



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## February 2012 through January 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Agency Decision

Title of Regulation: 12VAC5-590. **Waterworks Regulations.**

Statutory Authority: § 32.1-170 of the Code of Virginia.

Name of Petitioner: G. M. Loupassi, Member, Virginia House of Delegates.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health amend its regulations governing cross connection control and backflow prevention, contained in Virginia's Waterworks Regulations (12VAC5-590-580 et seq.). Currently, the regulations call for, in relevant part, annual inspections of backflow prevention devices on individual homeowners' lawn sprinkler systems. The petitioner suggests, in a letter to the commissioner, that a tiered system with lesser requirements for lower risk connections, such as individual homeowners' lawn sprinkler systems, might be in order, while also recognizing that "perhaps there are solutions that I am unaware of. . . ." The petitioner writes that "given the relatively low risk of contamination from such a source lawn sprinkler systems, combined with the onerous burden placed on homeowners with such systems, I respectfully ask that you review these regulations and consider a tiered system, with lesser requirements for lower risk connections."

Agency Decision: Request denied.

Statement of Reason for Decision: It is the Board of Health's determination not to grant the Petition for Rulemaking. The board believes the current regulatory provisions are appropriate and protective of public health. The board relied upon the following information in making its determination: The Virginia Waterworks Regulations complies with the International Plumbing Code (§§ 312.10.1 and 608.16.5) by requiring annual inspection/testing of backflow prevention devices on irrigation systems to protect public health because of the high degree of hazard associated with these systems. This practice is also supported by the American Water Works Association Manual of Water Supply Practices, Recommended Practice for Backflow Prevention and Cross-Connection Control. Should a backflow prevention device fail on a homeowner's irrigation system, there is nothing to prevent contaminants such as chemical fertilizers, pesticides, parasites, animal feces and waterborne viruses from entering the resident's home and the entire public drinking water system, creating a high risk to public health. The board received 19 public comments during the regulatory public comment period. Eleven of the 19 comments came from public utilities and various plumbing and irrigation companies in Virginia in support of the current regulations

requiring annual inspection/testing of irrigation systems. The remaining comments, predominantly from Chesterfield County residents, supported less frequent inspection/testing.

Agency Contact: Robert A. K. Payne, Legal Affairs Manager, Department of Health, Office of Drinking Water, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email [rob.payne@vdh.virginia.gov](mailto:rob.payne@vdh.virginia.gov).

VA.R. Doc. No. R12-02; Filed January 13, 2012, 5:14 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Initial Agency Notice

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

Statutory Authority: § 54.1-3300 and 54.1-3400 of the Code of Virginia.

Name of Petitioner: Louis M. Kaufman.

Nature of Petitioner's Request: To amend 18VAC110-20-680 C that requires that a medical equipment supplier must receive a valid order from a practitioner prior to dispensing, which has been interpreted to mean that the specific medical equipment supplier must receive the order at the MES location from which the product is being dispensed. The amendment would allow the transfer of a prescription received at one MES to another MES location.

Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov); comment will be accepted until March 6, 2012. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in 18VAC110-20-680. This matter will be on the board's agenda for its meeting on March 13, 2012.

Public Comment Deadline: March 4, 2012.

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

VA.R. Doc. No. R12-17; Filed January 21, 2012, 11:22 a.m.

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# Petitions for Rulemaking

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## BOARD OF SOCIAL WORK

### Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Michael Hayter.

Nature of Petitioner's Request: To amend 18VAC140-20-50, relating to requirements for supervision, to clarify the status of an individual who has completed supervision but has not passed the examination for LCSW licensure. Such individual should not be in the status of a "supervisee in social work" and should be exempt from providing information to his previous clinical supervisor.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on January 20, 2012, the board considered the petition and decided not to initiate the rule-making process. Since the law in Virginia requires licensure for a clinical social worker, a person who has completed the requisite number of supervised hours but has not passed the examination and been issued a license may not engage in practice except as a supervisee under supervision or in an exempt setting. Regulations of the board cannot be in conflict with the Code of Virginia.

