichinella spiralis)

\*Tuberculosis, active **disease** (Mycobacterium tuberculosis complex)

Tuberculosis infection

\*Tularemia (Francisella tularensis)

\*Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi)

\*Unusual occurrence of **disease** of public **health** concern

\*Vaccinia, **disease** or adverse event

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

\*Vibriosis (Vibrio spp.)

\*Viral hemorrhagic fever

\*Yellow fever

Yersiniosis (Yersinia spp.)

B. Conditions reportable by directors of laboratories. Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, conditions, and toxic effects specified in this subsection for humans. Such tests include microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences. Additional condition-specific requirements are noted in this subsection and subsection D of this section. Conditions identified by an asterisk (\*) require immediate communication to the local **health** department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis (Entamoeba histolytica)

\*Anthrax (Bacillus anthracis)

Arboviral infection, for example, CHIK, dengue, EEE, LAC, SLE, WNV, or Zika

Babesiosis (Babesia spp.)

\*Botulism (Clostridium botulinum)

\*Brucellosis (Brucella spp.)

Campylobacteriosis (Campylobacter spp.)

Candida auris - Include available antimicrobial susceptibility findings in report.

Carbapenemase-producing organism - Include available antimicrobial susceptibility findings in report.

Chancroid (Haemophilus ducreyi)

Chickenpox (Varicella virus)

Chlamydia trachomatis infection

\*Cholera (Vibrio cholerae O1 or O139)

\*Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Coronavirus **disease** 2019 (COVID-19 or SARS-CoV-2)

Cryptosporidiosis (Cryptosporidium spp.)

Cyclosporiasis (Cyclospora spp.)

\*Diphtheria (Corynebacterium diphtheriae)

Ehrlichiosis/Anaplasmosis (Ehrlichia spp., Anaplasma phagocytophilum)

Giardiasis (Giardia spp.)



Gonorrhea (*Neisseria gonorrhoeae*) - Include available antimicrobial susceptibility findings in report.

\**Haemophilus influenzae* infection, invasive

Hantavirus pulmonary syndrome

\*Hepatitis A

Hepatitis B (acute and chronic) - For All hepatitis B patients, also report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis C (acute and chronic) - For all patients with any positive HCV test, also report all results of HCV viral load tests, including undetectable viral loads and report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis, other acute viral - Any finding indicative of acute infection with hepatitis D, E, or other cause of viral hepatitis. For any reportable hepatitis finding, submit all available results from the hepatitis panel.

Human immunodeficiency virus (HIV) infection - For HIV-infected patients, report all results of CD4 and HIV viral load tests, including undetectable viral loads. For HIV-infected patients, report all HIV genetic nucleotide sequence data associated with HIV drug resistance tests by electronic submission. For children younger than three years of age, report all tests regardless of the test findings (e.g., negative or positive).

Influenza, confirmed- By culture, antigen detection by direct fluorescent antibody (DFA), or nucleic acid detection.

Lead, blood levels - All lead results from tests of venous or capillary blood performed by a laboratory certified by the Centers for Medicare and Medicaid Services in accordance with 42 USC § 263a, the Clinical Laboratory Improvement Amendment of 1988 (CLIA-certified).

Legionellosis (*Legionella* spp.)

Leptospirosis (*Leptospira interrogans*)

Listeriosis (*Listeria monocytogenes*), invasive or if associated with miscarriage or stillbirth from placental or fetal tissue

Lyme **disease** (*Borrelia* spp.)

Malaria (*Plasmodium* spp.)

\*Measles (Rubeola)

\*Meningococcal **disease** (*Neisseria meningitidis*), invasive - Include identification of gram-negative diplococci.

Mumps

\*Mycobacterial diseases - (See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli;
2. *M. tuberculosis* complex or any other mycobacteria; or
3. Antimicrobial susceptibility results for *M. tuberculosis* complex.

\*Pertussis (*Bordetella pertussis*)

\*Plague (*Yersinia pestis*)

\*Poliovirus infection

\*Psittacosis (*Chlamydia psittaci*)

\*Q fever (*Coxiella burnetii*)

\*Rabies, human and animal

\*Rubella

Salmonellosis (*Salmonella* spp.)

Shiga toxin-producing *Escherichia coli* infection

Shigellosis (*Shigella* spp.)

\*Smallpox (*Variola* virus)

Spotted fever rickettsiosis (*Rickettsia* spp.)

Streptococcal **disease**, Group A, invasive or toxic shock

*Streptococcus pneumoniae* infection, invasive if younger than five years of age

\*Syphilis (*Treponema pallidum*)

Toxic substance-related illness - By blood or urine laboratory findings above the normal range, including heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (Trichinellosis) (*Trichinella spiralis*)

Tuberculosis infection

\*Tularemia (*Francisella tularensis*)

\*Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi A, *Salmonella* Paratyphi B, *Salmonella* Paratyphi C)

\*Vaccinia, **disease** or adverse event

Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection - Include available antimicrobial susceptibility findings in report.

\*Vibriosis (*Vibrio* spp., *Photobacterium damsela*, *Grimontia hollisae*), other than toxigenic *Vibrio cholera* O1 or O139, which are reportable as cholera

\*Viral hemorrhagic fever

\*Yellow fever

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# Regulations

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Yersiniosis (Yersinia spp.)

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases because of their extremely contagious nature, potential for greater harm, or availability of a specific intervention that must be administered in a timely manner require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed in this subsection, shall be made immediately by the most rapid means available, preferably by telephone to the local **health** department. (These same diseases are also identified by an asterisk (\*) in subsections A and B, where applicable, of this section.)

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

Brucellosis (Brucella spp.)

Cholera (Vibrio cholerae O1 or O139)

Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Diphtheria (Corynebacterium diphtheriae)

**Disease** caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

Influenza-associated deaths if younger than 18 years of age

Influenza A, novel virus

Measles (Rubeola virus)

Meningococcal **disease** (Neisseria meningitidis)

Outbreaks, all

Pertussis (Bordetella pertussis)

Plague (Yersinia pestis)

Poliovirus infection, including poliomyelitis

Psittacosis (Chlamydophila psittaci)

Q fever (Coxiella burnetii)

Rabies, human and animal

Rubella, including congenital rubella syndrome

Smallpox (Variola virus)

Syphilis, congenital, primary, and secondary (Treponema pallidum)

Tuberculosis, active **disease** (Mycobacterium tuberculosis complex)

Tularemia (Francisella tularensis)

Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi (all types))

Unusual occurrence of **disease** of public **health** concern

Vaccinia, **disease** or adverse event

Vibriosis (Vibrio spp., Photobacterium damsela, Grimontia hollisae), other than toxigenic Vibrio cholerae O1 or O139, which are reportable as cholera

Viral hemorrhagic fever

Yellow fever

D. Submission of initial isolate or other specimen for further public **health** testing. A laboratory identifying evidence of any of the conditions in this subsection shall notify the local **health** department of the positive culture or other positive test result within the timeframes specified in subsection B of this section and submit the initial isolate (preferred) ~~or other initial specimen~~ within five days or the clinical specimen within two days of a positive result to the Division of Consolidated Laboratory Services or other public **health** laboratory where specified in this subsection ~~within seven days of identification~~. All specimens must be identified with the patient and physician information required in 12VAC5-90-90 B.

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

Brucellosis (Brucella sp.)

Candida auris

Candida haemulonii

Carbapenem-resistant ~~Enterobacteriaceae~~ Enterobacterales

Carbapenem-resistant Pseudomonas aeruginosa

Cholera (Vibrio cholerae O1 or O139)

Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Diphtheria (Corynebacterium diphtheriae)

Haemophilus influenzae infection, invasive

Influenza, unsubtypeable

Listeriosis (Listeria monocytogenes)

Meningococcal **disease** (Neisseria meningitidis)

Plague (Yersinia pestis)

Poliovirus infection

Q fever (Coxiella burnetii)

Salmonellosis (Salmonella spp.)

Shiga toxin-producing E. coli infection (Laboratories that identify a Shiga toxin but do not perform simultaneous

culture for Shiga toxin-producing *E. coli* should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)

Shigellosis (*Shigella* spp.)

Streptococcal **disease**, Group A, invasive

Tuberculosis (A laboratory identifying *Mycobacterium tuberculosis* complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)

Tularemia (*Francisella tularensis*)

Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi (all types))

Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection

Vibriosis (*Vibrio* spp., *Photobacterium damsela*, *Grimontia hollisae*)

Yersiniosis (*Yersinia* spp.)

Other diseases as may be requested by the **health** department.

E. Neonatal abstinence syndrome. Neonatal abstinence syndrome shall be reported by physicians and directors of medical care facilities when a newborn has been diagnosed with neonatal abstinence syndrome, a condition characterized by clinical signs of withdrawal from exposure to prescribed or illicit drugs. Reports shall be submitted within one month of diagnosis by entering the information into the Department of **Health's** online Confidential Morbidity Report portal (<http://www.vdh.virginia.gov/clinicians>).

F. Outbreaks. The occurrence of outbreaks or clusters of any illness that may represent a group expression of an illness that may be of public **health** concern shall be reported to the local **health** department immediately by the most rapid means available, preferably by telephone.

G. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public **health** or safety, the report of such illness shall be made immediately by the most rapid means available, preferably by telephone.

H. Unusual occurrence of **disease** of public **health** concern. Unusual or emerging conditions of public **health** concern shall be reported to the local **health** department immediately by the most rapid means available, preferably by telephone. In addition, the commissioner or the commissioner's designee

may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the **disease**, and to identify and implement appropriate action to protect public **health**. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

I. Coronavirus **disease** 2019 (SARS-CoV-2). COVID-19 shall be reported by physicians and directors of medical care facilities when a person who is infected with or who is suspected of having COVID-19 is treated or examined, hospitalized, or admitted into the intensive care unit. Physicians and directors of medical care facilities shall report that person's name, telephone number, address, age, date of birth, race, ethnicity, sex, and pregnancy status; name of **disease** diagnosed or suspected; the medical record number (if applicable); the date of onset of illness; available laboratory tests and results; and the name, address, and telephone number of the physician and medical facility where the examination was made. Case reports shall be submitted within three days of the suspicion or confirmation of **disease** by entering the information into the Department of **Health** online Confidential Morbidity Report portal at <http://www.vdh.virginia.gov/clinicians> or via electronic case reporting (<https://www.vdh.virginia.gov/meaningful-use/meaningful-use-submissions-of-electronic-case-reports/>).

J. Positive SARS-CoV-2 tests shall be reported by directors of laboratories, including other entities that hold Clinical Laboratory Improvement Amendments Certificates of Waiver. Each report shall give the source of the specimen and the laboratory method and result; the name, telephone number, email address, address, age, date of birth, race, ethnicity, sex, and pregnancy status (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician at whose request and medical facility at which the examination was made. Reports shall be submitted within three days of identification of evidence of **disease**. Reports shall be made by entering information into the department's available portal for laboratory reporting at <http://www.vdh.virginia.gov/clinicians> or via electronic laboratory reporting at <http://www.vdh.virginia.gov/meaningful-use/submissionofreportablelabresults>.

## 12VAC5-90-90. Those required to report.

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable **disease** or condition shall report, at a minimum, that person's name, address, age, date of birth, race, ethnicity, sex, and pregnancy status for females; name of **disease** diagnosed or suspected; the date of onset of illness; available laboratory tests and results; and the name, address, and telephone number of the physician and medical facility where the examination

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# Regulations

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was made, ~~except that influenza should be reported by number of cases only (and type of influenza, if available).~~ Reports are to be made to the local **health** department serving the jurisdiction where the physician practices. A physician may designate someone to report on his behalf, but the physician remains responsible for ensuring that the appropriate report is made. Any physician, designee, or organization making such report as authorized herein in this section shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made ~~on a Form Epi-1, a computer generated printout containing the data items requested on Form Epi-1, within the timeframes specified in 12VAC5-90-80 to the local **health** department serving the jurisdiction in which the facility is located. Reports shall be made via the Virginia Department of **Health**'s online Confidential Morbidity Report portal at <http://www.vdh.virginia.gov/clinicians> or a CDC or VDH **disease**-specific surveillance form that provides the same information and shall be made within three days of the suspicion or confirmation of **disease** except that those identified in 12VAC5-90-80-C shall be reported immediately by the most rapid means available, preferably by telephone, to the local **health** department serving the jurisdiction in which the facility is located.~~ Reporting may be done by means of secure electronic transmission upon agreement of the physician and the department.

Additional elements are required to be reported for individuals with confirmed or suspected active tuberculosis **disease**. Refer to Part X (12VAC5-90-225 et seq.) for details on these requirements.

B. Directors of laboratories. Laboratory directors shall report any laboratory examination of any clinical specimen, ~~whether performed in-house or referred to an out-of-state laboratory, which that yields evidence, by the laboratory method indicated or any other confirmatory test, of a **disease** listed in 12VAC5-90-80 B.~~ Laboratory directors shall report results that are performed in-house or referred to a reference laboratory, with the following exception: if the laboratory director ascertains that the reference laboratory that tests a specimen reports to the department electronically, then those reference laboratory findings do not need to be reported by the laboratory of origin.

Each report shall give the source of the specimen and the laboratory method and result; the name, address, age, date of birth, race, ethnicity, sex, and pregnancy status for females (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician at whose request and medical facility at which the examination was made. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within three days of identification of evidence of **disease**, except that those identified in 12VAC5-90-80-C shall be reported immediately by the most rapid means available, preferably by telephone, the timeframes specified in 12VAC5-90-80 to the local **health** department serving the jurisdiction in which the laboratory is

located. Reports shall be made ~~on Form Epi-1 via the department's online Confidential Morbidity Report portal or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Reporting may be done by means of secure electronic transmission upon agreement of the laboratory director and the department. Reports of HIV genetic nucleotide sequence data associated with HIV drug resistance tests must be submitted electronically. Any person making such report as authorized herein in this section shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.~~

~~A laboratory identifying evidence of any of the following conditions shall notify the local **health** department of the positive culture or other positive test result within the timeframes specified in 12VAC5-90-80 and submit the initial isolate or other initial specimen to the Division of Consolidated Laboratory Services within seven days of identification. All specimens must be identified with the patient and physician information required in this subsection.~~

~~Anthrax~~

~~Botulism~~

~~Brucellosis~~

~~Cholera~~

~~Diphtheria~~

~~E. coli infection, Shiga toxin producing. (Laboratories that use a Shiga toxin EIA methodology but do not perform simultaneous culture for Shiga toxin producing E. coli should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)~~

~~Haemophilus influenzae infection, invasive~~

~~Influenza A, novel virus~~

~~Listeriosis~~

~~Meningococcal **disease**~~

~~Pertussis~~

~~Plague~~

~~Poliovirus infection~~

~~Q fever~~

~~Salmonellosis~~

~~Shigellosis~~

~~Streptococcal **disease**, Group A, invasive~~

~~Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the~~



~~Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)~~

~~Tularemia~~

~~Typhoid/Paratyphoid fever~~

~~Vancomycin intermediate or vancomycin-resistant Staphylococcus aureus infection~~

~~Vibrio infection, including infections due to Photobacterium damsela and Grimontia hollisae~~

~~Yersiniosis~~

~~Other diseases as may be requested by the health department~~

When a clinical specimen yields evidence indicating the presence of a select agent or toxin as defined by federal regulations in 42 CFR Part 73, the person in charge of the laboratory shall contact the Division of Consolidated Laboratory Services and arrange to forward an isolate for confirmation. If a select agent or toxin has been confirmed in a clinical specimen, the laboratory director shall consult with Division of Consolidated Laboratory Services or CDC regarding isolate transport or destruction.

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to notify the local health department when the director of that medical care facility assumes the reporting responsibility; however, laboratories are still required to submit isolates to the Division of Consolidated Laboratory Services or other designated laboratory as noted in this subsection 12VAC5-90-80 D unless the laboratory has submitted an exemption request that has been approved by the department.

C. Persons in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12VAC5-90-80 A unless he the person in charge of a medical care facility has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein in this section shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient, and emergency care departments within the medical care facility. Such report shall contain the patient's name, address, age, date of birth, race, ethnicity, sex, and pregnancy status for females; name of disease being reported; available laboratory tests and results; the date of admission; medical record number; date expired (when applicable); and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within three days of the suspicion or confirmation of disease except that those identified in 12VAC5-90-80 C shall be reported immediately by the most rapid means available, preferably by telephone, the

timeframes specified in 12VAC5-90-80 to the local health department serving the jurisdiction in which the facility is located. Reports shall be made on Form Epi 1, a computer generated printout containing the data items requested on Form Epi 1, via the Virginia Department of Health's online Confidential Morbidity Report portal at <http://www.vdh.virginia.gov/clinicians> or a CDC or VDH disease-specific surveillance form that provides the same information. Reporting may be done by means of secure electronic transmission upon agreement of the medical care facility and the department.

A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.

D. Persons in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, or a school, child care center, or summer camp. Any person in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, or a school, child care center, or summer camp as defined in § 35.1-1 of the Code of Virginia shall report immediately to the local health department the presence or suspected presence in his the person in charge's program, service, facility, school, child care center, or summer camp of persons who have common symptoms suggesting an outbreak situation. Such persons person in charge may report additional information, including identifying and contact information for individuals with communicable diseases of public health concern or individuals who are involved in outbreaks that occur in their the person in charge's facilities, as necessary to facilitate public health investigation and disease control. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward any report of a disease or report of evidence of a disease which that has been made on a resident of his the local health director's jurisdiction to the Office of Epidemiology within three days of receipt. This report shall be submitted immediately by the most rapid means available if the disease is one requiring rapid communication, as required in 12VAC5-90-80 C. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology, by either a paper report or entry into a shared secure electronic disease surveillance system, within three days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's the appropriate local health director's jurisdiction or to the Office of Epidemiology on individuals residing outside Virginia. The Office of Epidemiology shall be responsible for notifying other state health departments of reported illnesses in their residents of other state health departments and for notifying CDC as necessary and appropriate.

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# Regulations

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F. Persons in charge of hospitals, nursing facilities or nursing homes, assisted living facilities, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing facility or nursing home, assisted living facility, or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or ~~his the person practicing funeral services's~~ agent if the dead person was known to have had, immediately prior to death, an infectious **disease** which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

Coronavirus, severe (e.g., SARS-CoV, MERS-CoV)

Creutzfeldt-Jakob **disease**

Human immunodeficiency virus (**HIV**) infection

Hepatitis B (acute and chronic)

Hepatitis C (acute and chronic)

Rabies

Smallpox (Variola virus)

Syphilis, infectious (Treponema pallidum)

Tuberculosis, active **disease** (Mycobacterium tuberculosis complex)

Vaccinia, **disease** or adverse event

Viral hemorrhagic fever

G. Employees, conditional employees, and persons in charge of food establishments. 12VAC5-421-80 ~~of the Food Regulations~~ requires a food employee or conditional employee to notify the person in charge of the food establishment when diagnosed with certain diseases that are transmissible through food and requires the person in charge of the food establishment to notify the regulatory authority. Refer to 12VAC5-421-80 for further guidance and clarification regarding these reporting requirements.

