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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC5-31
Regulation title	Virginia Emergency Medical Services Regulations
Action title	Amend the <i>Virginia EMS Regulations</i> to conform to amended <i>Code</i> language addressing the certification and recertification of emergency medical services personnel.
Date this document prepared	June 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

During the 2013 session of the Virginia General Assembly, two bills (HB1622 and SB 790) were introduced and subsequently passed that amended §32.1-111.5 of the *Code* by removing the requirement for EMS providers to take a written examination or obtain a waiver from testing from the relevant operational medical director (OMD) in order to recertify their EMS certification.

Regulatory changes will reflect that the General Assembly allowed the Department to remove this requirement.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None identified.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Commissioner of Health approved the final regulations, Virginia Emergency Medical Services 12VAC5-31-1401, and 12VAC5-31-1465, on behalf of the Board of Health on July 23, 2103.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

§ 32.1-111.4. Regulations; emergency medical services personnel and vehicles; response times; enforcement provisions; civil penalties.

A. The State Board of Health shall prescribe by regulation:

1. Requirements for record keeping, supplies, operating procedures and other agency operations;
2. Requirements for the sanitation and maintenance of emergency medical services vehicles and their medical supplies and equipment;
3. Procedures, including the requirements for forms, to authorize qualified emergency medical services personnel to follow Do Not Resuscitate Orders pursuant to § [54.1-2987.1](#);
4. Requirements for the composition, administration, duties and responsibilities of the State Emergency Medical Services Advisory Board;
5. Requirements, developed in consultation with the Emergency Medical Services Advisory Board, governing the training, certification, and recertification of emergency medical services personnel;
6. Requirements for written notification to the State Emergency Medical Services Advisory Board, the State Office of Emergency Medical Services, and the Financial Assistance and Review Committee of the Board's action, and the reasons therefor, on requests and recommendations of the Advisory Board, the State Office of Emergency Medical Services or the Committee, no later than five workdays after reaching its decision, specifying whether the Board has approved, denied, or not acted on such requests and recommendations;
7. Authorization procedures, developed in consultation with the Emergency Medical Services Advisory Board, which allow the possession and administration of epinephrine or a medically accepted equivalent for emergency cases of anaphylactic shock by certain levels of certified emergency medical services personnel as authorized by § [54.1-3408](#) and authorization procedures that allow the possession and

administration of oxygen with the authority of the local medical director and a licensed emergency medical services agency;

8. A uniform definition of "response time" and requirements, developed in consultation with the Emergency Medical Services Advisory Board, for each agency to measure response times starting from the time a call for emergency medical care is received until (i) the time an appropriate emergency medical response unit is responding and (ii) the appropriate emergency medical response unit arrives on the scene, and requirements for agencies to collect and report such data to the Director of the Office of Emergency Medical Services who shall compile such information and make it available to the public, upon request; and

9. Enforcement provisions, including, but not limited to, civil penalties that the Commissioner may assess against any agency or other entity found to be in violation of any of the provisions of this article or any regulation promulgated under this article. All amounts paid as civil penalties for violations of this article or regulations promulgated pursuant thereto shall be paid into the state treasury and shall be deposited in the emergency medical services special fund established pursuant to § [46.2-694](#), to be used only for emergency medical services purposes.

B. The Board shall classify agencies and emergency medical services vehicles by type of service rendered and shall specify the medical equipment, the supplies, the vehicle specifications and the personnel required for each classification.

C. In formulating its regulations, the Board shall consider the current Minimal Equipment List for Ambulances adopted by the Committee on Trauma of the American College of Surgeons.

§ 32.1-111.5. Certification and recertification of emergency medical services providers; appeals process.

A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical services providers, including those qualifications necessary for authorization to follow Do Not Resuscitate Orders pursuant to § [54.1-2987.1](#). Such regulations shall include criteria for determining whether an applicant's relevant practical experience and didactic and clinical components of education and training completed during his service as a member of any branch of the armed forces of the United States may be accepted by the Commissioner as evidence of satisfaction of the requirements for certification.