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

VA.R. Doc. No. R12-06; Filed January 21, 2012, 11:07 a.m.

### Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Statutory Authority: § 54.1-3708 of the Code of Virginia.

Name of Petitioner: Grace K. Nozaki.

Nature of Petitioner's Request: Regulations should define real-time webinars as Category 1 continuing education.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on January 20, 2012, the board considered the petition and decided to deny the request to initiate the rule-making process based on the current regulations that do not specify the delivery method for Category 1 continuing education. Provided the "formally organized learning activity" (workshops, seminars, conferences or courses) is offered and documented by one of the entities listed in regulation, it is acceptable for Category 1 continuing education. Those entities include universities or colleges, governmental agencies, or school systems or professional organizations in

the behavioral health field. The issue is not whether the seminar was delivered via the web or live, the issue is whether it was offered by one of the entities approved to offer Category 1 CE.

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

VA.R. Doc. No. R12-09; Filed January 21, 2012, 11:08 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BARBERS AND COSMETOLOGY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider amending **18VAC41-20, Board for Barbers and Cosmetology Rules and Regulations**. The purpose of the proposed action is to amend the regulations pertaining to general entry requirements, renewal and reinstatement requirements, school requirements, and standards of practice including sanitation and safety standards; and consider other necessary changes.

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

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

Public Comment Deadline: March 14, 2012.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

VA.R. Doc. No. R12-3107; Filed January 20, 2012, 4:47 p.m.

### COMMON INTEREST COMMUNITY BOARD

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC48-20, Condominium Regulations**, which was published in 27:20 VA.R. 2244 June 6, 2011.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R11-2805; Filed January 25, 2012, 10:13 a.m.

### BOARD FOR HEARING AID SPECIALISTS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Hearing Aid Specialists intends to consider amending **18VAC80-20, Board for Hearing Aid Specialists Regulations**. The purpose of the proposed action is to amend the regulations pertaining to qualifications for licensure, fees for duplicate wall certificates, and standards of conduct including measures

to take when contact is established for purchaser or prospective purchaser; and consider other necessary changes.

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

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

Public Comment Deadline: March 14, 2012.

Agency Contact: William H. Ferguson, Executive Director, Board for Hearing Aid Specialists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov).

VA.R. Doc. No. R12-3106; Filed January 20, 2012, 4:47 p.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 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**Title of Regulation:** **1VAC20-70. Absentee Voting (adding 1VAC20-70-20).**

**Statutory Authority:** § 24.2-103 of the Code of Virginia.

**Effective Date:** Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

**Agency Contact:** Justin Riemer, Deputy Secretary, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

#### Summary:

*This regulation details standards to assist local election officials in determining whether an absentee ballot may be counted by distinguishing what errors or omissions are always material and render the ballot invalid from those that are not material.*

#### **1VAC20-70-20. Material omissions from absentee ballots.**

**A.** Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B [ ~~should~~ shall ] not be rendered invalid if it contains an error or omission not material to its proper processing.

**B.** The following omissions are always material and any Envelope B containing such omissions [ ~~should~~ shall ] be rendered invalid if any of the following exists:

1. [ ~~The~~ Except as provided in subdivisions C 2 and 3 of this section, the ] voter did not include his full [ first ] name [ ~~in any order~~ ];

[ ~~2. The voter did not include a his first name;~~ ]

[ ~~3. 2. ] The voter did not [ ~~include~~ provide ] his last name;~~

[ ~~3. If the voter has a legal middle name, the voter did not provide at least a middle initial;~~ ]

4. The voter did not provide his house number [  ~~; and ] street name or [ his ] rural route address [  ~~; or city of residence;~~ ] or zip code;~~