## **12VAC5-90-103. Isolation for communicable **disease** of public **health** threat.**

A. Application. The commissioner, in ~~his the commissioner's~~ sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia and may declare the isolation of any individual ~~or individuals~~ upon a determination that:

1. Such individual ~~or individuals are~~ is known to have been infected with or ~~are~~ is reasonably suspected to have been infected with a communicable **disease** of public **health** threat;

2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the individual

~~or individuals have~~ has failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable **disease** of public **health** threat; and

3. Isolation is the necessary means to contain a communicable **disease** of public **health** threat, to ensure that such isolated individual ~~or individuals receive~~ receives appropriate medical treatment subject to the provisions of § 32.1-44 of the Code of Virginia, or to protect **health** care providers and others who may come into contact with such infected individual ~~or individuals~~.

The commissioner, in ~~his the commissioner's~~ sole discretion, may also order the isolation of an affected area if, in addition to the ~~above the provisions of this subsection~~, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For isolation for a communicable **disease** of public **health** threat, information about the infection or suspected infection, the individual, ~~individuals, and/or or~~ affected area, and the nature or suspected nature of the exposure shall be duly recorded by the local **health** department in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and to enable the commissioner to prepare the order of isolation, including the information required in § 32.1-48.12 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local **health** department to enable appropriate follow-up of individuals for **health** status evaluation and treatment as well as compliance with the order of isolation.

The commissioner shall ensure that the protected **health** information of any individual ~~or individuals~~ subject to the order of isolation is disclosed only in compliance with state and federal law.

C. Means of isolation. The local **health** department shall assess the situation, and in consultation with the Office of Epidemiology, identify the least restrictive means of isolation that effectively protects unexposed and susceptible individuals. The place of isolation selected shall allow the most freedom of movement and communication with family members and other contacts without allowing **disease** transmission to other individuals and shall allow the appropriate level of medical care needed by isolated individuals to the extent practicable. The commissioner, in ~~his the commissioner's~~ sole discretion, may order the isolated individual ~~or individuals~~ to remain in their residences, to remain in another place where they are present, or to report to a place ~~or places~~ designated by the commissioner for the duration of their isolation.

The commissioner's order of isolation shall be for a duration consistent with the known period of communicability of the communicable **disease** of public **health** threat or, if the course



of the **disease** is unknown or uncertain, for a period anticipated as being consistent with the period of communicability of other similar infectious agents. In the situation where an area is under isolation, the duration of isolation shall take into account the transmission characteristics and known or suspected period of communicability.

D. Delivery. The local **health** department shall deliver the order of isolation, or ensure its delivery by an appropriate party such as a law-enforcement officer or **health** department employee, to the affected individual ~~or individuals~~ in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the capacity of the local **health** department to ensure individual notification in a timely manner, then print, radio, television, Internet, ~~and/or~~ or other available means shall be used to inform those affected.

E. Enforcement. ~~Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of isolation may fail or refuse to comply with such order, the commissioner in his sole discretion may include in the order a requirement that such individual or individuals are to be taken immediately into custody by law enforcement agencies and detained for the duration of the order of isolation or until the commissioner determines that the risk of noncompliance is no longer present.~~ For any individual ~~or individuals~~ identified as, or for whom probable cause exists that ~~he~~ the individual may be, in violation of any order of isolation, or for whom probable cause exists that ~~he~~ the individual may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies shall include ~~but need not be limited to~~ the power to detain or arrest.

Any individual ~~or individuals~~ so detained shall be held in the least restrictive environment that can provide any required **health** care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order ~~or orders~~ of isolation are informed of appropriate measures to take to protect themselves from contracting the **disease** of public **health** threat.

F. **Health** status monitoring. The local **health** department shall monitor the **health** of those under isolation either by regular telephone calls, visits, self-reports, or by reports of caregivers or ~~healthcare~~ **health** care providers or by other means.

G. Essential needs. Upon issuance of an order of isolation to an individual ~~or individuals~~ by the commissioner, the local **health** department shall manage the isolation, in conjunction with local emergency management resources, such that ~~individual~~ the individual's essential needs can be met to the extent practicable. Upon issuance of an order of isolation by the commissioner for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual ~~or individuals~~ subject to an order of isolation or a court-ordered confirmation or extension of any such order may file an appeal of the order of isolation in accordance with the provisions of § 32.1-48.13 of the Code of Virginia. An appeal shall not stay any order of isolation.

I. Release from isolation. Once the commissioner determines that ~~an individual or~~ individuals no longer pose a threat to the public **health**, the order of isolation has expired, or the order of isolation has been vacated by the court, the ~~individual or~~ individuals under the order of isolation shall be released immediately. If the risk of an infected individual transmitting the communicable **disease** of public **health** threat to other individuals continues to exist, an order of isolation may be developed to extend the restriction prior to release from isolation.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order isolation for the affected area during the known or suspected time of exposure. In order for an affected area to be isolated, the Governor must declare a state of emergency for the affected area.

If an order of isolation is issued for an affected area during the known or suspected time of exposure, the commissioner shall cause the order of isolation to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including ~~but not limited to~~ radio, television, ~~internet~~ Internet, ~~and/or~~ or other available means; may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of isolation, enforcement, **health** status monitoring, essential needs, and release from isolation as described above in this section will apply to the isolation of affected areas. Appropriate management of a **disease** of public **health** threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under isolation, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and ~~time frame~~ timeframe of the exposure may not be possible; or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

## 12VAC5-90-107. Quarantine.

A. Application. The commissioner, in ~~his~~ the commissioner's sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of

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# Regulations

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Virginia and may order a complete or modified quarantine of any individual ~~or individuals~~ upon a determination that:

1. Such individual ~~or individuals are~~ is known to have been exposed to or ~~are~~ is reasonably suspected to have been exposed to a communicable **disease** of public **health** threat;
2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the individual ~~or individuals have~~ has failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable **disease** of public **health** threat; and
3. Quarantine is the necessary means to contain a communicable **disease** of public **health** threat to which an individual ~~or individuals have~~ has been or may have been exposed and thus may become infected.

The commissioner, in ~~his~~ the commissioner's sole discretion, may also order the quarantine of an affected area if, in addition to the ~~above~~ the provisions of this subsection, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For quarantine for a communicable **disease** of public **health** threat, information about the infection or suspected infection; the individual, ~~individuals, and/or~~ or affected area; and the nature or suspected nature of the exposure shall be duly recorded by the local **health** department, in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and enable the commissioner to prepare a written order of quarantine, including the information required in § 32.1-48.09 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local **health** department to enable appropriate follow-up of individuals for **health** status evaluation and treatment as well as compliance with the order of quarantine.

The commissioner shall ensure that the protected **health** information of any individual ~~or individuals~~ subject to the order of quarantine is disclosed only in compliance with state and federal law.

C. Means of quarantine. The local **health** department shall assess the situation, and in consultation with the Office of Epidemiology, shall recommend to the commissioner the least restrictive means of quarantine that effectively protects unexposed and susceptible individuals. The place of quarantine selected shall allow the most freedom of movement and communication with family members and other contacts without allowing **disease** transmission to others.

The commissioner, in ~~his~~ the commissioner's sole discretion, may order the quarantined individual ~~or individuals~~ to remain in their residences, to remain in another place where they are

present, or to report to a place ~~or places~~ designated by the commissioner for the duration of their quarantine.

The commissioner's order of quarantine shall be for a duration consistent with the known incubation period of the communicable **disease** of public **health** threat or, if the incubation period is unknown or uncertain, for a period anticipated as being consistent with the incubation period for other similar infectious agents. In the situation where an area is under quarantine, the duration of quarantine shall take into account the transmission characteristics and known or suspected incubation period.

D. Delivery. The local **health** department shall deliver the order of quarantine, or ensure its delivery by an appropriate party such as a law-enforcement officer or **health** department employee, to the affected individual ~~or individuals~~ in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the capacity of the local **health** department to ensure notification in a timely manner, then print, radio, television, Internet, ~~and/or~~ or other available means shall be used to inform those affected.

E. Enforcement. ~~Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of quarantine may fail or refuse to comply with such order, the commissioner in his sole discretion may include in the order a requirement that such individual or individuals are to be taken immediately into custody by law enforcement agencies and detained for the duration of the order of quarantine or until the commissioner determines that the risk of and from noncompliance is no longer present.~~ For any individual ~~or individuals~~ identified as, or for whom probable cause exists that ~~he~~ the individual may be, in violation of any order of quarantine, or for whom probable cause exists that ~~he~~ the individual may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies shall include ~~but need not be limited to~~ the power to detain or arrest.

Any individual ~~or individuals~~ so detained shall be held in the least restrictive environment that can provide any required **health** care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order ~~or orders~~ of quarantine are informed of appropriate measures to take to protect themselves from contracting the **disease** of public **health** threat.

F. **Health** status monitoring. The local **health** department shall monitor the **health** of those under quarantine either by regular telephone calls, visits, self-reports, or by reports of caregivers or ~~healthcare~~ health care providers or by other means. If ~~an~~ an individual ~~or individuals~~ develop symptoms compatible with the communicable **disease** of public **health** threat, then 12VAC5-90-103 would apply to the individual ~~or individuals~~.

G. Essential needs. Upon issuance of an order of quarantine to an individual ~~or individuals~~ by the commissioner, the local

**health** department shall manage the quarantine, in conjunction with local emergency management resources, such that ~~individual~~ the individual's essential needs can be met to the extent practicable. Upon issuance of an order of quarantine by the commissioner for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual ~~or individuals~~ subject to an order of quarantine or a court-ordered confirmation or extension of any such order may file an appeal of the order of quarantine in accordance with the provisions of § 32.1-48.10 of the Code of Virginia. An appeal shall not stay any order of quarantine.

I. Release from quarantine. Once the commissioner determines that ~~an individual or~~ individuals are no longer at risk of becoming infected and pose no risk of transmitting the communicable **disease** of public **health** threat to other individuals, the order of quarantine has expired, or the order of quarantine has been vacated by the court, the individuals under the order of quarantine shall be released immediately. If the risk of an individual becoming infected and transmitting the communicable **disease** of public **health** threat to other individuals continues to exist, an order of quarantine may be developed to extend the restriction prior to release from quarantine.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order quarantine for the affected area. In order for an affected area to be quarantined, the Governor must declare a state of emergency for the affected area.

If an order of quarantine is issued for an affected area, the commissioner shall cause the order of quarantine to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including ~~but not limited to~~ radio, television, Internet, ~~and/or~~ or other available means, may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of quarantine, enforcement, **health** status monitoring, essential needs, and release from quarantine ~~as described above in this section~~ will apply to the quarantine of affected areas. Appropriate management of a **disease** of public **health** threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under quarantine, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and ~~time frame~~ timeframe of the exposure may not be possible; or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of

the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

**12VAC5-90-140. Procedure for preventing ophthalmia neonatorum.**

The physician, nurse, or midwife in charge of the infant's care after delivery of a baby shall ensure that ~~one of the following is administered in each eye of that newborn baby as soon as possible after birth: (i) two drops of a 1.0% silver nitrate solution; (ii) a 1-cm ribbon of 1.0% tetracycline ophthalmic ointment; or (iii) a 1-cm ribbon of 0.5% erythromycin ophthalmic ointment~~ is administered in each eye of that newborn baby as soon as possible. This treatment shall be recorded in the medical record of the infant.

**12VAC5-90-215. Schedule and criteria for and confirmation of blood lead testing and information to be provided.**

A. Schedule for testing. Every child shall be tested to determine the blood lead level at 12 months and 24 months of age if the **health** care provider determines that the child meets any of the criteria listed in subsection B of this section. Children 25 months through 72 months of age who present for medical care and meet any of criteria of subsection B of this section shall also be tested if they have either not previously been tested for blood lead level or were previously tested but experienced a change since testing that has resulted in an increased risk of lead exposure based on the criteria listed in subsection B of this section.

B. Criteria for testing.

1. The child is eligible for or receiving benefits from Medicaid or the Special Supplemental Nutrition Program for Women, Infants and Children (WIC);
2. The child is living in or regularly visiting a house, apartment, dwelling, structure, or child care facility built before ~~1960~~ 1950;
3. The child is living in or regularly visiting a house, apartment, dwelling, structure, or child care facility built before 1978 that has (i) peeling or chipping paint or (ii) recent (within the last six months) ongoing or planned renovations;
4. The child is living in or regularly visiting a house, apartment, dwelling, or other structure in which one or more persons have blood lead testing yielding evidence of lead exposure;
5. The child is living with an adult whose job, hobby, or other activity involves exposure to lead;
6. The child is living near an active lead smelter, battery recycling plant, or other industry likely to release lead;

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# Regulations

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7. The child's parent, guardian, or other person standing in loco parentis requests the child's blood be tested due to any suspected exposure; or

8. The child is a recent refugee or immigrant or is adopted from outside of the United States.

C. Exceptions. A child who does not meet any of the schedule or criteria provided in subsection A or B of this section is considered to be at low risk, and testing is not required but may be conducted at the discretion of the **health** care provider. The testing requirement shall be waived if the parent, guardian, or other person standing in loco parentis of a child objects to the testing on the basis that the procedure conflicts with his religious tenets or practices.

D. Confirmation of blood lead levels. Blood lead level testing shall be performed on venous or capillary blood. Tests of venous blood performed by a laboratory certified by the federal Centers for Medicare & Medicaid Services in accordance with 42 USC § 263a, the Clinical Laboratory Improvement Amendment of 1988 (CLIA-certified), are considered confirmatory. Tests of venous blood performed by any other laboratory and tests of capillary blood shall be confirmed by a repeat blood test, preferably venous, performed by a CLIA-certified laboratory. Such confirmatory testing shall be performed in accordance with the following schedule:

1. Confirmatory testing is not required if the result of the capillary test is below CDC's reference value.

2. Within one to three months if the result of the capillary test is at or above the CDC's reference value and up to 9 nine micrograms of lead per deciliter of whole blood (µg/dL).

~~2.~~ 3. Within one week to one month if the result of the capillary test is 10-44 µg/dL. The higher this test result, the more urgent the need for a confirmatory test.

~~3.~~ 4. Within 48 hours if the result of the capillary test is 45-59 µg/dL.

~~4.~~ 5. Within 24 hours if the result of the capillary test is 60-69 µg/dL.

~~5.~~ 6. Immediately as an emergency laboratory test if the result of the capillary test is 70 µg/dL or higher.

E. Information to be provided. As part of regular well-check visits for all children, the **health** care provider shall make available to parents, guardians, or other persons standing in loco parentis information on the dangers of lead poisoning, potential sources of lead and ways to prevent exposure, and a list of available lead-related resources. When blood lead level testing is performed, the **health** care provider shall share the child's blood lead level test result with the child's parent, guardian, or other person standing in loco parentis and report to the local **health** department in accordance with the requirements of 12VAC5-90-80.

## 12VAC5-90-225. Additional data to be reported related to persons with active tuberculosis **disease** (confirmed or suspected).

A. Physicians and directors of medical care facilities are required to submit all of the following:

1. An initial report to be completed when there are reasonable grounds to suspect that a person has active TB **disease**, but no later than when antituberculosis drug therapy is initiated. The reports must include the following: the affected person's name; age; date of birth; gender; address; pertinent clinical, radiographic, microbiologic, and pathologic reports, whether pending or final; such other information as may be needed to locate the patient for follow-up; and name, address, and telephone number of the treating physician.

2. A secondary report to be completed simultaneously or within one to two weeks following the initial report. The report must include: the date, method, and results of ~~tuberculin skin test (TST)~~ tests for tuberculosis infection; the date and results of the initial and any follow-up chest radiographs; the dates and results of bacteriologic or pathologic testing, the antituberculosis drug regimen, including names of the drugs, dosages and frequencies of administration, and start date; the date and results of drug susceptibility testing; HIV status; contact screening information; and name, address, and telephone number of treating physician.

3. Subsequent reports are to be made when updated information is available. Subsequent reports are required when: clinical status changes, the treatment regimen changes; treatment ceases for any reason; or there are any updates to laboratory results, treatment adherence, name, address, and telephone number of current provider, patient location or contact information, or other additional clinical information.

4. Physicians ~~and/or~~ or directors of medical care facilities responsible for the care of a patient with active tuberculosis **disease** are required to develop and maintain a written treatment plan. This plan must be in place no later than the time when antituberculosis drug therapy is initiated. Patient adherence to this treatment plan must be documented. The treatment plan and adherence record are subject to review by the local **health** director or ~~his~~ the local **health** director's designee at any time during the course of treatment.

5. The treatment plan for the following categories of patients must be submitted to the local **health** director or ~~his~~ the local **health** director's designee for approval no later than the time when antituberculosis drug therapy is started or modified:

a. For individuals who are inpatients or incarcerated, the responsible provider or facility must submit the treatment plan for approval prior to discharge or transfer.



b. Individuals, whether inpatient, incarcerated, or outpatient, who also have one of the following conditions:

- (1) HIV infection.
- (2) Known or suspected active TB **disease** resistant to rifampin, rifabutin, rifapentine, or other rifamycin with or without resistance to any other drug.
- (3) A history of prior treated or untreated active TB **disease**, or a history of relapsed active TB **disease**.
- (4) A demonstrated history of nonadherence to any medical treatment regimen.

B. Laboratories are required to submit the following:

1. Results of smears that are positive for acid fast bacilli.
2. Results of cultures positive for any member of the *Mycobacterium tuberculosis* complex (i.e., *M. tuberculosis*, *M. bovis*, *M. africanum*) or any other mycobacteria.
3. Results of rapid methodologies, including acid hybridization or nucleic acid amplification, which are indicative of *M. tuberculosis* complex or any other mycobacteria.
4. Results of tests for antimicrobial susceptibility performed on cultures positive for ~~tubercle bacilli~~ *M. tuberculosis* complex.
5. Results of tests for tuberculosis infection.
6. Laboratories, whether testing is done in-house or referred to an out-of-state laboratory, shall submit a representative and viable sample of the initial culture positive for any member of the *M. tuberculosis* complex to the Virginia Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.

## 12VAC5-90-280. Reporting of dangerous microbes and pathogens.

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

"Biologic agent" means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing death, **disease**, or other biological malfunction in a human, an animal, a plant, or other living organism; deterioration of food, water, equipment, supplies, or material of any kind; or deleterious alteration of the environment.

"CDC" means the Centers for **Disease** Control and Prevention of the U.S. Department of **Health** and Human Services.

"Diagnosis" means the analysis of specimens for the purpose of identifying or confirming the presence or characteristics of

a select agent or toxin, provided that such analysis is directly related to protecting the public **health** or safety.

"Proficiency testing" means a sponsored, time limited analytical trial whereby one or more analytes, previously confirmed by the sponsor, are submitted to the testing laboratory for analysis and where final results are graded, scores are recorded and provided to participants, and scores for participants are evaluated.

"Responsible official" means any person in charge of directing or supervising a laboratory conducting business in the Commonwealth of Virginia. At colleges and universities, the responsible official shall be the president of the college or university or his designee. At private, state, or federal organizations, the responsible official shall be the laboratory director or a chief officer of the organization or his designee.

"Select agent or toxin" or "select agent and toxin" means all those biological agents or toxins as defined by federal regulations in 42 CFR Part 73, including **Health** and Human Services select agents and toxins and overlap select agents and toxins. "Dangerous microbes and pathogens" will be known as "select agents and toxins."