B. Each person desiring certification as an emergency medical services provider shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application, the Commissioner shall cause the applicant to be examined or otherwise determined to be qualified for certification. When determining whether an applicant is qualified for certification, the Commissioner shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant during his service as a member of any branch of the armed forces of the United States as evidence of satisfaction of the requirements for certification. If the Commissioner determines that the applicant meets the requirements for certification as an emergency medical services provider, he shall issue a certificate to the applicant. An emergency medical services provider certificate so issued shall be valid for a period required by law or prescribed by the Board. Any certificate so issued may be suspended at any time that the Commissioner determines that the holder no longer meets the qualifications prescribed for such emergency medical services provider. The Commissioner may temporarily suspend any certificate without notice, pending a hearing or informal fact-finding conference, if the Commissioner finds that there is a substantial danger to public health or safety. When the Commissioner has temporarily suspended a certificate pending a hearing, the Commissioner shall seek an expedited hearing in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

C. The Board shall prescribe by regulation procedures and the qualifications required for the recertification of emergency medical services providers.

D. The Commissioner may issue a temporary certificate when he finds that it is in the public interest. A temporary certificate shall be valid for a period not exceeding 90 days.

E. The State Board of Health shall require each person who, on or after July 1, 2013, applies to be a volunteer with or employee of an emergency medical services agency to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation, for the purpose of obtaining his criminal history record information. The Central Criminal Records Exchange shall forward the results of the state and national records search to the Commissioner or his designee, who shall be a governmental entity. If an applicant is denied employment or service as a volunteer because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action will help to strengthen the EMS system – and thereby protect the health, safety and welfare of citizens - by improving the efficiency of EMS provider recertification process through the removal of certain unnecessary and burdensome regulatory requirements. There is unanimous consensus by the EMS system that the current method and process used to recertify EMS providers needs to be changed. The EMS system is in agreement that the recertification of EMS credentials should be based solely on completion of continuing education hours and should not require a written examination or examination waiver by the provider’s EMS agency Operational Medical Director (OMD) to complete the process. Current review of available data reveals greater than 90% of all recertification testing is being waived.

These changes will not adversely affect the health, safety, and welfare of the citizens of the Commonwealth because the ability to provide patient care as an EMS provider is governed by regulations that require authorization by the agency OMD and affiliation with an EMS agency.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Changes to the regulations are not expected to be controversial as the various stakeholders groups and the EMS community requested this change to simplify the existing recertification process. These changes will mirror the recertification processes for other allied health professions.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The new changes allow a certified EMS provider to gain recertification through continuing education only, it removes any retesting requirement (written or practical) at the state level and also removes the requirement for the Operational Medical Director (OMD) to sign any paperwork to "waive" any test administered by the state. This does not preclude the ability of the individual OMD to implement any local requirements he believes necessary to evaluate the ability of the EMS providers that provide patient care under his authority.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of this regulatory action is that, it removes burdensome and unnecessary regulatory requirements, as well as aligns with other allied health care recertification practices in the Commonwealth. This regulatory action poses no disadvantages to either the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed any applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is disproportionately affected by this recommended change.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no known adverse impacts on small business.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	All Emergency Medical Services providers certified by the Commonwealth of Virginia.
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	All licensed EMS agencies in the Commonwealth of Virginia.
Benefits expected as a result of this regulatory proposal.	Streamline the recertification process as well as remove unnecessary and burdensome regulations.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	No additional costs are projected as this will allow greater efficiency in use of state personnel time.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	None.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	None.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no readily identified alternatives.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action has no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
1401		A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required	A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required documentation within the issued certification period to maintain a current certification. An EMS