[ ~~5. The voter did not sign Envelope B;~~

~~6. The voter's witness did not sign Envelope B; or~~

~~7. The ballot is not sealed in Envelope B ] ; [  ~~; or~~~~

~~8. The voter did not provide the date on which he signed Envelope B.~~

5. The voter did not provide either his city or zip code;

6. The voter did not sign Envelope B;

7. The voter did not provide the date on which he signed Envelope B;

8. The voter's witness did not sign Envelope B; or

9. The ballot is not sealed in Envelope B. ]

**C.** The ballot [ ~~should~~ shall ] not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his [ ~~middle~~ first ] initial instead of his [ first ] full [ ~~middle~~ ] name, [ so long as the voter provided his full middle name ];

3. The voter [ ~~used~~ provided ] a derivative of his legal name as [ ~~a~~ his ] first [ or middle ] name (e.g., "Bob" instead of "Robert");

[ 4. The voter did not provide his generational suffix; ]

[ ~~4. 5. ] The voter did not provide his residential street identifier (Street, Drive, etc.); or~~

~~5. 6. ] The voter did not provide a zip code [ , so long as the voter provided his city ] ; [ or~~

7. The voter did not provide his city, so long as the voter provided his zip code; ]

[ ~~6. 8. ] The voter omitted the year in the date on which he signed Envelope B [ ; or~~

9. The voter provided the incorrect date on which he signed Envelope B.

**D.** For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

F. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present. ]

VA.R. Doc. No. R11-2923; Filed January 25, 2012, 10:52 a.m.



**TITLE 2. AGRICULTURE**  
**PESTICIDE CONTROL BOARD**  
**Final Regulation**

**REGISTRAR'S NOTICE:** The Pesticide Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 5 of the Code of Virginia, which excludes regulations of the board adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more board meetings and one public hearing.

**Title of Regulation:** 2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (amending 2VAC20-51-60).

**Statutory Authority:** §§ 3.2-3906 and 3.2-3929 of the Code of Virginia.

**Effective Date:** February 17, 2012.

**Agency Contact:** Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-6559 ext 1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

**Summary:**

*The amendments add two classes of individuals to those persons exempt from the pesticide applicator certification requirements of the Virginia Pesticide Control Act. Gypsy moth surveyors and cotton boll weevil surveyors who work under the authority of the Virginia Department of Agriculture and Consumer Services will be exempt from the certification requirements.*

**2VAC20-51-60. Persons exempt from certification.**

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;

3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in 2VAC20-51-20 B;

4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;

5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a commercial applicator. One commercial applicator shall be present for every eight painters;

6. Forestry applicators standing on the ground who apply general use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a commercial applicator. One commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators;

7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified applicator; ~~and~~

8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides-;

9. Individuals who apply pesticides for the survey for gypsy moth under the authority of the department; and

10. Individuals who apply pesticides for the survey for cotton boll weevil under the authority of the department.

VA.R. Doc. No. R12-3090; Filed January 19, 2012, 3:13 p.m.



**TITLE 4. CONSERVATION AND NATURAL RESOURCES**  
**MARINE RESOURCES COMMISSION**  
**Final Regulation**

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

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# Regulations

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**Title of Regulation:** 4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-50).

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

**Effective Date:** February 1, 2012.

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

**Summary:**

*The amendment provides the description of an alternate container that may be used for measuring oysters to be sold or purchased.*

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

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

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

C. It shall be unlawful for any harvester to store oysters taken from public grounds on any boat in any type of container, except as described for the James River in 4VAC20-1230-30 M. All oysters taken from said areas shall be sold or purchased ~~only~~ in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, or the alternate container described in subsection D of this section; except that on the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

D. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

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

VA.R. Doc. No. R12-3098; Filed January 27, 2012, 11:23 a.m.