"Toxin" means the toxic material or product of plants, animals, microorganisms (including but not limited to bacteria, viruses, fungi, rickettsiae, or protozoa); or infectious substances; or a recombinant or synthesized molecule, whatever the origin and method of production; and includes any poisonous substance or biological product that may be engineered as a result of biotechnology or produced by a living organism; or any poisonous isomer or biological product, homolog, or derivative of such a substance.

"Verification" means the process required to assure the accuracy, precision, and the analytical sensitivity and specificity of any procedure used for diagnosis.

B. Administration. The dangerous microbes and pathogens will be known as "select agents and toxins." The select agent and toxin registry will be maintained by the Virginia Department of **Health**, Office of Epidemiology, Division of Surveillance and Investigation.

C. Reportable agents. The board declares the select agents and toxins and overlap select agents and toxins outlined in 42 CFR Part 73 to be reportable and adopts it herein by reference including subsequent amendments and editions. The select agents and toxins are to be reportable by the persons enumerated in subsection F of this section.

D. ~~B.~~ Items to report. Each report shall be made on a form determined by the department and shall contain the following: name, source, and characterization information on select agents and toxins and quantities held; objectives of the work with the agent; location (including building and room) where each select agent or toxin is stored or used; identification information of persons with access to each agent; identification

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# Regulations

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~~information of the person in charge of each of the agents; and the name and address of the laboratory and the name, position, and identification information of one responsible official as a single point of contact for the organization. The report shall also indicate whether the laboratory is registered with the CDC Select Agent Program and may contain additional information as required by 42 CFR Part 73 or the department.~~

~~E. C. Timing of reports. Reports shall be made to the department within seven calendar days of submission of an application to the CDC Select Agent Program. By January 31 of every year, laboratories the responsible official at a laboratory as designated by the federal select agent program shall provide a written update to the department, which shall include a copy of the federal registration certificate received through the CDC Select Agent Program Division of Surveillance and Investigation in the Office of Epidemiology containing the information specified in subsection B of this section.~~

~~In the event that a select agent or toxin that has previously been reported to the department is destroyed, a copy of federal forms addressing the destruction of the select agent or toxin must be submitted to the department within seven calendar days of submission to the CDC Select Agent Program.~~

~~In the event that a select agent or toxin, or a specimen or isolate from a specimen containing a select agent or toxin, has previously been reported to the department and is subsequently transferred to a facility eligible for receiving the items, a copy of federal forms addressing the transfer of the select agent or toxin must be submitted to the department within seven calendar days of submission to the CDC Select Agent Program.~~

~~In the event of a suspected release, loss, or theft of any select agent or toxin, the responsible official at a laboratory as designated by the federal select agent program shall make a report to the department immediately by the most rapid means available, preferably by telephone. The report shall be submitted to the Division of Surveillance and Investigation in the Office of Epidemiology. The rapid report shall be followed up by a written report within seven calendar days and shall include the following information:~~

- ~~1. The name of the biologic agent and any identifying information (e.g., strain or other characterization information);~~
- ~~2. An estimate of the quantity released, lost, or stolen;~~
- ~~3. An estimate of the time during which the release, loss, or theft occurred; and~~
- ~~4. The location (building, room) from or in which the release, loss, or theft occurred. The report may contain additional information as required by 42 CFR Part 73 or the department.~~

~~If a release has occurred, the report shall also include the nature, environment, and location of the release; number,~~

~~names, and position of exposed individuals; and actions taken as a result of the release.~~

~~The department shall be notified in writing of any change to information previously submitted to the department. If a new application or an amendment to an existing application is filed with the CDC Select Agent Program, a copy of the application or amendment shall be submitted to the department within seven calendar days of submission to the CDC Select Agent Program.~~

~~F. Those required to report. The laboratory director shall be responsible for annual reporting of select agents and toxins to the Virginia Department of **Health** and for the reporting of any changes within the time periods as specified within these regulations. Such reports shall be made on forms to be determined by the department. Any person making such reports as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.~~

~~G. Exemption from reporting. A person who detects a select agent or toxin for the purpose of diagnosing a **disease**, verification, or proficiency testing and either transfers the specimens or isolates containing the select agent or toxin to a facility eligible for receiving them or destroys them on site is not required to make a report except as required by 12VAC5-90-80 and 12VAC5-90-90. Proper destruction of the agent shall take place through autoclaving, incineration, or by a sterilization or neutralization process sufficient to cause inactivation. The transfer or destruction shall occur within seven calendar days after identification of a select agent or toxin used for diagnosis or testing and within 90 calendar days after receipt for proficiency testing.~~

~~Any additional exemptions from reporting under 42 CFR Part 73, including subsequent amendments and editions, are also exempt from reporting under this regulation; however, the department shall be notified of the exemption by submitting a copy of federal forms addressing the exemption within seven calendar days of submission to the CDC Select Agent Program.~~

~~H. D. Release of reported information. Reports submitted to the select agent and toxin registry shall be confidential and shall not be a public record pursuant to the Freedom of Information Act, regardless of submitter. Release of information on select agents or toxins shall be made only by order of the State **Health** Commissioner to the CDC and state and federal law-enforcement agencies in any investigation involving the release, theft, or loss of a select agent or toxin required to be reported to the department under this regulation. Any person making such reports as authorized in this section shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.~~

## **12VAC5-90-370. Reporting of healthcare-associated **health** care-associated infections.**

~~A. Reportable infections. Facilities **Health** care facilities that report data into the Centers for **Disease** Control and~~



Prevention's National Healthcare Safety Network (NHSN) ~~for as a requirement of~~ the Centers for Medicare and Medicaid Services ~~Hospital Inpatient Quality Reporting Program~~ shall share the data, through the NHSN, with the department.

B. Liability protection and data release. Any person making such report as authorized ~~herein in this section~~ shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

~~FORMS (12VAC5-90)~~

~~Confidential Morbidity Report, Epi-1 (rev. 10/2011)~~

~~Virginia Cancer Registry Reporting Form (rev. 1/1998)~~

VA.R. Doc. No. R20-5357; Filed April 12, 2023, 8:08 a.m.

## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA EMPLOYMENT COMMISSION

#### Fast-Track Regulation

Title of Regulation: **16VAC5-80. Adjudication (amending 16VAC5-80-20).**

Statutory Authority: §§ 60.2-111 and 60.2-623 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 7, 2023.

Effective Date: June 22, 2023.

Agency Contact: Jason German, Hearing Legal Services Officer III, Virginia Employment Commission, 6606 West Broad Street, Henrico, VA 23230, telephone (804) 786-4140, FAX (804) 786-9034, or email [jason.german@vec.virginia.gov](mailto:jason.german@vec.virginia.gov).

Basis: The Virginia Employment Commission may promulgate this action pursuant to § 60.2-111 of the Code of Virginia.

Purpose: The amendment adds one method to the list of ways to appeal. Specifically, the amendment adds that appeals can be filed by an electronic format as prescribed by the commission. This is an attempt to modernize the regulation to provide citizens with a more modern and integrated method of filing appeals.

Rationale for Using Fast-Track Rulemaking Process: The impetus for the regulatory change is an internal staff review of procedures to best meet the needs of Virginians seeking Virginia Employment Commission services. The regulation has not been updated for many years, and this regulatory change is necessary to modernize agency procedures, increase

accessibility for Virginians, and expedite agency services. The changes are expected to be noncontroversial.

Substance: The amendment adds that appeals can be filed by an electronic format as prescribed by the commission. This is meant to utilize the commission's current portal system and future updates and improvements.

Issues: The advantages to both the public and the agency are the ability to file and receive appeals through a more modern system, including online forms and portals. There is no disadvantage since the legacy methods of postal mail, fax, and via the Internet have not been removed.

#### 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 and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Employment Commission (VEC) proposes to update the regulation to reflect that first level appeals can be filed through its new online portal (i.e., a webpage on the VEC website), that an appeal decision can be delivered through the portal, and that a request for reopening of an appeal can be submitted through the portal.

Background. Currently, this regulation provides that first level appeals shall be filed in person, by mail, by fax, or "by the Internet at a site or address specified by the commission." The filing option by an Internet address is currently interpreted by VEC to be a link to a webpage as opposed to at a webpage.

In late 2021, VEC started using a new online portal for unemployment claim filing and processing. Among other purposes, the portal was designed to cater to the appeals-related needs of claimants, employers, attorneys, and other parties. This portal made it possible for the stakeholders to access their case information online at a centralized location by registration (i.e., by username and password). However, the current regulatory language regarding approved ways to file a first level appeal does not encompass filing of an appeal through this portal. For this reason, VEC proposes to add in the regulation that a first level appeal can be filed "[b]y an electronic format as prescribed by the commission." VEC interprets the phrase "an electronic format" to include through its new portal.

Similarly, the current language requires that an appeal decision be delivered and a request for reopening of an appeal be submitted by mail. VEC proposes to replace the word "mail" with the phrase "in a format prescribed by the commission." Instructions about approved formats are usually provided along with relevant documents, such as a decision. VEC states that these proposed changes do not eliminate the delivery of a decision or the submission of a request by mail. Instead, VEC states that the changes will mean that the commission can issue

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# Regulations

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an appeal decision through its portal and a request for reopening can be submitted through the portal in addition to by mail.

**Estimated Benefits and Costs.** To the extent that an online portal differs from an online webpage, the proposed addition of filing of a first level appeal against an unemployment claim through VEC's new online portal would expand the methods by which an appeal can be filed. The portal is accessible by registration to all interested parties including employers, claimants, and attorneys. In addition, the other changes that would allow the commissioner to deliver an appeal decision through the portal and allow a party to request reopening of the case through the portal in addition to mail would expand the means of processing an appeal.

With these changes, affected parties would likely use the portal if it is more convenient for them. Since the regulatory text retains all of the existing options for filing an appeal, delivering a decision, and requesting a reopening, adding a new option to use the portal would not be costly and may produce net benefits to employers (i.e., appellants) as well as claimants or their legal counsel.

VEC reports that the new online portal has other features and capabilities in addition to filing of first level appeals. The estimated cost of the portal pertaining to appeals-related features is approximately \$250,000. However, some of this cost would be offset by benefits to VEC to the extent the portal improves the efficiency of appeals processing for VEC relative to existing methods.

Finally, updating the regulatory language to reflect the current use of the portal for several purposes would benefit potential users who may not have been otherwise aware of this option.

**Businesses and Other Entities Affected.** The proposed changes primarily affect entities involved with first level appeals. Since February 2022, there have been 50,923 first level appeals filed with the commission. No entity appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>2</sup> 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. As noted, the proposed changes provide additional methods for filing a first level appeal, issuing a decision, and submitting a request for reopening, but do not take away any existing options. Thus, no direct adverse impact is indicated.

**Small Businesses<sup>3</sup> Affected.**<sup>4</sup> The proposed amendments do not adversely affect small businesses.

**Localities<sup>5</sup> Affected.**<sup>6</sup> The proposed amendments do not introduce costs for local governments or particularly affect any locality.

**Projected Impact on Employment.** The proposed amendments do not appear to have a direct impact on total employment.

**Effects on the Use and Value of Private Property.** No significant impact on the use and value of private property or real estate development costs is expected.

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<sup>1</sup>Section 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.

<sup>2</sup>Pursuant 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.

<sup>3</sup>Pursuant 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."

<sup>4</sup>If 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.

<sup>5</sup>"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.

<sup>6</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Virginia Employment Commission concurs with the Department of Planning and Budget's economic impact analysis.

## Summary:

*The amendments update the regulation to reflect that first level appeals can be filed through the commission's new online portal, that an appeal decision can be delivered through the portal, and that a request for reopening of an appeal can be submitted through the portal. These changes are accomplished by adding language allowing first level appeals to be filed by an electronic format prescribed by the Virginia Employment Commission.*

## **16VAC5-80-20. First level appeals.**

A. The claimant, the claimant's liable employer, or any subsequent employing unit with a direct interest in an issue

may appeal from an adverse deputy's determination or decision as specified in § 60.2-619 of the Code of Virginia.

1. Appeals shall be filed with the commission's Administrative Law Division's Office of First Level Appeals in one of the following ways:

- a. In person at any agency service location, including workforce, adjudication, or one-stop centers; or the commission's administrative office in Richmond, Virginia;
- b. By mail to the Administrative Law Division's Office of First Level Appeals at the address specified on the deputy's determination or decision;
- c. By facsimile transmission to the Administrative Law Division's Office of First Level Appeals at the facsimile number specified on the deputy's determination or decision; ~~or~~
- d. By the Internet at a site or address specified by the commission; or
- e. By an electronic format as prescribed by the commission.

2. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the ~~United States~~ U.S. Postal Service. If no postmark appears on the envelope, the appeal shall be presumed to be filed on the date it was received by the commission.

3. Appeals shall be in writing and should set forth the grounds upon which they are sought, as well as the name and last four digits of the social security account number of the claimant; however, any document in writing submitted to the commission by a party or a party's authorized representative expressing a desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or an appellant's authorized representative whatever assistance is necessary to file an appeal. The appeal should be signed by the appealing party or that party's authorized representative; however, the absence of a signature shall not result in the dismissal of the appeal.

B. After the filing of an appeal, the record in connection with the claim, together with the notice of appeal, shall be assigned to an appeal tribunal consisting of a salaried examiner only. Should evidence indicate that the appeal was not filed within the time prescribed by law, the first issue to be considered at the hearing shall be whether the appeal was timely filed or whether there exists good cause for extending the appeal period.

1. Except as otherwise provided in this chapter, all hearings shall be conducted by telephone conference call. At the discretion of the commission, a split hearing or an in-person hearing may be scheduled if the complexity of the case or the quality of telephone service in a particular locality makes

participation in the hearing unreasonably difficult. A split or in-person hearing will be scheduled if a party does not have reasonable access to a telephone that would permit meaningful participation in a telephonic hearing. In assessing the complexity of a particular case, the commission shall consider the number of witnesses involved, the number and length of any documents that will likely be proposed as exhibits, whether one or both parties are represented, whether an interpreter is required, and any other relevant factors. In-person or split hearings shall be scheduled at a location administratively feasible for the commission.

2. Any party who desires to appear in person for the hearing shall be permitted to do so provided a timely request is received by the commission. A request shall be deemed timely if it is received by the commission before the scheduled hearing convenes. If a request to appear in person is received after the hearing has been convened, the presiding appeals examiner may grant or deny the request based upon consideration of all relevant circumstances. A request by a party to appear in person shall not require any other party to also appear in person; however, any other parties to the proceeding should be promptly informed of the request for in-person participation and be given the opportunity to participate in person if the commission grants a party's ~~in-person~~ in-person hearing request.

3. A hearing that is postponed or continued to accommodate a request for in-person participation shall be rescheduled as soon as administratively feasible.

4. A notice of hearing shall be mailed to all parties and their known authorized representatives at least 10 days in advance of the hearing. The hearing notice shall set forth the particular statutory provisions and regulations that must be considered to resolve the case. The appeals examiner may consider any other applicable issues that are raised or become evident during the course of the hearing provided that all parties in interest are present and all agree on the record to waive the 10-day notice requirement with respect to such new issue. The appeals examiner may refer a new issue to the deputy if it has not been ruled upon at that level and may, upon the appeals examiner's own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper written notice in order to proceed.

C. The Office of First Level Appeals (First Level Appeals) shall endeavor to schedule hearings as soon as possible in the order in which appeals are received. Special requests regarding dates or times of hearings will be given consideration; however, they need not always be honored. Requests for postponement of scheduled hearings shall be granted only when a party or the party's authorized representative demonstrates good cause for an inability to appear at the scheduled date and time. Good cause shall be deemed to exist

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# Regulations

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if a likelihood of material and substantial harm is shown. Postponements may be granted only by the Chief Appeals Examiner or the Chief Appeals Examiner's designee, the Clerk of the Commission for First Level Appeals, the examiner assigned to hear the case, or an appeals examiner acting in charge of the Office of First Level Appeals, although they may be communicated to the parties by other authorized persons. A postponed hearing may be rescheduled without notice if all parties in interest agree. Otherwise, notice of a postponed hearing shall be given as if it were a new hearing.

D. Once a hearing has commenced, it may be continued only by the presiding appeals examiner, either upon the presiding appeals examiner's own motion or that of a party. Continuances may be granted in situations where (i) there is insufficient time to properly hear the evidence; or (ii) unexpected or unavoidable circumstances arise during the course of a hearing that require a continuance in order to protect the substantive or procedural rights of the parties.

A continued hearing may be rescheduled by the presiding appeals examiner without written notice if all parties in interest are present and all concur. Otherwise, notice of a continued hearing shall be given as if it were a new hearing.

E. If the appellant wishes to withdraw the appeal, a request, together with the reasons therefor, must be made in writing and sent to the Clerk of the Commission of First Level Appeals at the commission's administrative office in Richmond, Virginia. The request will be granted only if the Chief Appeals Examiner, the Chief Appeals Examiner's designee, or the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, and potential overpayment;
2. The request is not the result of any coercion, collusion, or illegal waiver of benefits prohibited under § 60.2-107 of the Code of Virginia; and
3. The appealed determination is not clearly erroneous based upon the existing record.

Once granted, a withdrawal cannot be rescinded unless an evidentiary hearing on the issue of rescission is held before an appeals examiner, and the former appellant demonstrates that the criteria required for withdrawal were not fully met. A request to rescind a withdrawal must be filed with the commission within 30 days from the issuance of the Order of Dismissal or the discovery of information that would establish that withdrawal criteria were not met.

F. In any hearing before an appeals examiner, all testimony shall be taken under oath or affirmation and a record of the proceedings shall be made by the presiding appeals examiner who shall inform all parties of this fact. No other recording of the proceedings other than that specifically authorized by the

Virginia Unemployment Compensation Act (§ 60.2-100 et seq. of the Code of Virginia) shall be permitted.

The appeals examiner shall conduct the hearing in such a manner as to ascertain the substantive rights of the parties without having to be bound by common law, statutory rules of evidence, or technical rules of procedure. In addition to testimony, the appeals examiner may accept relevant documents or other evidence into the record as exhibits, upon the motion of a party.

1. Where a party is unrepresented, the appeals examiner shall assist that party in presenting ~~his~~ that party's case and testing the case of the opposing party.

2. At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. All such persons will be permitted to attend the entire hearing.

3. An employer shall be permitted one representative, in addition to counsel or duly authorized agent, who may attend the entire proceeding. The appeals examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken. Observers may be permitted to attend the hearing so long as there is no objection by a party.

4. The appeals examiner shall control the order of proof, rule upon the admission of evidence, and may examine and cross-examine witnesses. The examiner shall have the authority to maintain order and eject disruptive or unruly individuals. At a hearing, the parties, counsel, or duly authorized representatives shall be given an opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation and rebuttal. On motion of the appeals examiner, or any party, documents already in a claimant's file or obtained during the course of a hearing may be admitted into the record as exhibits provided they are relevant to the issues in dispute. Before the hearing is closed, the parties shall be given an opportunity to present oral argument on all the issues of law and fact to be decided. In addition, the appeals examiner may permit the parties to submit written arguments.