		<p>documentation within the issued certification period to maintain a current certification.</p> <p>B. An EMS provider requesting recertification must complete the continuing education (CE) hour requirements for the level to be recertified.</p> <p>C. An EMS provider requesting recertification must pass the written state certification examination.</p> <p>1. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:</p> <p>a. The EMS provider meets the recertification requirements including those established by the OMD; and</p> <p>b. The EMS provider must submit a completed Virginia EMS Certification Application with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.</p> <p>(1) If the Virginia EMS Certification Application form is received by the Office of EMS after the</p>	<p><u>provider requesting recertification must complete the continuing education hour requirements, as identified in 12VAC5-31-1403, for the level at which the EMS provider is requesting to be recertified. The Office of EMS must receive documentation of the EMS provider's completion of continuing education within the issued certification period for the provider to maintain a current certification.</u></p> <p>B. An EMS provider requesting recertification must complete the continuing education (CE) hour requirements for the level to be recertified.</p> <p>C. An EMS provider requesting recertification must pass the written state certification examination.</p> <p>1. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:</p> <p>a. The EMS provider meets the recertification requirements including those established by the OMD; and</p> <p>b. The EMS provider must submit a completed Virginia EMS Certification Application with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.</p> <p>(1) If the Virginia EMS Certification Application form is received by the Office of EMS after the EMS provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.</p> <p>(2) If the Virginia EMS Certification</p>
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		<p>EMS provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.</p> <p>(2) If the Virginia EMS Certification Application form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1407.</p> <p>2. An EMS provider under legal recognition pursuant to 12VAC5-31-1393 must pass a written and practical EMS certification examination and is not eligible for examination waiver.</p>	<p>Application form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1407.</p> <p>2. An EMS provider under legal recognition pursuant to 12VAC5-31-1393 must <u>recertify by passing</u> <u>pass a Virginia</u> written and practical EMS certification examination and is not eligible for examination waiver.</p> <p>[These changes conform language to statutory changes, more closely mirror the recertification process for other allied health professions, streamline the recertification process, and remove unnecessary and burdensome regulations.]</p>
1465		<p>A. Individuals who are eligible to recertify and hold current certifications are required to successfully complete the state written examination process based upon the following:</p> <p>1. All individuals who are not affiliated with a licensed EMS agency must take the state written examination to recertify.</p>	<p>A. Individuals who are eligible to recertify and hold current certifications are required to successfully complete the state written examination process based upon the following:</p> <p>1. All individuals who are not affiliated with a licensed EMS agency must take the state written examination to recertify.</p> <p>2. Individuals affiliated with a licensed EMS agency may be granted an exam waiver from the state written recertification examination by the operational</p>

	<p>2. Individuals affiliated with a licensed EMS agency may be granted an exam waiver from the state written recertification examination by the operational medical director (OMD) of the EMS agency, provided:</p> <p>a. A completed Virginia EMS Certification Application signed by the OMD and the individual is submitted to the Office of EMS documenting the exam waiver or a format approved by the Office of EMS.</p> <p>b. A Virginia EMS Certification Application form submitted as an exam waiver must be received by the Office of EMS no later than 30 days following the expiration of the individual's certification at the level being waived.</p> <p>(1) Virginia EMS Certification Application forms received by the Office of EMS during the 30 days after the individual's certification expiration date will be considered valid for recertification purposes. However, during this period following expiration, the individual may not practice at the expired certification level.</p> <p>(2) Virginia EMS</p>	<p>medical director (OMD) of the EMS agency, provided:</p> <p>a. A completed Virginia EMS Certification Application signed by the OMD and the individual is submitted to the Office of EMS documenting the exam waiver or a format approved by the Office of EMS.</p> <p>b. A Virginia EMS Certification Application form submitted as an exam waiver must be received by the Office of EMS no later than 30 days following the expiration of the individual's certification at the level being waived.</p> <p>(1) Virginia EMS Certification Application forms received by the Office of EMS during the 30 days after the individual's certification expiration date will be considered valid for recertification purposes. However, during this period following expiration, the individual may not practice at the expired certification level.</p> <p>(2) Virginia EMS Certification Application forms received by the Office of EMS more than 30 days after the individual's certification expiration date will be considered as invalid and the individual will be deemed in reentry status and required to test to regain current certification.</p> <p>B. Candidates in current provider status required or choosing to take the state recertification examination must demonstrate eligibility as evidenced by presentation of a valid recertification eligibility notice letter from the Office of EMS.</p> <p>[These changes conform language to statutory changes, more closely mirror the recertification process for</p>
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		<p>Certification Application forms received by the Office of EMS more than 30 days after the individual's certification expiration date will be considered as invalid and the individual will be deemed in reentry status and required to test to regain current certification.</p> <p>B. Candidates in current provider status required or choosing to take the state recertification examination must demonstrate eligibility as evidenced by presentation of a valid recertification eligibility notice letter from the Office of EMS.</p>	<p>other allied health professions, streamline the recertification process, and remove unnecessary and burdensome regulations.]</p>
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