## Final Regulation

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

**Title of Regulation:** 4VAC20-530. Pertaining to American Shad (amending 4VAC20-530-31).

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

**Effective Date:** February 1, 2012.

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

**Summary:**

*The amendment extends the 2011 provisions for an American shad commercial bycatch fishery to provide for a limited bycatch fishery in 2012.*

**4VAC20-530-31. Bycatch fishery.**

A. Any registered commercial fisherman meeting the conditions described in this subsection shall be eligible to participate in the American shad bycatch fishery in ~~2011~~ 2012:

1. The registered commercial fisherman shall apply for a VMRC American Shad Bycatch Permit and possess that permit while fishing, landing, or selling his catch of American shad.

2. The registered commercial fisherman shall complete the VMRC American Shad Bycatch Survey form to describe his pending fishing activity.

B. It shall be unlawful for any person to possess aboard a vessel more than 10 American shad. When more than one registered and permitted fisherman is fishing on the same vessel, it shall be unlawful to possess more than 10 American shad aboard that vessel.

C. It shall be unlawful for any person to possess aboard a vessel or land any American shad unless that person possesses at least an equal number of fish of only the following food-grade species: spot, croaker, bluefish, catfish, striped bass or white perch.

D. Possession of American shad by any person permitted in accordance with this section shall be lawful only when those American shad were harvested from the bycatch area. Possession of any American shad harvested in Virginia waters that are outside of the bycatch area shall constitute a violation of this regulation.

E. American shad harvested only as bycatch by anchored gill nets and staked gill nets may be possessed or retained for sale in accordance with the provisions of this regulation. It shall be unlawful for any person to harvest, land, or possess any American shad taken by any recreational gear or by any commercial gear, except anchored gill net or staked gill net.

F. Every fisherman permitted for the American shad bycatch fishery shall contact the commission's interactive voice response system once weekly to report the following for the preceding weekly period: name, registration number, number of fishing trips taken, water body fished, number of nets set, number of American shad caught, and number retained.

VA.R. Doc. No. R12-3096; Filed January 27, 2012, 11:17 a.m.

**Emergency Regulation**

**Title of Regulation:** 4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** January 30, 2012, through February 29, 2012.

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

**Preamble:**

*This emergency amendment increases the vessel possession and landing limits to 50,000 pounds of scup (porgy) during the period January 1 through April 30 of each year.*

**4VAC20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than ~~30,000~~ 50,000 pounds of scup.
2. Land in Virginia more than a total of ~~30,000~~ 50,000 pounds of scup during each consecutive 7-day landing period, with the first 7-day period beginning on January 1.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 8,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 13,085 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. 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 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R12-3110; Filed January 27, 2012, 11:20 a.m.

**Final Regulation**

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

**Title of Regulation:** 4VAC20-1120. Pertaining to Tilefish and Grouper (amending 4VAC20-1120-40).

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

**Effective Date:** February 1, 2012.

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

**Summary:**

*The amendments revise the commercial possession limits for tilefish.*

**4VAC20-1120-40. Commercial limitations.**

A. It shall be unlawful for any ~~vessel to land in Virginia more than 300 pounds of tilefish, as described in 4VAC20-1120-20, per day when commercial fishing.~~ person harvesting

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tilefish when commercial fishing, as described in 4VAC20-1120-20, to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of tilefish, in combination, in excess of 500 pounds.
2. Possess aboard any vessel in Virginia waters any amount of blueline tilefish in excess of 200 pounds.
3. Possess aboard any vessel any amount of golden tilefish during any in-season closure announced by the National Marine Fisheries Service.

B. It shall be unlawful for any vessel to land in Virginia more than 175 pounds of grouper, as described in 4VAC20-1120-20, per day when commercial fishing.

C. It shall be unlawful for any person to transfer at sea to another person or vessel any harvest of tilefish or grouper.

VA.R. Doc. No. R12-3094; Filed January 27, 2012, 11:19 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Final Regulation

Title of Regulation: 6VAC20-60. Rules Relating to Compulsory Minimum Training Standards for Dispatchers (amending 6VAC20-60-10, 6VAC20-60-20, 6VAC20-60-25; repealing 6VAC20-60-100).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: March 14, 2012.