G. The decision of the appeals examiner shall be reduced to writing and shall state the issues, findings of fact, opinion or reasons for the decision, and final judgement of the examiner. A copy of the decision shall be ~~mailed~~ delivered in a format prescribed by the commission to each of the interested parties and their known representatives who have requested to be notified of the decision. If the decision is rendered by an appeals examiner other than the one who presided at the hearing, that examiner shall review the record of the hearing and so state in the decision.

H. If any party believes that the appeals examiner exhibits bias toward one or more parties in a case, a challenge to the interest of such appeals examiner shall be made promptly after the discovery of facts on which such challenge is based, but not



later than the date on which the decision is issued. A challenge to the interest of the appeals examiner made during the course of the hearing shall be decided and ruled upon by the presiding appeals examiner. If the presiding appeals examiner grants the challenge and withdraws from the case, the appeals examiner shall adjourn the hearing and promptly return the case to the Clerk of the Commission for rescheduling before a different appeals examiner. If a party challenges the interest of an appeals examiner after the conclusion of the hearing, but before the decision is issued, the challenge shall be set forth in writing with the reasons therefor, and sent to the chief appeals examiner at the Administrative Office of First Level Appeals of the Commission in Richmond, Virginia. If the Chief Appeals Examiner or the Chief Appeals Examiner's designee does not remove the challenged appeals examiner, the appeals examiner shall render a decision in the case. If the challenged appeals examiner is removed, is unavailable or chooses to withdraw, the Chief Appeals Examiner or the Chief Appeals Examiner's designee shall decide the case. Failure to remove the appeals examiner shall be subject to review by the commission on appeal by the aggrieved party, in the same manner as any other issue in the case.

I. Any party who is unable to appear for the scheduled hearing; or who appeared but wishes to present additional evidence; may request a reopening of the case, which will be granted if good cause is shown. The request, together with the reasons therefor, shall be made in writing and sent to the Chief Appeals Examiner in the administrative office of the commission in Richmond, Virginia.

1. Where a request for reopening is received before the decision of the appeals examiner is issued, the decision shall be withheld if the Chief Appeals Examiner, the Chief Appeals Examiner's designee, or the appeals examiner assigned to the case, finds that the reasons given in the request, if proven, would establish good cause to reopen the hearing. In that event, a hearing will be scheduled on the reopening issue. If, after the hearing, the appeals examiner should decide that reopening is warranted, the case shall be reopened for the taking of additional evidence. If no reasons are given for the reopening request; or if the reasons given would not establish good cause to reopen the hearing, the appeals examiner shall render a decision denying the request and adjudicating the merits of the case. In any event, the decision concerning the issue of reopening shall be subject to review by the commission on appeal by the aggrieved party.

2. A request for reopening after the appeals examiner has issued a decision on the merits of the case, but within the appeal period, shall be ~~mailed~~ submitted in a format prescribed by the commission to the Administrative Law Division's Office of Commission Appeals in the administrative office of the commission in Richmond, Virginia and shall set forth in writing the reasons therefor. If the commission is of the opinion that the written request

establishes good cause for reopening, it shall remand the case to the Chief Appeals Examiner of First Level Appeals. If the commission is of the opinion that the written request does not set forth good cause for reopening, it shall treat the request as an appeal to the commission on the merits of the case pursuant to this part. The commission may, in its discretion, schedule a hearing to receive evidence with respect to a reopening request or remand the case to the appeals examiner to hear and decide the reopening issue.

3. Once a decision is rendered and becomes final, it cannot be reopened for any reason. A request for a reopening after the decision of the appeals examiner has become final shall be treated as an untimely appeal to the commission pursuant to this chapter. In the discretion of the commission, a hearing on the issue of reopening may be held.

VA.R. Doc. No. R23-7370; Filed April 6, 2023, 9:20 a.m.

## DEPARTMENT OF LABOR AND INDUSTRY

### Proposed Regulation

**Title of Regulation:** 16VAC15-60. Regulation Governing On-the-Job Training Programs or Other Training Programs (adding 16VAC15-60-10, 16VAC15-60-20).

**Statutory Authority:** §§ 40.1-6 and 40.1-28.10 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** July 7, 2023.

**Agency Contact:** Cristin Bernhardt, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2392, or email [cristin.bernhardt@doli.virginia.gov](mailto:cristin.bernhardt@doli.virginia.gov).

**Basis:** Section 40.1-6 of the Code of Virginia authorizes the Commissioner of Labor and Industry to make such rules and regulations necessary for the enforcement of Title 40.1 of the Code of Virginia. Chapters 1204 and 1242 of the 2020 Acts of Assembly amend § 40.1-28.10 of the Code of Virginia to direct and authorize the commissioner to set regulations to provide standards for on-the-job training or other training programs.

**Purpose:** The proposed regulatory action protects public **health**, safety, or welfare by establishing a training wage program to allow employers to utilize a lower wage while they are training their employees. The regulation sets standards for employer requirements and responsibilities in having such a training program where they can economically benefit from the payment of lower wages during the employee training period. Employees will know that employers are appropriately paying them at a reduced wage and standards including the limited time period (no more than 90 days) allowed for reduced wages to be paid after which they must receive full wages. In addition, the department will be able to adequately monitor compliance with the training wage provision of the minimum wage law with an established set of standards.

# Regulations

**Substance:** The proposed regulation sets forth the standards required for any on-the-job training or other training program that an employer must establish if the employers wishes to pay its employees the reduced rate for the duration of the 90-day training period. Established provisions include (i) the period for which the employee can be paid the training wage; (ii) the lowest the employer can pay an employee while training; (iii) when an employee, who is trained or substantially trained to do the job does not need the training, stipulating that the employer cannot pay reduced wages simply by calling the first 90 days of employment a training period; (iv) prohibiting an employer from reducing the work of or firing current employees and replacing them with trainees at a reduced wage; and (v) what comprises an established training program.

**Issues:** Advantages of the regulation for the public include that (i) employers wishing to take advantage of paying a lower wage to their trainees will know whether they are able to; (ii) employers will know their requirements and responsibilities in having such a training program; (iii) employers who do not utilize the training wage will know that their competitors that do have one are not getting an undue competitive advantage; and (iv) employees will know if their employer is appropriately paying them at a reduced wage. Disadvantages of the regulation to the public is that there will be some costs involved in having a written description of the training program. The advantage of the regulation for the department will be able to adequately monitor compliance with the training wage provision of the minimum wage law. There are no disadvantages for the agency or 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.<sup>1</sup>

**Summary of the Proposed Amendments to Regulation.** As the result of a 2020 legislative mandate, the Department of Labor and Industry (DOLI) proposes to make permanent an emergency regulation that establishes on-the-job training program standards for an employer to pay a reduced training wage.

### Background.

**Federal Law.** The United States Fair Labor Standards Act<sup>2</sup> establishes the federal minimum wage for covered nonexempt employees. The current federal minimum wage is \$7.25 per hour.

**Legislative Mandate.** Chapters 1204<sup>3</sup> and 1242<sup>4</sup> of the 2020 Acts of Assembly (identical bills) amended the Virginia Minimum Wage Act to incrementally increase the Virginia minimum wage beginning May 1, 2021. The legislation also created a training wage for employees in on-the-job training programs lasting less than 90 days. The Virginia training wage (VA training wage) is the higher of either the federal minimum wage or 75% of the Virginia minimum wage. The table shows the effective VA training wage for different time periods, assuming that the federal minimum wage remains at \$7.25.

Calculation of the VA Training Wage under the 2020 Legislative Mandate\*

BEGIN DATE	END DATE	VA Minimum Wage	Federal Minimum Wage*	75% of VA Minimum Wage	VA Training Wage*
< May 1, 2021	May 1, 2021	federal minimum wage	\$7.25	N/A	N/A
May 1, 2021	January 1, 2022	\$9.50	\$7.25	\$7.13	\$7.25
January 1, 2022	January 1, 2023	\$11.00	\$7.25	\$8.25	\$8.25
January 1, 2023	January 1, 2025	\$12.00	\$7.25	\$9.00	\$9.00
January 1, 2025	January 1, 2026	\$13.50	\$7.25	\$10.13	\$10.13
January 1, 2026	January 1, 2027	\$15.00	\$7.25	\$11.25	\$11.25

\*The VA training wage in this table assumes that the federal minimum wage would remain at \$7.25.

Employers can of course choose to pay more than the VA Training Wage to employees who are in an on-the-job training program.

**Standards for On-The-Job Training Programs.** The legislation specifies that the VA training wage applies to all persons who are, "enrolled in an established employer on-the-job or other training program for a period not to exceed 90 days which meets standards set by regulations adopted by the Commissioner." The Regulation Governing On-The-Job Training Programs or Other Training Programs (16VAC15-60) is a new regulation proposed by DOLI to set such standards. It

became effective as an emergency regulation on by May 1, 2021. The emergency regulation is scheduled to expire on October 31, 2022. DOLI now proposes to make the regulation permanent.

The proposed standards of the regulation are that an employee enrolled in an established on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid the VA training wage provided the following conditions are met:

The employee (i) must not have previous similar or related experience in the occupation; and (ii) can only undergo one on-

the-job training program or other training program established in accordance with § 40.1-28.10 of the Code of Virginia per employer.

The employer (i) must not use the employee in a manner that causes, induces, encourages, or assists any displacement or partial displacement of any currently employed worker; (ii) must make a good faith effort to continue to employ the employee after the training period expires; (iii) must not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage; (iv) may not apply the reduced training wage to seasonal or temporary employees; and (vi) may not place an employee in another on-the-job training program or other training program established in accordance with § 40.1-28.10 of the Code of Virginia when an employer requires the employee to change employment classification or duties.

The occupation must require a sufficient degree of technical skill to necessitate a learning period.

The training program (i) must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations; (ii) must involve either formal instruction or on-the-job training during a period when the learners are entrusted with limited responsibility and are under supervision or guidance; and (iii) must describe, in writing, the nature and extent of the instruction and supervision provided.

The employee could be placed in another on-the-job training program, or in another training program established in accordance with § 40.1-28.10 of the Code of Virginia with a subsequent employer, if the employee does not have previous similar or related experience in the occupation.

**Estimated Benefits and Costs.** Presumably the intent of having a time-limited training wage that is less than the minimum wage is to encourage employers to hire inexperienced individuals when they might not otherwise do so. There is the possibility that the introduction of the training wage could lower wages in some situations when the individuals would have been hired anyway. Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Since the emergency regulation became effective, DOLI has received one payment of wage complaint about an employer who raised the defense that they were using the training wage, which DOLI determined was an inappropriate use of the training wage. The employer ceased the inappropriate use and paid the damages to 14 of its employees to whom they had paid a training wage. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.

The proposed standards in the regulation are likely beneficial for employees in that they may somewhat reduce the potential occurrences where the training wage is paid when the

individual would have been hired anyway, help limit the use of the training wage for only when there is intent to employ the individual more than temporarily, help ensure that actual training occurs when the training wage is paid, and reduce the likelihood that other employees would be displaced.

On the other hand, there is the possibility that the proposed conditions could stop an employee from being hired who otherwise would have received a desired offer if the employer could have paid the VA training wage. For example, say that Company A is known for producing the best-trained people in an occupation and also the best services that that occupation provides. Moreover, Company A is willing to hire at the VA training wage, but not the minimum wage for the training program. If a person applies who has some experience in that occupation, the proposed condition that the employee not have previous similar or related experience in the occupation could exclude his participation in the training program. However, because no data are collected on the use of the program, it is not possible to determine whether this potential situation would actually occur.

Likewise, the proposed standards may reduce potential cost savings for some employers who would have chosen to pay the VA training wage if not prohibited by one or more of the proposed standards. For example, if firms could pay the training wage to seasonal or temporary employees, for jobs that do not require technical skills, or to displace a current higher-paid worker, such firms could potentially save on payroll while hiring their preferred candidates.

**Businesses and Other Entities Affected.** The proposed regulation potentially affects firms in the Commonwealth with training programs that may wish to pay less than the Virginia minimum wage, as well as individuals who may wish to participate in such training programs. Data is not available to estimate the number of entities.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> 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. As noted, the discretionary proposals described are beneficial for workers, but prevent potential cost savings for employers. Thus, an adverse impact is indicated. Practically speaking, an adverse impact would inevitably need to be indicated however these requirements were designed. If there were to be no limits beyond what is in statute for when a training wage could be paid, then potential cost savings for employers would not be prevented, but overall at least some subset of workers would likely be worse off.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>**

**Types and Estimated Number of Small Businesses Affected.** The proposed regulation potentially affects small firms in the Commonwealth with training programs that may wish to pay less than the Virginia minimum wage. Data is not available to estimate the number.

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# Regulations

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**Costs and Other Effects.** The proposed standards may reduce potential cost savings for some small businesses who would have chosen to pay the VA training wage if not prohibited by one or more of the proposed standards.

**Alternative Method that Minimizes Adverse Impact.** There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

**Localities<sup>8</sup> Affected.<sup>9</sup>** The proposed regulation neither disproportionately affects particular localities nor affects costs for local governments.

**Projected Impact on Employment.** The proposed regulation is not likely to have a substantive effect on total employment.

**Effects on the Use and Value of Private Property.** The proposed standards may prevent some firms from paying the VA training wage to trainees, which could prevent some modest cost savings. To the extent this occurs, this could potentially produce a very modest reduction in the value of some firms. The proposed regulation does not affect real estate development costs.

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<sup>1</sup>Section 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.

<sup>2</sup>See <https://www.dol.gov/agencies/whd/flsa>

<sup>3</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1204>

<sup>4</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1242>

<sup>5</sup>Pursuant to Code § 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.

<sup>6</sup>Pursuant 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."

<sup>7</sup>If 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.

<sup>8</sup>"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.

<sup>9</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to the Economic Impact Analysis:** The Department of Labor and Industry concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## **Summary:**

*In response to Chapters 1204 and 1242 of the 2020 Acts of Assembly and pursuant to § 40.1-28.10 of the Code of Virginia, the proposed regulation provides the standards required for any employer on-the-job training program or other training program established in accordance with the requirements of § 40.1-28.10 and includes (i) the period for which the employee can be paid the training wage; (ii) the lowest the employer can pay an employee while training; (iii) when an employee, who is trained or substantially trained to do the job does not need the training, prohibition of the employer paying reduced wages simply by calling the first 90 days of employment a training period; (iv) prohibiting an employer from reducing the work of or firing current employees and replacing them with trainees at a reduced wage; and (v) what comprises an established training program. .*

## **Chapter 60**

### **Regulation Governing On-the-Job Training Programs or Other Training Programs**

#### **16VAC15-60-10. Definitions.**

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

"Employee" means any person or individual who is enrolled in an established employer on-the-job training program for a period not to exceed 90 days that meets standards set by this chapter.

"Employer" means any individual, partnership, association, corporation, or business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.

"Good faith effort" means done honestly, objectively, and with no deliberate intent to defraud.

"Limited responsibility" means job duties that are substantially less than the expectations for a worker who has achieved a sufficient degree of technical skill and has completed a job training program.

"Reasonable expectation" means a fair and sensible belief that something will happen.



"Seasonal employee" means an employee in an occupation that can be carried out only at certain seasons or fairly definite periods of the year and that does not include such occupations as may be carried on through an entire year.

"Similar or related experience" means knowledge or skill in a particular job or activity gained because the person has done that job or activity or a comparable job or activity for a meaningful period of time.

"Sufficient degree of technical skill" means the ability to use the processes, practices, techniques, or tools of a particular area of expertise enough to meet the purpose and requirements of the job.

"Temporary employee" means an employee supplied to a host employer and paid by a staffing agency whether or not the job is actually temporary.

## **16VAC15-60-20. Requirements for job training programs.**

Beginning May 1, 2021, an employee enrolled in an established on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75% of the minimum hourly wage specified at § 40.1-28.10 of the Code of Virginia, provided the following conditions are met:

1. The employee has been hired in and is receiving training for an occupation in which the employee has no previous similar or related experience;

2. The employer is not utilizing the employee being paid the training wage in a manner that causes, induces, encourages, or assists any displacement or partial displacement of any currently employed worker, including:

a. By displacing any previous recipient of the training wage;

b. By reducing hours of a currently employed worker;

c. By replacing a current or laid off employee with a trainee;

d. By relocating operations resulting in a loss of employment at a previous workplace; or

e. In a manner that replaces, supplants, competes with, or duplicates any approved apprenticeship program.

3. The occupation for which the employee is receiving training must require a sufficient degree of technical skill to necessitate a learning period. The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

4. Such a training program must involve either formal instruction or on-the-job training during a period when the learners are entrusted with limited responsibility and are under supervision or guidance;

5. Such a training program shall describe in writing the nature and extent of the instruction and supervision provided;

6. The employer makes a good faith effort to continue to employ the employee after the period of the training wage expires;

7. The employer shall not hire the employee at the training wage unless there is a reasonable expectation that there will be employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage. The training wage shall not be applied to:

a. Seasonal employees; or

b. Temporary employees; and

8. An employee can only undergo one on-the-job training program or other training program established in accordance with § 40.1-28.10 per employer.

a. A change in employment classification or duties required by the employer of the employee would not allow an employer to place that employee in another on-the-job training program or other training program established in accordance with § 40.1-28.10.

b. An employee may be placed in another on-the-job training program or other training program established in accordance with § 40.1-28.10 with a subsequent employer so long as placing that employee in the on-the-job training program or other training program established in accordance with § 40.1-28.10 would not violate subdivision 1 of this subsection.

VA.R. Doc. No. R21-6714; Filed April 13, 2023, 8:03 a.m.

## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

#### **Forms**

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation: 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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# Regulations

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Agency Contact: Erin Barrett, Regulatory Coordinator, Department of **Health** Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC30-21)

~~Instructions/Checklist for Completing an Application to Practice as an Audiologist in Virginia (Includes Provisional for Re-entry Into Practice) (rev. 6/2020)~~

~~Instructions/Checklist for Application for Provisional License to Practice as an Audiologist in Virginia (New Graduates Only) (rev. 6/2020)~~

~~Instructions/Checklist for Completing an Application to Practice as a School Speech Language Pathologist in Virginia (rev. 6/2020)~~

~~Instructions/Checklist for Reinstatement of an Expired License (rev. 6/2020)~~

~~Instructions/Checklist for Reactivating a Current Inactive License (rev. 6/2020)~~

[Instructions/Checklist for Completing an Application to Practice as an Audiologist \(Includes Provisional for Re-Entry into Practice\) \(rev. 3/2023\)](#)

[Instructions/Checklist for Application for Provisional License to Practice as an Audiologist \(New Graduates Only\) \(rev. 3/2023\)](#)

[Instructions/Checklist for Completing an Application to Practice as a Speech-Language Pathologist \(Includes Provisional for Re-Entry into Practice\) \(rev. 3/2023\)](#)

[Instructions/Checklist for Completing an Application to Practice as a School Speech-Language Pathologist \(rev. 3/2023\)](#)

[Instructions/Checklist for Reinstatement of an Expired License \(rev. 3/2023\)](#)

[Instructions/Checklist for Reactivation of a Current Inactive License \(rev. 3/2023\)](#)

[Request for Verification of Out-of-State License \(rev. 6/2020\)](#)

[Employment Verification \(rev. 6/2020\)](#)

[Continuing Education Reporting Form \(rev. 6/2020\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 6/2020\)](#)

[Request for Verification of a Virginia License \(rev. 6/2020\)](#)

[Name/Address Change Form \(rev. 6/2020\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 6/2020\)](#)

[Application for Registration to Volunteer Practice \(rev. 6/2020\)](#)

VA.R. Doc. No. R23-7541; Filed April 14, 2023, 2:34 p.m.