Agency Contact: Stephanie Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Banks Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, or email stephanie.morton@dcjs.virginia.gov.

Summary:

*The amendments (i) reduce the number of members serving on the Curriculum Review Committee from 13 to nine; (ii) transfer the approval authority of the performance outcomes from the Criminal Justice Services Board to the board's Committee on Training; and (iii) remove the performance outcomes from the regulations.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### 6VAC20-60-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency or nonlaw-enforcement head of a communications center.

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training facility in compliance with academy certification standards and operated by the state or local unit(s) of government for the purpose of providing instruction of compulsory minimum training standards.

"Compulsory minimum training standards" means the performance outcomes and minimum hours approved by the Criminal Justice Services Board.

"Curriculum Review Committee" means the committee consisting of the following ~~13~~ nine individuals: ~~four~~ two members of the committee shall represent regional criminal justice academies, ~~four~~ two members of the committee shall represent independent criminal justice academies, one member shall represent the Department of State Police Training Academy, and four experienced communications personnel shall represent emergency communication functions. The Committee on Training shall appoint members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the Department of Criminal Justice Services.

"Dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the dispatching of law-enforcement personnel.

"Emergency medical dispatcher training" means training which meets or exceeds the training objectives as provided in Performance Outcome 1.6, which is set out in 6VAC20-60-100.

"Standard" means Performance Outcome, Training Objective, Criteria for Testing, and Lesson Plan Guide relating to compulsory minimum training for dispatchers and is found on the department's website.

"VCIN/NCIC training" means approved training as specified by the Virginia Department of State Police for dispatchers accessing Virginia Crime Information Network/National Crime Information Center information.

**6VAC20-60-20. Compulsory minimum training standards.**

Pursuant to the provisions of § ~~9.1-102(8)~~ 9.1-102 (10) of the Code of Virginia, the board establishes the following categories of training as listed below as the compulsory minimum training standards for dispatchers:

- ~~1. The performance outcomes are specified in 6VAC20-60-100. Performance outcomes may not be changed except as noted in 6VAC20-60-25 through the Administrative Process Act.~~
- ~~2. Categories of training are listed below:~~
  - ~~a. 1. Category 1 - Communications.~~
  - ~~b. 2. Category 2 - Judgment.~~
  - ~~c. 3. Category 3 - Legal Issues.~~
  - ~~d. 4. Category 4 - Professionalism.~~
  - ~~e. 5. Category 5 - On-the-Job Training.~~

**6VAC20-60-25. Approval authority.**

A. The Criminal Justice Services Board shall be the approval authority for the training categories ~~and performance outcomes~~ of the compulsory minimum training standards. Amendments to training categories ~~and performance outcomes~~ shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. Training Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards ~~and performance outcomes~~ may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director, nonlaw-enforcement head of a communications center, or the Curriculum Review Committee.

Prior to approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of change of the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register.

**~~6VAC20-60-100. Performance outcomes for compulsory minimum training standards for dispatchers. (Repealed.)~~**

~~Category 1—Communication~~

~~In conjunction with responding to calls for public safety services, the dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet these challenges successfully, the dispatcher must develop good communication skills in the performance of relevant duties. Expected performance outcomes in this category include the following:~~

- ~~1.1 Obtain information related to complaints and/or requests for service from the public, field units, and other agencies.~~
- ~~1.2 Perform multiple tasks related to receiving information and dispatching appropriate response units.~~
- ~~1.3 Apply standard communication techniques in receiving and transmitting information via radio and telephone.~~
- ~~1.4 Disseminate information to the public, field units, and other agencies using standard communication and dispatching techniques.~~
- ~~1.5 Apply standard communication techniques when handling specialized situations via radio, telephone, and in person.~~
- ~~1.6 Assist callers by providing initial emergency medical care information to victims of accidents, illness and/or crimes, if applicable.~~
- ~~1.7 Respond to a report of a disaster.~~

~~Category 2—Judgment~~

~~In conjunction with responding to calls for public safety services, the dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet these challenges successfully, the dispatcher must develop good judgment in the performance of relevant duties. Expected performance outcomes in this category include the following:~~

- ~~2.1 Receive, prioritize, and handle multiple tasks related to emergency call taking and dispatching using judgment based on policies and procedures.~~
- ~~2.2 Receive and handle various types of nonemergency complaints and requests from the public or other agencies by using judgment based on policies and procedures.~~

~~Category 3—Legal Issues~~

~~In conjunction with responding to calls for public safety services, the dispatcher must identify legal requirements based on the Constitution of the United States, the Code of Virginia, and/or local ordinances where applicable. Expected performance outcomes in this category include the following:~~

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~~3.1 Apply federal/state laws, local ordinances, and rules and regulations established for dispatch operations.~~

~~3.2 Perform the duties of a dispatcher with awareness of general liability applicable to this job.~~

~~3.3 Testify in court.~~

## ~~Category 4 – Professionalism~~

~~In conjunction with responding to calls for public safety services, the dispatcher must demonstrate professionalism in every aspect of performance of these services. The dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet those challenges successfully, the dispatcher must attain and maintain professionalism in the performance of all duties. Expected performance outcomes include the following:~~

~~4.1 Respond to stressful situations professionally.~~

~~4.2 Respond to abusive callers or difficult people professionally.~~

## ~~Category 5 – On the Job Training~~

~~In conjunction with responding to calls for service, the dispatcher must identify requirements related to the employing law enforcement agency. These requirements may be general in nature, but serve to enhance the ability of both the dispatcher and the agency to provide needed public safety services. Expected performance outcomes in this category include the following:~~

~~5.1 Demonstrate ability to utilize agency equipment to handle 911 call taking and dispatching duties.~~

~~5.2 Quickly and accurately recording information into CAD and/or on cards.~~

~~5.3 Use of maps and street files to identify locations and proper codes.~~

~~5.4 Accurately type information received verbally.~~

~~5.5 Transmit the complaint to radio dispatch by computer/telephone, or personally dispatch appropriate response unit(s).~~

~~5.6 Use written information or computer aided dispatch to assign law enforcement, fire, and rescue units.~~

~~5.7 Monitor and update status of incidents and status of field units.~~

~~5.8 Update the field units regarding incident and status information.~~

~~5.9 Use written information or computer aided dispatch to redirect incidents to another dispatcher.~~

~~5.10 Monitor, respond, and dispatch by radio, computer transmission, or written information to and from field units.~~

~~5.11 Basic concepts and differences between basic and enhanced 9-1-1 telecommunications systems.~~

~~5.12 Conference phone lines or patch radio frequencies to enable communications.~~

~~5.13 Monitor transferred call until connection is established.~~

~~5.14 Receive and handle TTY calls.~~

~~5.15 Hold phone line to complete a telephone trace.~~

~~5.16 Use ANI/ALI to locate and identify caller, if applicable.\*~~

~~5.17 Complete ANI/ALI forms to update entries, if applicable.\*~~

~~5.18 Use call check system to replay "difficult" calls, if applicable.\*~~

~~5.19 Use "emergency ring down" phones, if applicable.\*~~

~~(\*These criteria must be tested if the agency utilizes this telecommunications equipment.)~~