## BOARD OF OPTOMETRY

### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

Agency Contact: Erin Barrett, Regulatory Coordinator, Department of **Health** Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC105-20)

[Application Instructions for Licensure/TPA Certification \(rev. 6/2020\)](#)

~~Application for a License to Practice as a TPA-Certified Optometrist, online form available at [https://www.dhp.virginia.gov/Optometry/optometry\\_forms.htm](https://www.dhp.virginia.gov/Optometry/optometry_forms.htm).~~

~~Instructions/Checklist for Reactivation of an Inactive License (rev. 6/2020)~~

[Instructions/Checklist for Reactivation of an Inactive License \(rev. 3/2023\)](#)

[Instructions/Checklist for Reinstatement of a License Following Discipline \(TPA-Certified Optometrist\)\(rev. 3/2023\)](#)

[Instructions/Checklist for Reinstatement of an Expired License \(rev. 6/2020\)](#)

[Application for Registration for Volunteer Practice \(rev. 6/2020\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 6/2020\)](#)

[Licensure Verification Form \(rev. 6/2020\)](#)

[Employment Verification Form \(rev. 6/2020\)](#)

[Instructions for Completing the Continuing Education \(CE\) Reporting Form \(rev. 6/2020\)](#)

[Continuing Education Credit Form for Volunteer Practice \(rev. 6/2020\)](#)

[Name/Address Change Form \(rev. 6/2020\)](#)

[Written Evidence for Injections \(rev. 6/2020\)](#)

[Request for Verification of a Virginia License \(rev. 6/2020\)](#)

VA.R. Doc. No. R23-7542; Filed April 14, 2023, 2:42 p.m.

## BOARD OF PHARMACY

### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

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

**Agency Contact:** Erin Barrett, Regulatory Coordinator, Department of **Health** Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC110-20)

[Application for a Pharmacy Permit \(rev. 10/2020\)](#)

[Application for a Non-resident Pharmacy Registration \(rev. 10/2020\)](#)

[Application for a Non-Resident Wholesale Distributor Registration \(rev. 10/2020\)](#)

[Application for Registration as Nonresident Manufacturer \(rev. 10/2020\)](#)

[Application for a Non-Resident Third Party Logistics Provider Registration \(rev. 10/2020\)](#)

[Application for Registration as a Nonresident Warehouser \(rev. 10/2020\)](#)

[Application for a Non-resident Outsourcing Facility Registration \(rev. 10/2020\)](#)

[Application for an Outsourcing Facility Permit \(rev. 10/2020\)](#)

[Application for a Medical Equipment Supplier Permit \(rev. 10/2020\)](#)

[Application for a Permit as a Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a Permit as a Non-Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a License as a Wholesale Distributor \(rev. 10/2020\)](#)

[Application for a Permit as Warehouser \(rev. 10/2020\)](#)

[Application for a Permit as a Third-Party Logistics Provider \(rev. 10/2020\)](#)

[Application for Registration as a Non-resident Medical Equipment Supplier \(rev. 10/2020\)](#)

[Application for a Controlled Substances Registration Certificate \(rev. 10/2020\)](#)

[Closing of a Pharmacy \(rev. 5/2018\)](#)

[Application for Approval of an Innovative \(Pilot\) Program \(rev. 10/2020\)](#)

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(rev. 5/2018\)](#)

[Application for Approval of a Repackaging Training Program \(rev. 10/2020\)](#)

[Registration for a Facility to be an Authorized Collector for Drug Disposal \(rev. 5/2018\)](#)

~~[Application for Re-inspection of Facility \(rev. 3/2021\)](#)~~

[Application for Re-inspection of a Facility \(rev. 3/2023\)](#)

[Notification of Distribution Cessation due to Suspicious Orders \(rev. 5/2018\)](#)

VA.R. Doc. No. R23-7545; Filed April 14, 2023, 3:22 p.m.

### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** **18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians.**

**Agency Contact:** Erin Barrett, Regulatory Coordinator, Department of **Health** Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC110-21)

[Application for Licensure as a Pharmacist by Examination \(rev. 6/2021\)](#)

[Application for Licensure as a Pharmacist by Endorsement \(rev. 6/2021\)](#)

~~[Instructions for Reinstating or Reactivating a Pharmacist License \(rev. 6/2021\)](#)~~

~~[Instructions for Reinstating a Pharmacy Technician Registration \(rev. 6/2021\)](#)~~

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# Regulations

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[Instructions for Reinstating or Reactivating a Pharmacist License \(rev. 4/2023\)](#)

[Instructions for Reinstating a Pharmacy Technician Registration \(rev. 4/2023\)](#)

[Application for Registration as a Pharmacy Technician \(eff. 6/2021\)](#)

[Application for Registration as a Limited-Use Pharmacy Technician \(for use exclusively in a free clinic\) \(rev. 6/2021\)](#)

[Affidavit for Limited-use Pharmacy Technician \(rev. 5/2018\)](#)

[Application for Approval of Pharmacy Technician Training Program \(rev. 10/2020\)](#)

[Application for Registration as a Pharmacy Technician Trainee \(rev. 6/2021\)](#)

[Application for Registration as a Pharmacy Intern \(eff. 6/2021\)](#)

[Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy \(rev. 6/2021\)](#)

[Affidavit of Practical Experience as a Pharmacy Intern \(rev. 3/2019\)](#)

[Name Change Form for Individuals \(rev. 3/2018\)](#)

[Application for Approval of a Continuing Education Program \(rev. 10/2020\)](#)

[Application for Approval of an Innovative \(PILOT\) Program \(rev. 6/2021\)](#)

[Application for Approval of a Repackaging Training Program \(rev. 10/2020\)](#)

[Continuing Education \(CE\) Credit Form for Preceptors \(rev. 7/2020\)](#)

[Application for Approval of ACPE Accredited Pharmacy School Course\(s\) for Continuing Education Credit \(rev. 6/2020\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 4/2018\)](#)

[Application for Volunteer Practice by a Pharmacist \(rev. 4/2018\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 4/2018\)](#)

VA.R. Doc. No. R23-7544; Filed April 14, 2023, 3:19 p.m.

## BOARD OF VETERINARY MEDICINE

### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

**Agency Contact:** Erin Barrett, Regulatory Coordinator, Department of **Health** Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC150-20)

[Instructions for Completing an Application to Practice as a VETERINARIAN in Virginia \(rev. 6/2020\)](#)

~~Application for a License to Practice Veterinary Medicine online form available at <https://www.dhp.virginia.gov/Boards/VetMed/PractitionerResources/Forms/>~~

[Instructions for Completing an Application to Practice as a VETERINARY TECHNICIAN in Virginia \(rev. 6/2020\)](#)

~~Application for a License to Practice Veterinary Technology online form available at <https://www.dhp.virginia.gov/Boards/VetMed/PractitionerResources/Forms/>~~

[Application for Registration of a Veterinary Establishment AND Changes/Updates to a Registered Establishment \(rev. 6/2020\)](#)

[Change of Veterinarian-in-Charge Form \(rev. 6/2020\)](#)

[Veterinary Establishment Inspection Report \(rev. 10/2019\)](#)

[Veterinary Establishment Closure Form \(rev. 6/2020\)](#)

[Employment Verification \(rev. 6/2020\)](#)

[Name/Address Change Form \(rev. 6/2020\)](#)

[Request for Verification of a Virginia License \(rev. 6/2020\)](#)

[Application for Registration for Volunteer Practice \(rev. 6/2020\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 6/2020\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 6/2020\)](#)

~~Instructions/Checklist for Completing an Application for Registration to Practice as an Equine Dental Technician in Virginia (rev. 6/2020)~~

~~Instructions for Reinstating an Expired License to Practice as a VETERINARIAN or VETERINARY TECHNICIAN in Virginia (rev. 6/2020)~~

~~Instructions for Reactivating an Inactive License to Practice as a VETERINARIAN or VETERINARY TECHNICIAN in Virginia (rev. 6/2020)~~

[Instructions/Checklist for Completing an Application for Registration to Practice as an Equine Dental Technician \(rev. 3/2023\)](#)



[Instructions for Reinstating an Expired Registration to Practice as an Equine Dental Technician \(rev. 3/2023\)](#)

[Instructions for Reinstating an Expired License to Practice \(Veterinarian or Veterinary Technician\) \(rev. 3/2023\)](#)

[Instructions for Reactivating an Inactive License to Practice \(Veterinarian or Veterinary Technician\) \(rev. 3/2023\)](#)

[Recommendation for Registration as an Equine Dental Technician \(rev. 6/2020\)](#)

[Instructions for Reinstating a License to Practice Following Discipline \(Veterinarian or Veterinary Technician\) \(rev. 3/2023\)](#)

VA.R. Doc. No. R23-7543; Filed April 14, 2023, 3:07 p.m.

## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

#### Final Regulation

**Title of Regulation:** 22VAC30-120. Adult Services Approved Providers (amending 22VAC30-120-10 through 22VAC30-120-160).

**Statutory Authority:** § 51.5-131 of the Code of Virginia.

**Effective Date:** June 8, 2023.

**Agency Contact:** Paige L. McCleary, Adult Services Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email [paige.mccleary@dars.virginia.gov](mailto:paige.mccleary@dars.virginia.gov).

**Summary:**

*The amendments (i) require a local department of social services to evaluate an individual's application to be a provider when an adult recipient requests that individual be that adult's provider; (ii) raise the minimum age to be a chore and companion service provider and to be an assistant to an in-home provider to 18 years of age; and (iii) clarify content, eliminate inconsistency within the regulation, remove obsolete text, and update text to use person-centered language. Clarifying, nonsubstantive changes were made to the proposed regulation.*

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

#### 22VAC30-120-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control

and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Adult" means any individual 18 years of age or ~~over~~ older, or younger than 18 if legally emancipated.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603 [ of the Code of Virginia ].

~~"Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services.~~

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or [ ~~his the adult's~~ ] funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such fund, property, benefits resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to [ ~~his the adult's~~ ] detriment or an intentional failure to use the financial resources of an adult in a manner that results in the neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against [ ~~his the adult's~~ ] will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition ~~or an emotional or behavioral problem~~. Adult foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision, and special services in ~~his the provider's own home for up to three adults who are unable to remain in their own homes because of~~ to an adult with a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults. Care provided for more than three adults requires licensure as an assisted living facility by the Virginia Department of Social Services.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that [ ~~he the adult~~ ] is not able to provide for himself or is not being provided services necessary to maintain [ ~~his the adult's~~ ] physical and mental

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# Regulations

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**health** and that the failure to receive such necessary services impairs or threatens to impair [ ~~his~~ the adult's ] well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult, and there is a written or oral expression of consent by that adult.

~~"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.~~

"Assistant" means any individual who is responsible to assist an ~~adult services~~ approved provider in caring for ~~adult clients~~ adults. Assistants ~~must shall~~ meet the ~~same requirements as the provider~~ standards set forth in this chapter.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for ~~adult clients unable to perform such tasks for themselves.~~ Chore services include adults, including minor repair work on furniture and appliances in the adult's home; carrying coal, wood and, or water; chopping wood; removing snow; yard maintenance; and painting.

~~"Client" means any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services.~~

"Companion provider" means a provider who assists ~~adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in adults with~~ activities such as light housekeeping, companionship, shopping, meal preparation, transportation, ~~household management and activities of daily living (ADLs)~~ laundry, money management, and ADLs.

"Department" means the Virginia Department for Aging and Rehabilitative Services.

~~"Home based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self care and are likely to prevent or reduce dependency.~~

"**Health** care professional" means a physician or other **health** care practitioner licensed, accredited, or certified to perform specific **health** care services consistent with the laws of the Commonwealth.

"Homemaker ~~services~~ provider" means a provider who gives instruction in or, where appropriate, performs activities such as personal care, ~~home~~ household management, household maintenance, nutrition, consumer or hygiene education.

"In-home provider" means an individual who provides care in the home of the adult ~~client needing supervision and/or~~

~~services~~. In-home providers ~~include~~ are companion, chore, and homemaker providers.

"Instrumental activities of daily living" or "IADLs" means meal preparation, ~~housekeeping/light housework~~ light housekeeping, shopping for personal items, money management, laundry, ~~or~~ using the telephone, and home maintenance. An ~~adult client's~~ adult's degree of independence in performing these activities is part of determining ~~the appropriate level of care and services~~ an adult's service needs.

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

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

"Local department-approved provider" means a provider that is not subject to licensure by the Virginia Department of **Health** [ or the Virginia Department of Social Services ] and is approved by a local department of social services to provide in-home or adult foster care services to clients adults.

~~"Out of home provider" means an individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.~~

"Personal care services" means the provision of nonskilled services to the adult, including assistance in the activities of daily living ADLs, and may include instrumental activities of daily living related to the needs of the adult client IADLs, to maintain the adult client's **health** and safety safely in their the adult's home.

"Personal toiletries" means hygiene items provided to the individual by the adult foster care provider, including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Responsible person" means an individual ~~designated by or for an adult client~~ who is authorized by state law to make decisions concerning the adult client and/or and to receive information about the adult client.

"Significant change" means a change in an adult's condition that is expected to last longer than 30 calendar days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition for which an appropriate course of treatment is in progress.

## 22VAC30-120-20. Local department-approved providers.

A. This [ regulation chapter ] applies to ~~providers approved by a local department~~ department-approved providers and ~~does~~ shall not apply to facilities or organizations licensed or regulated by a licensing or regulatory agency the Virginia Department of **Health** [ or the Virginia Department of Social Services ]. A local department shall not approve a provider that

does not meet the standards set ~~out~~ forth in this ~~regulation~~ chapter.

B. This ~~regulation~~ chapter is applicable to the following providers:

1. ~~Out of home providers including: a. Adult day services providers; b. Adult foster care providers; and~~
2. ~~In-home providers including: a. Chore providers; b. Companion providers; c. Homemaker providers.~~

C. The local department [ ~~is not required to may~~ ] accept provider applications for ~~any type of service~~ [ even ] when the local department has a sufficient number of approved providers for that service ~~to meet the client population needs~~ [ or ] does not offer the type of service [ ~~or. If the local department~~ ] chooses to contract with an agency or organization licensed or regulated by the Virginia Department of Health [ ~~or the Virginia Department of Social Services~~ ] to provide in-home providers [ the local department shall inform the provider applicant of the local department's choice to contract with a licensed or regulated agency or organization ]. However, if the local department approves its own providers and the adult identifies an individual to be a provider, the local department shall initiate the approval process for that individual as long as the service is offered by that locality. The individual identified by the adult shall meet the standards set forth in this chapter.

D. Prior to approving an ~~out of home~~ adult foster care provider ~~located in another~~ that is not approved by the local department in the [ whose ] jurisdiction [ where ] the provider is located, the local department wanting to approve the provider shall seek written permission from the local department in the jurisdiction where the adult foster care provider will provide services is located.

E. Local departments may use an approved in-home or adult foster care provider from another jurisdiction without ~~performing another approval study~~ initiating the approval process when the local department obtains written permission and a copy of the approval documents from the local department that ~~conducted the approval study~~ approved the in-home or adult foster care provider.

## **22VAC30-120-30. Standards for providers and other persons.**

A. Age requirements include:

1. All local department-approved ~~adult services homemaker~~ providers shall be at least 18 years of age.
2. ~~All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service~~ Any assistant to

a local department-approved provider shall be at least 18 years of age.

~~3. Any assistant to a local department approved in home provider for adult services shall be at least 16 years of age.~~

B. Criminal record background checks and additional requirements include:

1. ~~The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search. An individual applying to become an in-home or adult foster care provider shall identify any criminal convictions and consent to a criminal record search. The local department shall obtain criminal history record information from the Central Criminal Records Exchange of any individual the local department is considering approving as an in-home or adult foster care provider. The local department may also obtain a criminal records search on all adult household members residing in the home of an individual the local department is considering approving as an adult foster care provider. A new criminal record background check shall be required at the time of provider renewal.~~

2. Convictions of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia shall prohibit ~~a provider, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider~~ any individual from being approved as a local-department approved provider. In addition, if the provider or, for adult foster care and adult day services, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.

3. Conviction of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia will result in the revocation of the in-home or adult foster care provider's approval unless an allowable variance is granted by the local department. The local department shall terminate the provision of services by an in-home provider or the adult shall be removed from the adult foster care home immediately if any adult in the home has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia.

4. ~~When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of a felony or misdemeanor not listed in clause (i) of the definition of barrier crime in § 19.2-392.02 of the~~

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# Regulations

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~~Code of Virginia, the local department may approve the provider if the local department determines that the conviction does not jeopardize the safety or proper care of the adult. If approval as a local department-approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local department, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Except as provided by law, further dissemination of the criminal history record information is prohibited.~~

C. Interview, references, and employment history requirements include:

1. The provider shall participate in interviews with the local department.
2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.
3. The provider shall provide information on the provider's employment history.
4. The local department shall use the interviews, references, and employment history to assess that the provider is:
  - a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;
  - b. Able to sustain positive and constructive relationships with adults ~~in care~~, and to relate to adults with respect, courtesy, and understanding;
  - c. Capable of handling emergencies with dependability and good judgment; and
  - d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety, and protection for adults.
5. For adult foster care ~~and adult day services providers~~, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.
6. For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:
  - a. Home management and household maintenance;
  - b. The types of personal care of ~~the elderly older adults~~ or adults with a disability permitted by regulation;
  - c. Nutrition education and meal planning and preparation, including special diets; and
  - d. Personal hygiene and consumer education.
7. For adult foster care providers, the local department shall further use the interview, references, and employment

history to assess that the provider has sufficient financial income or resources to meet the basic needs of [ ~~his the adult foster care provider's~~ ] own family and has the knowledge, skills, and abilities to care for adults, including, ~~but not limited to:~~

- a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.
- b. Housekeeping services based on the needs of the adult ~~in care~~.
- c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.
- d. Provision of clean bed linens and towels at least once a week and as needed by the adult.
- e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.
- f. Provision of ~~generic~~ personal toiletries ~~including soap and toilet paper~~.
- g. Assistance with the following: care of personal possessions, care of personal funds if requested by the adult and adult foster care home's policy permits it, use of telephone, arranging transportation, obtaining necessary personal items and clothing, making and keeping appointments, and correspondence.
- h. Securing **health** care and transportation when needed for medical treatment.
- i. Providing social and recreational activities as required by the local department ~~and consistent with licensing regulations~~.
- j. General supervision for safety.

D. Training requirements include:

1. The local department shall provide basic orientation to any approved provider.
2. The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

E. Medical requirements include:

1. The ~~in-home~~ provider; ~~for out of home care, the an assistant, the provider's spouse, adult foster care provider,~~ and all other adult household members in the adult foster care home who come in contact with adults in receiving care shall submit a statement from the local **health** department or ~~licensed physician~~ a **health** care professional that ~~he the individual submitting the statement~~ is believed to be free of tuberculosis in a communicable form.



2. The provider and assistant shall submit the results of a physical and mental **health** examination when requested by the local department.