~~5.20 Conduct/monitor civil defense test.~~

~~5.21 Enter data into a record system.~~

~~5.22 Generate reports.~~

~~5.23 Restart the computer system, if applicable.~~

~~5.24 Transcribe and/or copy a tape recording.~~

~~5.25 Operate radio equipment.~~

~~5.26 Operate paging equipment.~~

~~5.27 Patch radio frequencies.~~

~~5.28 Perform radio frequency tests.~~

~~5.29 Dispatch by radio transmission.~~

~~5.30 Use of alternative communication methods if regular radio is down.~~

~~5.31 Using NCIC or other manuals for assistance.~~

~~5.32 Transmitting emergency bulletins by TTY (if applicable).~~

~~5.33 Query vehicle.~~

~~5.34 Query Computerized Criminal History (CCH).~~

~~5.35 Query stored vehicles.~~

~~5.36 Query driver's license.~~

~~5.37 Enter administrative license suspension (if applicable).~~

~~5.38 Query stolen articles.~~

~~5.39 Query gun.~~

- 5.40 Query wanted/missing persons.
- 5.41 Clearing entries (if applicable).
- 5.42 Enter/query protective orders.
- 5.43 Modify information in computer database (if applicable).
- 5.44 Hit confirmation process (to include placing locate).
- 5.45 Informal and formal messages.
- NOTE: ~~TRAINEE MUST COMPLETE VCIN/NCIC TRAINING PRIOR TO BEING TESTED ON THE JOB BY CRITERIA NUMBERS 5.31 THROUGH 5.45.~~
- 5.46 Answer, refer, and route calls/messages to proper departmental unit.
- 5.47 Prepare a general broadcast bulletin.
- 5.48 Complete data entry forms.
  - 5.48.1 Wanted or missing person.
  - 5.48.2 Stolen vehicle.
- 5.49 Prepare an activity log.
- 5.50 Prepare a summary report.
- 5.51 Prepare an intra departmental memo.
- 5.52 Monitor alarm/security systems, if applicable.
- 5.53 Receive opening/closing calls, if applicable.
- 5.54 Maintain equipment within the communications center.
- 5.55 Troubleshoot equipment problems.
- 5.56 Document equipment problems.
- 5.57 Identify local ordinances affecting dispatch operations.
- 5.58 Use and maintain maps and cross street directories.
- 5.59 Demonstrate map reading skills to include street directions.
- 5.60 Use and maintain log shift rosters of assigned field units.
- 5.61 Use and maintain department files for warrants and/or other citations.
- 5.62 Use and maintain complaint history files.
- 5.63 Use and maintain specialized logs or data bases, e.g. medical incidents, problem addresses, restraining orders, etc.
- 5.64 Use and maintain towing agency rotation logs.
- 5.65 Use and maintain business directories.

- 5.66 Use and maintain a directory of services provided by other agencies.
- 5.67 Answer an anonymous witness line, e.g., Crime Stoppers.
- 5.68 Provide information, refer and/or transfer calls to appropriate departments or agencies as a general service to the public.
- 5.69 Provide requested information to authorized departments or agencies.
- 5.70 Maintain general resource material in the Communications Center.
- 5.71 Maintain order and cleanliness in the Communications Center.

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

#### FORMS (6VAC20-60)

~~Application for Exemption From Virginia Compulsory Minimum Training Standards, Form W-2, eff. 1/91.~~

~~On the Job Training Dispatchers, Form D-1, eff. 12/93.~~

~~Criminal Justice Training Roster, Form No. 41, eff. 1/93.~~

[Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2, rev. 04/10.](#)

[On the Job Training Dispatchers, Form D-1, rev. 09/02.](#)

VA.R. Doc. No. R09-1887; Filed January 19, 2012, 9:48 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

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

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# Regulations

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**Title of Regulation:** 20VAC5-417. Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers (amending 20VAC5-417-10, 20VAC5-417-20, 20VAC5-417-40, 20VAC5-417-50, 20VAC5-417-60, 20VAC5-417-70; repealing 20VAC5-417-30).

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

**Effective Date:** February 1, 2012.

**Agency Contact:** Katie Cummings, Deputy Director, Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9101, FAX (804) 371-9069, or email [katie.cummings@scc.virginia.gov](mailto:katie.cummings@scc.virginia.gov).