F. All ~~local department approved~~ adult foster care providers shall ~~keep~~ notify the local department ~~informed~~ within one business day of changes in the household composition that may affect approval of the provider.

G. The provider shall have the capability to ~~fully~~ perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

H. Any provider who causes the local department to make an improper payment by withholding information or providing false information ~~may~~ shall be required to repay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

## **22VAC30-120-40. Standards for of care for adult services for local department-approved providers.**

A. The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability, or impairment.

B. Supervision requirements include:

1. The provider shall have a plan for seeking assistance from police, ~~firefighters~~ the fire department, and medical professionals in an emergency.

2. A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.

3. ~~If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make~~ The adult foster care provider shall inform the local department prior to an extended absence. An extended absence shall be defined as greater than one calendar day. Each adult foster care provider shall identify to the local department a substitute provider who will provide care during the adult foster care provider's extended absence. Each substitute provider shall also meet the standards set forth in this chapter.

4. The provider shall ensure that adequate care and supervision are provided to ~~adults in care~~ each adult and that the adult's **health**, safety, and well-being are protected.

5. The provider shall notify the local department within 24 hours of any significant changes in the adult's mental or physical condition.

C. The following standards apply to food provided to ~~adult clients~~ adults by ~~adult day services and~~ adult foster care providers:

1. Adults ~~in care~~ shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day ~~and, the daily nutritional needs of each adult, and the time of day care is provided.~~

2. Adults ~~in care~~ shall receive special diets if prescribed by a ~~licensed physician~~ **health** care professional or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

D. Requirements for transportation of adults include:

1. ~~If the provider and, for out of home services, the assistant; spouse of the provider; volunteer; or any other agent involved in the day to day operation of the adult day services or adult foster care transports adults in care, the As part of the service, only the approved provider or the person providing the or assistant shall provide transportation for the adult and shall have a valid driver's license and automobile liability insurance. When the approved provider or assistant is unable to provide transportation for the adult, the approved provider shall coordinate and assist the adult in obtaining backup transportation.~~

2. The vehicle used to transport adults shall have a valid license and inspection sticker.

3. ~~Providers or the person who transports adults in care must~~ The vehicle operator shall ensure that all passengers use safety belts in accordance with requirements of Virginia law.

E. Requirements for medical care include:

1. The provider shall have the name, address, and telephone number of each adult's ~~physician~~ **health** care professional and responsible person easily accessible.

2. The provider shall be able to meet the identified needs of the adult ~~as assessed by the local department before accepting the adult for care and in order to continue providing services or continuing to provide services to the adult.~~

3. The adult foster care provider shall not administer medications. The adult foster care and adult day services provider shall:

a. Ensure that the adult receives prescription ~~drugs~~ medications only in accordance with ~~an order signed by a licensed physician or authentic prescription label~~ the prescription label and; with the adult's responsible person's written consent, as ~~appropriate~~ applicable;

b. Document all medications taken by adults ~~in care~~, including over-the-counter medications;

c. Ensure that the adult ~~in care~~ receives ~~nonprescription drugs over-the-counter medications~~ only with the adult's or the adult's responsible person's written consent, as ~~required~~ applicable;

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# Regulations

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- d. Keep medications separate from food except those items that must be refrigerated;
- e. Report all major injuries to and accidents experienced by the adult to the local department and the adult's responsible person immediately;
- f. Have authorization for emergency medical care for each adult ~~in care~~; and
- g. Have first aid supplies easily accessible in case of accidents.

4. Admission or ~~retention~~ continued residence of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment ~~of by the adult services worker~~ local department or by the adult's ~~physician~~ health care professional.

F. The ~~adult day services and~~ adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults ~~in care~~.

G. All providers ~~of adult services~~ shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this [ ~~regulation chapter~~ ] are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

H. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

## **22VAC30-120-50. Standards for the home of the adult foster care ~~or adult day services~~ provider.**

A. Physical accommodations requirements include:

- 1. The home shall have appropriate space and furnishings for each adult receiving care ~~in the home to include~~, including:
  - a. Space to keep clothing and other personal belongings;
  - b. Accessible and adequate basin and toilet facilities;
  - c. Comfortable sleeping or napping furnishings;
  - d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;
  - e. Adequate space for recreational activities; and
  - f. Sufficient space and equipment for food preparation, service, and proper storage.
- 2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.
- 3. All doors and windows used for ventilation shall be appropriately screened.
- 4. Rooms used by adults ~~in care~~ shall have adequate lighting for activities and the comfort of adults.

5. The ~~provider and any adult in care shall have access to a working telephone in the home~~ shall have a working telephone that the adult shall be permitted to use.

6. The home shall be in compliance with all local ordinances.

7. Additional standards for adult foster care include:

- a. No more than two adults shall share a sleeping room unless they request, or if applicable, each adult's responsible person requests and consent [ annually ] consents in writing [ , which includes by electronic mail, ] to sharing such a sleeping arrangement.
- b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.
- c. There shall be at least one toilet, one basin, and one tub or shower for every five persons residing in the home.

B. Home safety requirements include:

- 1. The home and grounds shall be free from litter and debris and present no ~~hazard to the safety of the adults receiving care~~ safety hazards.
- 2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.
- 3. The provider shall have a written emergency plan that includes, ~~but is not limited to, fire or natural disaster and rehearse the plan at least twice a year and natural disasters~~. The provider shall rehearse the plan at least twice per year and review the plan with each new adult placed in admitted to the home. The written plan shall be provided to the local department upon request.
- 4. ~~Attics or basements used by adults in care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window. The provider shall ensure the adult [ is able to evacuate can be safely evacuated from ] all living spaces [ safely ] during an emergency. The provider shall include emergency evacuation procedures in the written emergency plan and shall consider the adult's ability to ambulate during an emergency.~~
- 5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition ~~in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof owned by the provider or other household members in a manner that prohibits access by the adult. If the provider permits an adult to possess weapons, firearms, or ammunition in the home, the provider shall have a written policy detailing such permissions, and the provider shall require the adult to safely store all weapons, firearms, or~~

ammunition. The provider may have a written policy prohibiting all weapons, firearms, and ammunition in the home, and the provider may choose not to accept into care an adult if the adult possesses weapons, firearms, or ammunition.

6. The provider shall protect adults from household pets that may be a **health** or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in receiving care who are mentally incapacitated.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

## C. Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local **health** department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the **health** of the adult in care adults.

## D. Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

~~2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the Department of Social Services.~~

~~3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the Department of Social Services.~~

E. The adult foster care provider shall display the Adult Protective Services hotline number and the toll free number of the State Long-term Care Ombudsman in a manner and method accessible to adults in the home.

## **22VAC30-120-60. Record requirements for adult foster care and adult day services providers.**

A. The provider shall maintain written, legible, and current information on each adult in receiving care.

## B. Information on the adult ~~in care~~ shall include:

1. ~~Identifying~~ The adult's identifying information on the adult in care;

2. Name, address, and home and work telephone numbers of the adult's responsible persons;

3. Name and telephone number of person to be called in an emergency ~~when if the adult's~~ responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up transport the adult ~~in care~~;

5. Name of persons not authorized to call or visit the adult ~~in care~~;

6. Date of admission and discharge of the adult ~~in care~~;

~~7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;~~ 8. Medical Pertinent medical information pertinent to the **health** care of the adult in care;

~~9. 8.~~ Correspondence related to the adult ~~in care~~ as well as other written ~~adult~~ information about the adult provided by the local department; and

~~10. 9.~~ Placement agreement between the provider and the adult and ~~his~~ the adult's responsible person, ~~where if~~ applicable.

C. ~~Adult~~ All records are confidential and shall not be shared without the approval of the adult ~~in care~~ or the adult's responsible person, except as required under federal and state law.

D. The local department ~~and its representatives~~ shall have access to all records.

E. The department ~~and its representative~~ shall have access to all records.

## **22VAC30-120-70. Approval period.**

The approval period for ~~a provider~~ all providers may be up to 24 months when the provider meets the standards. ~~In the case of adult day services and adult foster care, the home shall also meet the standards.~~

## **22VAC30-120-80. Allowable variance.**

A. The grant or denial of a variance is within the discretion of the local department. The provider may request ~~an allowable~~ a variance on a standard if the variance does not jeopardize the safety and proper care of ~~the any~~ any adult or prospective adult receiving care or violate federal, state, or local law and the local department approves the request.

B. ~~The local department shall consult with the state adult services consultant prior to granting an allowable variance~~ The allowable variance, if granted by the local department, shall be

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# Regulations

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documented in writing with a copy maintained by the local department and the provider.

~~C. The allowable variance shall be in writing with a copy maintained by the local department and the provider. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.~~

~~D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted. The variance shall be requested by the provider, and if granted by the local department, issued prior to the approval of the provider or at the time of the provider's renewal.~~

~~E. The allowable variance shall be requested and granted by the local department, prior to the approval of the provider or at the time of the provider's renewal.~~

## **22VAC30-120-90. Emergency approval.**

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or ~~his~~ the adult's responsible person requests placement or service in an emergency.

~~B. A representative of~~ For emergency approval of an adult foster care provider, the local department shall visit the provider's home prior to the emergency placement to ensure that minimum safety standards are evident and that the provider is capable of providing the care ~~prior to the emergency placement of the adult in adult foster care or adult day services for the adult.~~

~~C. For emergency approval of an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.~~

~~D. Emergency approval of a provider shall not exceed 30 calendar days.~~

~~E. The provider must shall meet all applicable standards if services shall are to be provided beyond the 30-day emergency approval or if the emergency approval is extended beyond 30 days.~~

## **22VAC30-120-100. Provider monitoring.**

~~A. For adult day services or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.~~

~~B. For home-based care in-home providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider. At least one~~

monitoring visit shall occur in the home of each adult who is receiving care.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult ~~in care~~ or ~~his~~ the adult's responsible person shall have access to ~~all~~ provider monitoring reports ~~completed by the local department for that specific adult and that adult's provider~~ upon request.

## **22VAC30-120-110. Renewal process.**

The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards, and if the local department continues to offer this service. ~~In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.~~

## **22VAC30-120-120. Inability to meet standards.**

A. If the provider cannot meet the standards ~~for adult services approved providers set forth in this chapter~~, the local department shall grant provisional approval, suspend approval, or revoke approval depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance with the standards set forth in this chapter does not jeopardize the safety or proper care of the adults ~~in care~~. Provisional approval shall not exceed ~~three months~~ 90 calendar days.

C. The local department may suspend approval if noncompliance with the standards set forth in this chapter may jeopardize the safety and proper care of ~~the adults in care~~ adults. Suspension shall not exceed ~~three months~~ 90 calendar days. During the suspension, the provider ~~can give no~~ shall not provide care to adults ~~referred by the local department receiving services arranged by the local department~~.

D. If the provider is found to be out of compliance with the standards set forth ~~herein and in this chapter~~ cannot meet standards within ~~three months~~ 90 calendar days, and a variance is not granted, the approval shall be revoked.

E. The local department shall immediately revoke its approval if noncompliance with the standards set forth in this chapter jeopardizes the health, safety, and proper care of ~~the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision. The local department shall terminate services and find alternative services for all affected adults who are receiving adult foster care no later than five calendar days from the date of the local department's revocation decision. For in-home providers, the local department shall find alternative services for the adult no later than 30 calendar days from the date of the local department's revocation decision.~~

F. The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

## **22VAC30-120-130. Relocation of ~~out-of-home~~ adult foster care provider.**

A. If the ~~out-of-home~~ provider moves adult foster care provider relocates within the locality, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 calendar days after relocation, to avoid disruption of services to the adult ~~in~~ receiving care.

B. If an ~~out-of-home~~ provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself. If the adult foster care provider relocates within the Commonwealth to a locality other than the locality that originally approved the adult foster care provider, the local department that originally approved the adult foster care provider (original local department) shall notify the local department in the new locality (new local department) of the relocation. If the new local department offers adult foster care services, the new local department may accept the adult foster care provider approval from the original local department based upon the recommendation of the original local department or the new local department may initiate an approval process. If the new local department does not offer adult foster care services, the original local department shall request written permission from the new local department for the adult foster care provider to continue to provide adult foster care services for the original local department.

## **22VAC30-120-140. Right to review.**

A. The provider shall have the right to request that the decision of the local department be reviewed by the ~~local~~ director of ~~social services~~ the local department.

B. The provider must request the review within 10 calendar days from the effective date of the ~~notice of action~~ local department's decision.

C. All written findings and actions of the local department or its director, including the decision of the local department director at the conclusion of the review, are final and shall not be (i) appealable to the Commissioner of the Department for Aging and Rehabilitative Services or (ii) considered a final agency action for purposes of judicial review pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## **22VAC30-120-150. Rights of adults ~~in~~ receiving care.**

A. Adults ~~in the~~ receiving care of ~~from~~ local department-approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not

be construed to restrict or abridge any right that any adult has under the law. The provider shall ~~establish policies and procedures to ensure that adults in care or the adult's responsible person are aware of and understand the following rights:~~ described in subsection B of this section. The adult and, if appropriate, the adult's responsible person shall acknowledge in writing receipt of this information, which shall be filed in the adult's record.

B. Adults receiving care from local department-approved providers shall have the right:

1. To be fully informed, prior to the beginning of the provision of services, (i) of [ his the adult receiving care's ] rights and of all rules and expectations governing [ his the adult receiving care's ] conduct and responsibilities; ~~the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record~~ and (ii) charges, if any, for the services to be provided;

2. To be fully informed, prior to the beginning of the provision of services, of services available and of related charges, if any; ~~this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record~~ free from adult abuse, neglect, and exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against [ ~~him~~ the adult receiving care ]; and to be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

3. Unless a conservator of such person has been appointed, ~~to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf~~ To be free to voice grievances and recommend changes in policies and services without fear of reprisal;

4. To be afforded confidential treatment of [ his the adult receiving care's ] personal affairs and records and to approve or refuse [ ~~their~~ ] release [ of records ] to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting when services may need to be transferred to another provider;

5. When receiving adult foster care or adult day services, ~~to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the local department that made the placement shall be given advance notice of at least 30 days for any transfer or discharge~~ To be



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# Regulations

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encouraged to function at [ ~~his~~ the adult receiving care's ] highest mental, emotional, physical, and social potential;

6. ~~An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge must be to a setting that will ensure the protection of the adult's health, safety and welfare; the local department that made the placement must be notified of the emergency discharge as soon as practicable but no later than 24 hours after the emergency discharge. To be afforded the opportunity to participate in the planning of [ his the adult receiving care's ] program of care and medical treatment and the right to refuse medical treatment unless there has been a court adjudication of incapacity;~~

7. ~~In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment; To be afforded privacy including:~~

~~a. In the care of [ his the adult receiving care's ] personal needs except when assistance may be needed;~~

~~b. In any medical examination or health-related consultations that the adult may have;~~

~~c. In any communications; and~~

~~d. During visitation with other persons; and~~

8. ~~When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record; To be free of physical, mechanical, or chemical restraints.~~

9. ~~To be free to select health care services from reasonably available resources;~~

10. ~~To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider;~~

11. ~~To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;~~

12. ~~To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;~~

13. ~~When receiving care from an out of home local department approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;~~

~~14. To be encouraged to function at his highest mental, emotional, physical, and social potential;~~

~~15. To receive and send uncensored, unopened mail;~~

~~16. To refuse medication unless there has been a court finding of incapacity;~~

~~17. To choose which services are included in the service agreement and to receive all physician prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults;~~

~~18. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:~~

~~a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and~~

~~b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;~~

~~19. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;~~

~~20. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:~~

~~a. In the care of his personal needs except as assistance may be needed;~~

~~b. In any medical examination or health related consultations that the adult may have at the home;~~

~~c. In communications, in writing, or by telephone;~~

~~d. During visitations with other persons;~~

~~e. When receiving care from an out of home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff shall not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations administered by the Commissioner for Aging and Rehabilitative Services; and~~

~~f. When receiving care from an out of home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and~~

21. ~~Is permitted to meet with and participate in activities of social, faith based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.~~

~~B. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.~~

~~C. The out of home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline as well as the toll free telephone number for the Virginia Long Term Care Ombudsman Program and any state ombudsman program serving the area.~~

~~D. The out of home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.~~

~~E. Each out of home provider shall provide appropriate staff training to implement each adult's rights included in this section.~~

~~F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.~~

~~G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out of home provider setting and the adult is present during the search.~~

~~H. When receiving care from an out of home provider, adults have the right to be notified before the adult's room or roommate is changed.~~

~~I. When receiving care from an out of home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.~~

C. In addition to the rights described in subsection B of this section, adults receiving care from an adult foster care provider shall have the following additional rights:

1. To be free to manage [ his the adult receiving care's ] personal finances and funds, to be entitled to access personal account statements reflecting financial transactions made, and to be given at least a quarterly accounting of financial transactions made on [ his the adult receiving care's ] behalf, unless a conservator has been appointed by a court to manage the adult's financial affairs;

2. To be permitted to retain and use personal clothing and possession as space permits, unless to do so would infringe upon the rights of other adults;

3. To be permitted to have guests in the adult's room or portion thereof, unless to do so would infringe upon the rights of other adults;

4. To have the adult foster care provider only enter the room after the provider makes [ his the provider's ] presence known except in a case of emergency or pursuant to oversight as required in this chapter;

5. To be permitted but not required to share a room with a spouse also residing in the home;

6. To be permitted to participate in social, faith-based, and other community activities at the adult's discretion, unless contraindicated as documented by the adult's health care professional;

7. To be notified before the adult's room or roommate is changed;

8. To be free from searches of personal belongings without the adult's or the adult's responsible person's permission, unless the adult foster care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the provider's home and the adult or the adult's responsible person is present during the search;

9. To be discharged only when the provider gives the adult, the adult's responsible person, and the local department that made the placement a 30-calendar-day written notice stating the reason for discharge;

10. To be afforded reasonable assistance to ensure an orderly discharge upon notice of discharge or upon the adult giving notice of [ his the adult receiving care's ] desire to move; and

11. To not be required to perform services in the home except as voluntarily contracted pursuant to an agreement for the service provision that states the terms of consideration

D. The adult foster care provider shall ensure that any assistants providing care also understand and uphold the rights included in this section.

## **22VAC30-120-160. Responsibilities of adults in adult foster care or adult day services.**

A. Adults ~~in~~ receiving care shall follow the rules of the provider unless these rules are in violation of adults' an adult's rights.

B. Adults ~~in~~ receiving care, ~~or~~ the local department ~~when appropriate~~, or the adult's responsible person, if applicable, shall give a ~~two-week~~ two weeks written notice of the intent to leave the placement.

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# Regulations

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C. Adults ~~in~~ receiving care or the adult's responsible person, if applicable, shall notify providers if there are changes in the adult's **health** status.

VA.R. Doc. No. R18-5298; Filed April 11, 2023, 3:39 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### VIRGINIA AVIATION BOARD

#### Proposed Regulation

**Title of Regulation:** 24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (amending 24VAC5-20-10; adding 24VAC5-20-410 through 24VAC5-20-450).

**Statutory Authority:** §§ 5.1-2.2 and 5.1-2.15 of the Code of Virginia.

**Public Comment Deadline:** July 7, 2023.

**Agency Contact:** Stephen Smiley, Senior Aviation Planner, Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3627, FAX (804) 236-3635, or email [stephen.smiley@doav.virginia.gov](mailto:stephen.smiley@doav.virginia.gov).

**Basis:** Sections 5.1-2.2 and 5.1-2.15 require and authorize the Department of Aviation to promulgate regulations to carry out the purposes of Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia. Section 15.2-926.3 of the Code of Virginia requires any ordinance or regulation regulating take-off and landing of an unmanned aircraft by a political subdivision be developed and authorized by the Department of Aviation. Chapter 345 of the 2020 Acts of the Assembly requires the department to promulgate regulations specific to take-offs and landings as described in § 15.2-926.3.

**Purpose:** Public properties, especially public parks, are regularly used for recreational purposes. Section 15.2-926.3 of the Code of Virginia authorizes local political subdivisions to regulate the launching and landing of unmanned aircraft on lands owned by the subdivisions to reduce hazards to citizens by unmanned aircraft flights at public parks and other areas. Further, while federal regulations prohibit flying of unmanned aircraft over federal and state prisons, no such restriction exists for local jails. Part VIII, Unmanned Aircraft, of Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (24VAC5-20) will authorize regional jail authorities and any locality that operates a jail to control the launching and landing of unmanned aircraft at those sensitive sites, thereby protecting public safety.

**Substance:** Part VIII, Unmanned Aircraft, of Regulations Governing the Licensing and Operation of Airports and

Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (24VAC5-20) allows certain local political subdivisions to (i) regulate when take-offs and landings may be done on subdivision lands; (ii) identify areas of increased public safety or environmental concern where extra information must be provided by a potential user prior to a take-off or landing; (iii) require a demonstration of safety by the operator of an unmanned aircraft that weighs more than 55 pounds prior to launching or landing the aircraft; (iv) delineate the process for local adoption of regulations; and (v) provide exceptions for landings due to malfunctions of the aircraft or its operating equipment; public safety officer or emergency services personnel use in performing required duties; operations by the United States government; and launching or landing to address declared emergencies as well as the authority to allow the sole occupant of more than one-half acre of public land for an event to launch and land unmanned aircraft related to the occupant's use.

**Issues:** Advantages of the regulation to the public include that it will help localities and certain political subdivisions reduce the risk of injuries or damage to property related to launching or landing unmanned aircraft, particularly in recreational properties, such as parks. The regulation also reduces the likelihood of persons launching drones on local properties. Disadvantages of the regulation to the public include that it limits the current, unfettered ability of unmanned aircraft operators to launch and land the aircraft on public properties. Advantage of the regulation to the agency and Commonwealth is that it will help avoid conflicts on local properties that could involve the Commonwealth in disputes. There are no disadvantages to the agency or 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 and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 345 of the 2020 Acts of Assembly,<sup>2</sup> the Virginia Aviation Board (Board) proposes to replace emergency regulations with permanent regulations pursuant to which cities, counties, towns, school divisions, park authorities, jail authorities and airport authorities (political subdivisions)<sup>3</sup> may regulate the take-off and landing of an unmanned aircraft in their areas.

Background. Prior to the enactment of Chapter 345, § 15.2-926.3 of the Code of Virginia prohibited political subdivisions from regulating the use of a privately owned, unmanned aircraft (UAV) system as defined in § 19.2-60.1 of the Code of Virginia<sup>4</sup> within its boundaries. According to the Board, this prohibition was the source of concern among some political subdivisions about their inability to protect all users of property owned by the political subdivision from the hazards associated

with the launching and landing of UAVs on those properties. The concern was addressed by Chapter 345, which authorized political subdivisions to regulate take-off and landing of a UAV on property owned by the political subdivision, subject to approval by the Virginia Department of Aviation (DOAV) as follows:

"B. Notwithstanding the prohibition of subsection A, a political subdivision may, by ordinance or regulation, regulate the take-off and landing of an unmanned aircraft, as defined in § 19.2-60.1, on property owned by the political subdivision. Such ordinance or regulation shall be developed and authorized in accordance with the rules and regulations promulgated by the Department of Aviation (the Department). The political subdivision shall report to the Department any ordinance or regulation adopted pursuant to this section, and the Department shall publish and update annually on its website, and any other website the Department deems appropriate, a summary of any such ordinance or regulation adopted."

Chapter 345 also provided some exemptions from the applicability of political subdivision ordinances or regulations as follows:

"D. Nothing in this section shall be construed to prohibit (i) the take-off or landing of an unmanned aircraft by a commercial operator in compliance with Federal Aviation Administration regulations, or as deemed reasonable or necessary by private or public entities for emergency or maintenance support functions or services, including the protection and maintenance of public or private critical infrastructure; (ii) the landing of an unmanned aircraft by an operator in compliance with Federal Aviation Administration regulations as deemed reasonable or necessary by the operator in the event of a technical malfunction of an unmanned aircraft system; (iii) the take-off or landing of an unmanned aircraft being operated by a sworn public safety officer in the performance of his duties; or (iv) the take-off or landing of an unmanned aircraft owned or operated by the United States government, or any operator under contract with any agency of the United States government, in performance of his assigned duties."

Based on the legislative mandate, DOAV held extensive conversations with affected interest groups "including citizen-oriented groups, state emergency services personnel, and unmanned aviation industry representatives" and developed emergency regulations<sup>5</sup> effective August 13, 2021. In this action, the Board proposes to make the emergency rules permanent.

In essence, the proposed regulation mainly establishes a procedure for political subdivisions to develop and establish ordinances or regulations on the use of UAV and systems. According to the proposal, the steps are as follows: (i) any local ordinance or regulation is submitted to DOAV for review, (ii) upon approval by DOAV, the locality or political subdivision holds a public hearing and advertises the hearing 14 days prior

to the date of the hearing, (iii) the locality or political subdivision reports the adoption of the rules to DOAV within 14 days of the adoption, (iv) DOAV publishes new or revised rules on its website or provides links to the locality's website within 14 days of from receiving the adoption notice.

The other substantive rules established by this proposal, but which are not mentioned in the mandate, are those that authorize political subdivisions to (i) regulate when take-offs or landings are allowed; (ii) designate specific properties of increased concern for public safety or risk to natural resources where the operator may be subject to additional requirements, such as stating the purpose and demonstration of safety of the take-off and landing in that area; (iii) require the operator to provide information prior to any take-off or landing or demonstrate safety if the UAV has a take-off weight of 55 pounds or more; and (iv) regulate UAV with a take-off weight of less than 0.55 pounds only in designated areas in item ii.

The proposal also provides exemptions from the applicability of local rules for take-offs and landings of UAVs that are either under the purview of Federal Aviation Administration or are operated by the United States government, certain sworn officers, or employees of localities or political subdivisions.

In summary, the legislative mandate now allows localities and political subdivisions to regulate take-off and landing of UAVs in their jurisdictions. And, this proposed regulation establishes a procedure to develop and establish such a local ordinance or regulation to restrict the use of UAVs mainly in terms of timing and locations.

**Estimated Benefits and Costs.** Government rules regarding UAVs are numerous and complex, which makes local regulation very challenging. For example, operation of a UAV in the air (unlike take-off and landing) falls solely under the purview of the Federal Aviation Administration, and local governments and political subdivisions lack authority over this operation. In addition, federal and state entities may have their own regulations in their own areas, such as federal and state parks or prisons. However, prior to the legislative mandate, political subdivisions in the Commonwealth lacked authority to regulate UAVs in their jurisdictions. With this action, political subdivisions would have the authority and also a process by which they can develop and establish rules primarily for the timing and location of take-off and landing (rather than operation in the air) of UAVs in their jurisdictions.

**Benefits.** The fact that all ordinances and local regulations would have to be reviewed and approved by DOAV prior to their adoption should provide some level of consistency across different political subdivisions, while allowing them to factor in local area considerations. The greater the consistency across localities, the easier it would be for users of UAVs to understand and comply with the local rules.

Although the use of UAVs has many current and potential beneficial uses in civil applications such as photography, cinematography, archeology, surveys, inspections, conservation, hobby and recreation, package delivery, **health**



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# Regulations

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care, journalism, scientific research, search and rescue, agriculture, manufacturing, or construction, it also has the potential to pose risks to safety, the environment, security, or privacy. For example, in the absence of the recent legislation and the proposed regulation, a drone may take-off or land from a crowded local park, a street, a school backyard, a dense downtown, or near private residences. Potential hazards associated with launching and landing of UAVs were the original concern among the localities as mentioned. The intent of the mandate and this regulation appears to give localities and political subdivisions an ability to mitigate potential harmful uses or hazards posed by UAVs. Consequently, depending on the specifics of each local and political subdivision ordinance and regulation, a reduction in potential harms from the use of UAVs may be expected.

**Costs.** DOAV would likely expend some one-time administrative resources such as staff time to review and approve initial local government ordinances and regulations and ongoing resources for monitoring and subsequent amendments to local rules. Currently, DOAV is absorbing such expenses within its existing resources. However, if ongoing expenses prove to be non-negligible, the possibility of a future budget request to cover such expenses cannot be ruled out.

The users of UAVs would likely lose some flexibility in terms of when and where they can take-off and land their equipment if and when a political subdivision passes an ordinance or regulation. Also, the legislation and this regulation is silent about fees for the use of UAVs, but DOAV states that political subdivisions have inherent powers to assess permit or registration fees if they see fit. Thus, some users may be required to pay some fees in certain jurisdictions. DOAV stated that one of its objectives is to keep any local restrictions on recreational use of UAVs at a minimum. Also, DOAV foresees assessment of fees only on commercial uses. However, it does not appear that DOAV has the authority or the tools to achieve those objectives.

**Businesses and Other Entities Affected.** The proposed regulation applies to all 132 localities and all other political subdivisions in the Commonwealth. DOAV initially expects a few large localities to seek approval for their ordinances or local regulations regarding take-off and landing of UAVs. Once a few localities adopt their own rules, DOAV believes most others would follow, eventually reaching 100-110 of the 132 localities.

The users of UAVs would also be affected if and when the political subdivision they live in adopts an ordinance or regulation. According to DOAV, there are 865,505 drones registered in the United States with the Federal Aviation Administration. Of these, approximately 35% are commercial drones and 65% are recreational. Given the national numbers and anecdotal information from DOAV, the number of drones in Virginia is likely in the tens of thousands, but precise data are not available.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> 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. As noted, some users of UAVs would likely lose some flexibility in terms of when and where they can take-off and land their equipment if and when the locality or subdivision passes an ordinance or regulation. Thus, an adverse impact on some users is indicated.

**Small Businesses<sup>7</sup> Affected.<sup>8</sup>** Of the tens of thousands of UAVs that likely exist in Virginia, national statistics suggest 35% are involved in commercial uses. Of these commercial drones, some are bound to be used by small businesses.

**Types and Estimated Number of Small Businesses Affected.** There is no reliable estimate on what portion of the commercial UAVs may be used by small businesses or what types of small businesses.

**Costs and Other Effects.** The proposed regulation allows localities to restrict the use of UAVs primarily in terms of time and location. Thus, small businesses would be adversely affected as they may lose some flexibility in terms of time and locations where their UAVs can take-off and land when and if the locality adopts such restrictions.

**Alternative Method that Minimizes Adverse Impact.** There are no clear alternative methods that both reduce the adverse impact and meet the intended policy goals.

**Localities<sup>9</sup> Affected.<sup>10</sup>** The proposed regulation potentially affects all 132 localities. The legislation and the regulation allow but do not require localities to adopt rules governing the take-off and landing of UAVs. In addition, a locality may assess fees for registration or permit to cover its costs if it chooses to establish rules and procedures. Thus, the proposed amendments do not introduce costs for local governments. Although localities with higher population densities may potentially be more inclined to adopt rules on UAVs, on its face the regulation does not appear to particularly affect any locality more than others.

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

**Effects on the Use and Value of Private Property.** The new legislation and the proposed regulation allow localities to adopt regulations on the use of UAVs. Some of the UAVs are used for commercial purposes and their use may be restricted or be subject to registration or permit fees. Such restrictions and fees may add to compliance costs of the affected businesses and have a negative impact on their asset values.

Conversely, one of the purposes of local rules restricting the use of UAVs in certain locations is to enhance environmental protection and minimize environmental hazards. Thus, to the extent a private property is protected better from harms and hazards posed by UAVs, its use should be enhanced and its value should be positively affected.



The proposed regulation does not appear to affect real estate development costs.

<sup>1</sup>Section 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.

<sup>2</sup><https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0345>

<sup>3</sup>This definition of "political subdivision" is contained in the proposed regulatory text.

<sup>4</sup>"Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

"Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links, sensing devices, and the components that control the unmanned aircraft.

<sup>5</sup><https://townhall.virginia.gov/l/viewstage.cfm?stageid=9225>

<sup>6</sup>Pursuant 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.

<sup>7</sup>Pursuant 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."

<sup>8</sup>If 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.

<sup>9</sup>"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.

<sup>10</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Aviation agrees with the economic impact analysis prepared by the Department of Planning and Budget and takes no exception to the background, information, and conclusions of the analysis.

## Summary:

*As required by Chapter 345 of the 2020 Acts of Assembly, the proposed amendments establish Part VIII (Unmanned Aircraft) of Regulations Governing the Licensing and*

*Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (24VAC5-20) that authorizes localities and other political subdivisions to adopt local regulations for the take-off and landing of unmanned aircraft on properties owned by the locality or other political subdivision, including (i) what the locality or other political subdivision must do to adopt and finalize a local regulation and (ii) exceptions to enable an unmanned aircraft to be launched and landed during an emergency under certain circumstances and to enable a sole occupant of public property to launch and land unmanned aircraft on the property possessed by the occupant.*

## **24VAC5-20-10. Definitions.**

Words or terms defined in § 5.1-1 of the Code of Virginia are incorporated by reference. The following words and terms when used in this ~~regulation~~ chapter shall have the following meanings unless the context clearly indicates otherwise:

"Aircraft" means any contrivance now known or hereafter invented that is controlled, used, and usually occupied by a person for the purpose of navigation and transportation through the air, excepting "hang glider" as defined in § 5.1-1 of the Code of Virginia. Commonly recognized names for aircraft include, ~~but are not limited to,~~ planes, helicopters, seaplanes, ultralights, and hot air balloons.

"Airline" means an air carrier operation under Federal Aviation Regulations 14 CFR Part 119, 14 CFR Part 121, 14 CFR Part 129, or 14 CFR Part 135 providing scheduled passenger service.

"Airport sponsor" means an entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required for an airport.

"Antique aircraft" means any aircraft constructed by the original manufacturer, or ~~his~~ the manufacturer's licensee, on or before December 31, 1945.

"Approach surface" means a surface longitudinally centered on the extended runway centerline and extending outward and upward. An approach surface is applied to each end of each runway.

"Aviation" means activities and infrastructure related to transportation by air, including ~~but not limited to~~ (i) the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories; (ii) the establishment, design, construction, extension, operation, improvement, repair, or maintenance of airports or landing areas; and (iii) navigable airspace, other air navigation facilities, and air instruction.

"Commercial operator" means a person, except an airline, who operates any aircraft for the purpose of rental or charter or for other purposes from which revenue is derived.

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# Regulations

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"Contract carrier permit" means a permit issued by the department to contract carriers operating under Federal Aviation Regulations 14 CFR Part 61, 14 CFR Part 135, or 14 CFR Part 141 for transport of passengers or freight on demand by air. Owners of aircraft who contract to provide flight instruction in their aircraft for profit are required to have a contract carrier permit.

"Day/VFR Use Only License" means a conditional airport license issued with the restriction that operations at the airport can only occur between sunrise and sunset and only under Visual Flight Rules (VFR) for the purpose of allowing continuing operations at an airport that is not in compliance with the minimum requirement for approach surfaces.

"Department" means the Virginia Department of Aviation.

"Effective runway length" means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway and the far end thereof.

"Hazard" means a fixed or mobile structure or object, natural growth, or use of land that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to the landing or taking off of aircraft.

"Helipad" means a small designated area, usually with a prepared surface, on an airport, heliport, landing/takeoff area, apron/ramp, or movement area used for the takeoff, landing, or parking of helicopters.

"Heliport" means (i) an identifiable area on land, water, or structure, including a building or facilities thereon, used or intended to be used for the landing and takeoff of helicopters or other rotorcraft or (ii) appurtenant areas that are used, or intended for use, for heliport buildings or other heliport facilities including rights-of-way, easements, and all heliport buildings and facilities located thereon.

"Noncommercial dealer" means a person who owns and offers for sale a minimum of three aircraft during any consecutive 12-month period, which aircraft are not used for personal use, rental, charter, or for a purpose from which revenue is derived.

"Obstacle" means a fixed or mobile object that interferes with the siting or operation of navigational aids or that may control the establishment of instrument procedures. An obstacle could be located on an area intended for the ground movement of aircraft or would extend above the approach surfaces intended to protect aircraft in flight or the runway object free area.

"Obstruction" means an object, obstacle, or structure that penetrates the approach surfaces or runway object free area at an aircraft landing area. The obstruction may be man-made or of natural growth, including trees.

"Obstruction clearance plane" means a plane sloping upward from the runway at a slope meeting the appropriate requirements to clear all obstructions within a specified area as shown in a profile view of that area.

"Private-Use Landing Area License" means a license issued for a facility not open for public use, including airports, heliports, helipads, and seaplane bases, that is within five nautical miles of a licensed public-use airport, in accordance with § 5.1-7 of the Code of Virginia.

"Runway" means a rectangular surface area that may be turf, paved, or water course that is designed specifically for the purpose of approaching and landing and taking-off and departing of aircraft.

"Runway object free area" means an imaginary area centered on the runway centerline that is clear of aboveground objects protruding above the runway centerline, except for allowable objects necessary for air navigation or aircraft ground maneuvering purposes.

"Runway safety area" means a rectangular area symmetrical about the runway centerline, which includes the runway, runway shoulders, and safety overruns, if present. The portion abutting the edge of the runway shoulders, runway ends, and safety overruns is cleared, drained, graded, and usually turfed. Under normal conditions, the runway safety area is capable of supporting snow removal, firefighting, and rescue equipment and of accommodating the occasional passage of aircraft without causing major damage to the aircraft.

"Safety overrun" or "stopway" means an area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support an aircraft during an aborted takeoff without causing structural damage to the aircraft and designated by the airport authorities for use in decelerating the aircraft during an aborted takeoff.

"Seaplane base" means an area of water used or intended to be used for the landing and takeoff of aircraft, together with appurtenant shoreside buildings and facilities.

"Structure" means (i) a man-made object, including a mobile object, constructed or erected by man, including ~~but not limited to~~ buildings, towers, cranes, smokestacks, earth formations, overhead transmission lines, flag poles, and ship masts or (ii) natural objects, including ~~but not limited to~~ trees.

"Threshold" means the beginning of that portion of the runway identified for the landing of aircraft. A threshold may be displaced, or moved down the runway, to provide for adequate safety provisions.

"UAS" means unmanned aircraft system.

"Ultralight" means an aircraft that (i) is used or intended to be used for manned operation in the air by a single occupant; (ii) is used or intended to be used for recreation and sport purposes only; (iii) does not have a United States or foreign air

worthiness certificate; (iv) weighs less than 254 pounds empty weight, excluding floats and safety devices that are intended for deployment in a potentially catastrophic situation; (v) has a fuel capacity not exceeding five United States gallons; and (vi) is not capable of more than 55 knots calibrated airspeed at full power in level flight and has a power-off stall speed that does not exceed 24 knots calibrated airspeed.

"Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

### Part VIII Unmanned Aircraft

#### **24VAC5-20-410. Definitions for Part VIII, Unmanned Aircraft.**

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

"Commercial operator" means a person operating a UAS for a commercial purpose in compliance with applicable Federal Aviation Administration regulations.

"Emergency response personnel" means the officials and employees of governmental and nongovernmental entities responding to or supporting emergency response operations, including search and rescue, law enforcement, hazardous materials, fires, car crashes, and natural or man-made disasters.

"Locality" or "local government" means a county, city, or town.

"Operator" means the person who is directly responsible for the operation of an unmanned aircraft.

"Property owned" means any real property owned through fee interest, together with all buildings and other structures, facilities, or improvements located on the real property.

"Political subdivision" means (i) a locality, (ii) a school division, or (iii) any park authority, jail authority, or airport authority that has the power to enact or promulgate ordinances or regulations having the force or effect of law.

"Recreational operator" means a person who is operating an unmanned aircraft solely for a recreational purpose and is fully in compliance with 49 USC § 44809.

#### **24VAC5-20-420. Political subdivision powers.**

A. Any political subdivision may regulate the take-off and landing of an unmanned aircraft on property owned by the political subdivision, in a manner consistent with this part. All regulations of any political subdivision, whether enacted by ordinance or resolution by a locality or adopted by a political subdivision other than a locality, must comply with this part of this chapter.

B. The regulations may provide for times when take-offs and landings are allowed.

C. The regulations may designate specific properties of increased concern for public safety or risk to natural resources where an operator seeking to use the property must show (i) the purpose of the take-off and landing, (ii) what steps the operator will take to limit risk to the public or to natural resources, and (iii) information to demonstrate that the take-off and landing can be carried out without harm to the identified public safety risk or natural resources. On such properties, the regulation may deny permission to take-off or land unmanned aircraft, unless the operator can demonstrate the safety of the take-off and landing, based on the information provided.

Prior to designating any properties pursuant to this subsection, the political subdivision must show the basis for the designation. The designation must be based on a significant and specific risk to public safety or to natural resources. Every area designated pursuant to this subsection must include a map showing, with specificity, the area of prohibited use. The map and any related documents must be provided in electronic, computable, machine-readable, and transmissible form.

D. For unmanned aircraft with a takeoff weight of 55 pounds or more, the regulations may require the operator to provide information prior to any take-off or landing, demonstrating the safety of the take-off and landing. This subsection is inapplicable to any licensed airport or licensed UAS facility.

E. No political subdivision shall require a permit for operators for take-off and landing unmanned aircraft in areas designated for unmanned aircraft use. This subsection shall not apply to unmanned aircraft covered by subsection C of this section.

F. No subdivision shall regulate the take-off and landing of unmanned aircraft with a ready-for-take-off weight of less than 0.55 pounds, except on properties regulated pursuant to the authority in subsection B of this section.

G. Any political subdivision may provide or participate in offering UAS classes, competitions, and similar events on its property.

#### **24VAC5-20-430. Procedure for adopting an ordinance or regulation.**

A. Any locality that proposes to regulate the take-off and landing of unmanned aircraft on property owned by it shall enact such regulations by ordinance or resolution. Any other political subdivision shall adopt regulations for such purposes.

B. No proposed ordinance or regulation may be advertised for a public hearing until the political subdivision has submitted the regulation to the department for comment and the department has notified the political subdivision that the ordinance or regulation is consistent with this chapter.

C. A locality may regulate the use of unmanned aircraft by ordinance or resolution. The locality shall hold a public hearing

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# Regulations

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prior to adoption of regulations. The locality shall advertise the hearing and the substance of the ordinance or regulation on the locality website for a minimum of 14 days, displayed where public hearings are set out on the locality's website and shall include the advertising in the applicable social media feeds of the locality for the same period of time. The regulation must be based on findings of need for public safety protection or protection of specific natural resources.

D. Any political subdivision other than a locality shall hold a public hearing prior to adoption of a regulation. The other political subdivision shall advertise the hearing and the substance of the regulation on the subdivision's website for a minimum of 14 days, displayed where public hearings are set out on the political subdivision's website and shall include notice of the advertising in the applicable social media feeds of the subdivision for the same period of time. The regulation must be based on findings of need for public safety enhancement protection or protection of specific natural resources.

E. Every political subdivision shall report the adoption of any regulation permitted by this chapter to the Department of Aviation within 14 days of adoption. The report shall include an electronic copy of the regulations, policies, maps, and any other documents related to the regulation with links to the political subdivision's regulation. No regulation shall take effect until it is published on the department's website.

F. The department will publish all new or revised regulations or ordinances or provide links to the political subdivision's website pages containing such information within 14 days of receipt from the political subdivision. The department shall publish and update annually on its website, and any other website the department deems appropriate, a summary of any such regulations or ordinances adopted.

G. If, at any time, the department deems a political subdivision's local regulation to be inconsistent with this chapter, the department will inform the subdivision of the discrepancies. The political subdivision shall amend its regulation to eliminate the discrepancies.

## **24VAC5-20-440. Exceptions.**

A. No ordinance or regulation may prohibit:

1. The take-off or landing of an unmanned aircraft by a commercial operator in compliance with Federal Aviation Administration regulations or as deemed reasonable or necessary by private or public entities for emergency or maintenance support functions or services, including the protection and maintenance of public or private critical infrastructure;

2. The landing of an unmanned aircraft by an operator in compliance with Federal Aviation Administration regulations as deemed reasonable or necessary by the

operator in the event of a technical malfunction of an unmanned aircraft system;

3. The take-off or landing of an unmanned aircraft being operated by a sworn public safety officer or other emergency response personnel in the performance of the public safety officer's duties;

4. The take-off or landing of an unmanned aircraft owned or operated by the United States government or any operator under contract with any agency of the United States government in performance of the officer's assigned duties;

5. The take-off or landing of an unmanned aircraft by a commercial operator done as a part of the response to an emergency declared by the Governor or a local emergency declared pursuant to the laws of the Commonwealth; or

6. The take-off or landing of unmanned aircraft by employees and agents of a political subdivision on that political subdivision's lands.

B. No political subdivision's local regulation enacted pursuant to the authority in this chapter shall apply to take-offs and landings on the vehicular travel portions of public highways or streets or to rights of ways adjacent to travel portions of the highways or streets.

C. If a private entity has exclusive use of more than one-half acre of public property for a specific event, such as a concert, sports activity, or family event, any local regulation may allow the entity to launch and land its own unmanned aircraft at the event and may allow an operator employed by the entity to launch and land unmanned aircraft during the event on that property only.

## **24VAC5-20-450. Federal laws and regulations.**

Nothing in this chapter shall allow any use of unmanned aircraft in any manner inconsistent with federal laws and regulations, including Title 14 of the Code of Federal Regulations.

VA.R. Doc. No. R21-6599; Filed April 11, 2023, 8:39 a.m.

## EXECUTIVE ORDER NUMBER 25 (2023)

### **Establishing a Virginia-Taiwan Trade Office**

#### Importance of Initiative

The United States is Taiwan's second largest trading partner. Virginia's relationship with Taiwan is a meaningful driver of the national partnership, with recent growth in annual product exports from Virginia significantly outpacing that of the broader nation. Furthermore, Taiwan and Virginia share common values, including democratic norms and support of a rules-based world order. According to preliminary analysis undertaken by the Virginia Economic Development Partnership Authority per Senate Bill 1208 and signed into law as 2023 Acts of Assembly Chapter 637 on March 26, 2023, the Commonwealth of Virginia will benefit from the opening of a Virginia-Taiwan Trade Office.

Attracting foreign direct investment (FDI) to the Commonwealth and aiding Virginia companies in selling their products overseas are critical to the economic prosperity of the Commonwealth. Given that Taiwan is a critical partner to Virginia and the United States and shares our commitment to democracy, expanding our trade relationship will strengthen ties on both sides. Taiwan is a significant source of FDI in the United States and their market share of FDI is rising. Taiwan ranks as the fourth fastest-growing source of FDI in the United States. A trade office in Taiwan will build off this foundation and momentum to help bring investment and jobs to Virginia.

FDI in advanced technologies includes the semiconductor ecosystem. A secure semiconductor supply chain is essential to the national security of the United States. Virginia is uniquely poised to excel in the advanced technology sector due to our extensive IT infrastructure, a robust, internationally recognized university system primed to advance key technologies and satisfy growing workforce needs, and the highest existing concentration of tech employees in the United States.

Additionally, international trade plays an essential role in maintaining the vitality of the Virginia economy. VEDP's International Trade programs and the Virginia Department of Agriculture and Consumer Services Office of International Marketing provide direct support to Virginia companies committed to increasing their international export sales as a corporate growth strategy. These services help companies identify potential new markets, develop market entry strategies, and locate possible distributors and representatives for products or services - all at little to no cost to the company.

The Commonwealth and her businesses provide critical computer and electronic products, machinery, agricultural exports such as soybeans, textiles, and more to Taiwan. Increasing opportunities for international trade with Taiwan in these sectors will position Virginia's companies for future success.

The relationship is further supported by the heart of Virginia's economy, the Port of Virginia, whose 6 terminals and extensive

multimodal network support the export and import of goods, to and from Virginia and states across the nation. There are over \$1.4 billion in transformative projects underway at the Port, including deepening and widening of the Norfolk Harbor and its channels which will make the Port of Virginia the deepest port on the U.S. East Coast and the only port that will be able to safely handle two-way traffic of ultra-large container vessels. Taiwanese exports through the Port of Virginia saw a 12.5% year-over-year increase in twenty-foot equivalent unit (TEUs) in 2022. The Virginia-Taiwan Trade Office coupled with the historic investments in infrastructure improvements at the Port of Virginia will position Virginia and Taiwan to increase TEUs through the Port and strengthen supply chain relationships.

The existing partnership between Taiwan and Virginia will be further strengthened by the creation of a Virginia-Taiwan Trade Office, and its opening will enable the Commonwealth to better showcase Virginia to prospective investors and businesses, and to further open markets for Virginia products. The establishment of the Virginia-Taiwan Trade Office will be Virginia's fourth international office, in addition to offices in Germany, Japan and South Korea.

#### Directive

Accordingly, pursuant to the authority vested in me in Article V of the Constitution of Virginia and as the Chief Executive of the Commonwealth, and pursuant to § 2.2-103 of the Code of Virginia, I hereby direct and order the Secretary of Commerce and Trade, in collaboration with the Virginia Economic Development Partnership (VEDP), to establish a Virginia-Taiwan Trade Office to serve as the official representation of Virginia in Taiwan and to promote and offer services related to economic development and trade.

Additionally, the Secretary of Commerce and Trade and the Virginia Economic Development Partnership shall submit a plan to implement this directive including the steps, resources, and actions necessary to open a Virginia-Taiwan Trade Office, along with a timeline for opening the office by June 30, 2023. The plan shall also explore services that will promote the Commonwealth's agricultural, industrial, and commercial products and services to Taiwan as well as generate new business opportunities, sales, and investments across various industries serving the interests of residents of the Commonwealth and the people of Taiwan.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of April, 2023.

/s/ Glenn Youngkin, Governor



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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### BOARD OF PHARMACY

Titles of Documents: [Access to Prescriptions during Unanticipated Shortened Hours.](#)

[Pharmacy Administration Records.](#)

[Protocol for the Prescribing and Dispensing of Naloxone.](#)

Public Comment Deadline: June 7, 2023.

Effective Date: June 8, 2023.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of **Health** Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Proposed Enforcement Action for the Town of Cape Charles**

An enforcement action has been proposed for the Town of Cape Charles for violations of State Water Control Law and regulations at the wastewater treatment plant in Cape Charles, 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 May 8, 2023, through June 7, 2023.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email [john.brandt@deq.virginia.gov](mailto:john.brandt@deq.virginia.gov).

### **Proposed Enforcement Action for the Carroll County Public Service Authority**

An enforcement action has been proposed for the Carroll County Public Service Authority for violations of the State Water Control Law at the I-77 Exit 1 wastewater treatment plant in Carroll County. The Department of Environmental Quality proposes to issue a consent order to resolve violations associated with the facility. A description of the proposed action is available at the DEQ office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person will accept comments by email or postal mail from May 8, 2023, through June 7, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for Murphy Brothers Inc.**

An enforcement action has been proposed for Murphy Brothers Inc. for violations of State Water Control Law, regulations, and applicable permit at the Yellow Cab of Falls Church facility located in Falls Church, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at [www.deq.virginia.gov/permits-regulations/public-notices](http://www.deq.virginia.gov/permits-regulations/public-notices). The DEQ contact will accept written comments from May 9, 2023, through June 8, 2023.

Contact Information: Katherine Mann, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [katherine.mann@deq.virginia.gov](mailto:katherine.mann@deq.virginia.gov).

### **Proposed Enforcement Action for O'Reilly Automotive Stores Inc.**

An enforcement action has been proposed for O'Reilly Automotive Stores Inc. for violations of State Water Control Law and regulations at the O'Reilly Auto Parts Clarksville located in Mecklenburg County, Virginia. The proposed order is available from the Department of Environmental Quality contact or at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact will accept written comments from May 8, 2023, to June 8, 2023.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, or email [matthew.richardson@deq.virginia.gov](mailto:matthew.richardson@deq.virginia.gov).

### **Proposed Enforcement Action for Perdue Agribusiness LLC**

An enforcement action has been proposed for Perdue Agribusiness LLC for violations of State Water Control Law and regulations at the Perdue Agribusiness - Chesapeake Facility in Chesapeake, 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 May 8, 2023, through June 7, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov).

### **Proposed Enforcement Action for Riggins Company LC**

An enforcement action has been proposed for Riggins Company LC for violations of State Water Control Law in Hampton, Virginia. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office listed or online at <http://www.deq.virginia.gov>. The DEQ contact will accept comments from May 8, 2023, to June 8, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov).

### **Proposed Enforcement Action for Riverbend Management Inc., Brookhill Town Center LLC, and Brookhill Investments LLC for the Brookhill Town Center Development**

An enforcement action has been proposed for Riverbend Management Inc., Brookhill Town Center LLC, and Brookhill Investments LLC for the Brookhill Town Center development. The Department of Environmental Quality (DEQ) proposes to

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## General Notices

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issue a consent order with penalty to Riverbend Management Inc., Brookhill Town Center LLC, and Brookhill Investments LLC 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](http://www.deq.virginia.gov). The DEQ contact will accept comments from May 8, 2023, through June 6, 2023.

**Contact Information:** Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [francesca.wright@deq.virginia.gov](mailto:francesca.wright@deq.virginia.gov).

### **Proposed Enforcement Action for Southwood Building Systems Inc.**

An enforcement action has been proposed for Southwood Building Systems Inc. for violations of State Water Control Law, regulations, and applicable permit at the Widewater State Park site located in Stafford, Virginia. The proposed consent order is available from the Department of Environmental Quality (DEQ) contact or at [www.deq.virginia.gov/permits-regulations/public-notices](http://www.deq.virginia.gov/permits-regulations/public-notices). The DEQ contact will accept written comments from May 8, 2023, to June 8, 2023.

**Contact Information:** Holly Shupe, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [holly.shupe@deq.virginia.gov](mailto:holly.shupe@deq.virginia.gov).

### **Withdrawal of Proposed Local Variance for Data Centers - Loudoun County**

In response to public comment, a proposed variance for data centers located in Loudoun County was withdrawn by the Department of Environmental Quality (DEQ) on April 12, 2023. The original public comment period was opened on January 26 and extended from March 6 through April 21, with a public hearing held on April 6, 2023. Therefore, no decision or announcement of a decision on the proposed variance is necessary, and the comment period is now closed effective immediately.

DEQ is canceling the public notice and not moving forward at this time with the consideration of an issuance of an order granting a temporary local variance for data centers located in Loudoun County. As stated in the initial public notice and draft order, the proposal was meant to address a concern for the area in which there may not be a sufficient amount of electricity for data centers due to severe, localized constraints in electricity transmissions through 2025. The proposal was intended to be an option to allow the data centers to continue to serve their customers, maintain the integrity of Internet, and alleviate demand on the electric grid during periods of extreme stress.

Given further discussion with stakeholders and public comment on the proposal, DEQ believes that these issues are now being addressed between the data centers, the utilities, and the regional transmission organization (PJM Interconnection). If needed in the future, DEQ stands ready to assist in ensuring that Virginians have a reliable, affordable, clean, and growing supply of energy.

**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](mailto:karen.sabasteanski@deq.virginia.gov).

### **Piney River Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Amherst County**

Piney River Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Amherst County. Piney River Solar Project will be located in Amherst, Virginia. Latitude and longitude coordinates are 37.699871, -79.019174. The proposed project is a 50-megawatt alternating current photovoltaic ground-mounted solar facility. The two adjoining parcels comprising the project area create an area of approximately 431.37 acres. The solar array will use approximately 138,300 solar panels.

**Contact Information:** Susan Tripp, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23233, telephone (804) 664-3470, or email [susan.tripp@deq.virginia.gov](mailto:susan.tripp@deq.virginia.gov).

## **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

### **Draft Baby Care Provider Manual Chapter VI Available for Review**

The draft Baby Care Provider Manual Chapter VI is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/>.

**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, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

### **Draft Emergency Medicaid Provider Manual Supplement Available for Review**

The draft Emergency Medicaid Provider Manual Supplement is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/>.

**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, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

## Draft Long-Term Services and Support Screening Provider Manual Chapters II and V Available for Review

The draft Long-Term Services and Support Screening Provider Manual Chapters II and V are now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/>.

**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, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

## BOARD OF PHARMACY

### Notice for Scheduling of Chemicals in Schedule I Pursuant to 54.1-3443 of the Code of Virginia

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act.

The public hearing will be conducted at 9:05 a.m. on June 13, 2023.

Instructions will be included in the agenda for the board meeting, also on June 13. Public comment may also be submitted electronically or in writing prior to June 13, 2023, to Caroline Juran, Executive Director of the Board of Pharmacy, at [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified five compounds for recommended for inclusion in the Code of Virginia.

The following compounds are classified as synthetic opioids. Compounds of this type have been placed in Schedule I pursuant to subdivision 1 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

2-(4-isopropoxybenzyl)-5-nitro-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other name: N-Pyrrolidino Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

5-nitro-2-(4-propoxybenzyl)-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other names: N-Pyrrolidino Protonitazene, Protonitazepyne), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

N-phenyl-N-(1-propionyl-4-piperidiny)-propanamide (other name: N-propionyl Norfentanyl), its isomers, esters, ethers,

salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

Based on their chemical structure, the following compounds are expected to have depressant properties. Compounds of this type have been placed in Schedule I pursuant to subdivision 4 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

6-(4-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: 4'-chloro Deschloroalprazolam, 4'Cl-Deschloroalprazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7-chloro-5-(2-chlorophenyl)-1-methyl-3H-1,4-benzodiazepin-2-one (other names: Diclazepam, 2-Chlorodiazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

**Contact Information:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472.

## 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](mailto: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.