**Summary:**

*The amendments make modifications (i) necessitated by Chapters 738 and 740 of the 2011 Acts of Assembly, which eliminate certain requirements applicable to competitive telecommunications services and (ii) to account for certain competitive and technological changes in the telecommunications industry. The amendments remove the price ceilings for retail services, provide more pricing flexibility, set forth requirements for tariffed and nontariffed services, and establish tariff requirements for nonretail services.*

*Changes from the proposed regulations include incorporating a change to the definition of "locality," incorporating a change to the escrow account for customer deposits from a previous Commission Order, removing references to the Division of Economics and Finance, including 20VAC5-417-40 (MLEC requirements) as an amended section, and updating annual reporting requirements to remove the number of customers.*

AT RICHMOND, JANUARY 17, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC-2011-00048

Ex Parte: In re: Amending the rules governing the certification and regulation of competitive local exchange carriers

ORDER REVISING REGULATIONS

On August 4, 2011, the State Corporation Commission ("Commission") issued an Order for Notice and Hearing ("August 4 Order") that initiated a proceeding to consider amending the Commission's rules governing the certification and regulation of competitive local exchange carriers, 20 VAC 5-417-10 et seq. ("CLEC Rules"). The August 4 Order noted that the CLEC Rules were last revised on September 27, 2007, by a Final Order issued by the Commission in Case No. PUC-2007-00033. The Commission

concluded that it is appropriate to revisit the CLEC Rules to make modifications necessitated by changes in the law by the Virginia General Assembly enacted in Chapters 738 and 740 of the 2011 Virginia Acts of Assembly, and by competitive and technological changes that have occurred in the telecommunications industry since the last review of the CLEC Rules.

To facilitate this review, the Staff of the Commission ("Staff") prepared proposed revisions of the CLEC Rules ("Proposed Rules"), which were, pursuant to the August 4 Order, published in the Virginia Register. Public notice was also given so as to provide the public an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to suggest modifications or supplements to the Proposed Rules.

While no requests for hearing were filed, comments on the Proposed Rules were filed by BVU Authority, Sprint Communications of Virginia, United Telephone Southeast, LLC, and Central Telephone Company of Virginia (jointly as CenturyLink), Verizon Virginia Inc. and Verizon South Inc. (jointly as Verizon), and Cox Virginia Telcom, LLC. BVU Authority also included in its comments to the Proposed Rules certain revisions to the requirements for Municipal Local Exchange Carriers ("MLEC") set out in 20 VAC 5-417-40 of the CLEC Rules.

On October 28, 2011, the Staff filed the Response of the Division of Communications ("Staff Response"), which, in part, reviewed the comments submitted on the Proposed Rules. Staff also noted that Rule 20 VAC 5-417-40 was not specifically noticed at the outset of this proceeding as no changes to this section of the CLEC Rules were included in the Proposed Rules. However, the Staff Response set out revisions to the Proposed Rules based upon the comments received, including additional modifications to the MLEC requirements in 20 VAC 5-417-40 of the CLEC Rules.

On November 22, 2011, the Commission issued an Order providing the public an opportunity to comment on, request a hearing on, or suggest modifications or supplements to the revisions to the MLEC requirements set out in 20 VAC 5-417-40 of the CLEC Rules as proposed by BVU Authority and as further modified by the Staff. Again, no requests for a hearing were received by the Commission. Only BVU filed comments, which were supportive of the additional changes to 20 VAC 5-417-40 noted in the Staff Response.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the revisions to the CLEC Rules, 20 VAC 5-417-10 et seq., as set forth and attached to this Order, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules Governing Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 et seq. are hereby revised and adopted as

attached to this Order, and shall become effective as of February 1, 2012.

(2) A copy of this Order including the revisions to 20 VAC 5-417-10 et seq., shall be forwarded to the Registrar of Regulations for publication in the Virginia Register.

(3) There being nothing further to come before the Commission, this case shall be removed from the docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereby shall be sent by the Clerk of the Commission to: JoAnne L. Nolte, Esquire, and Garland S. Carr, Esquire, The Nolte Law Firm, P.C., 1427 West Main Street, Richmond, Virginia 23220-4629; Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; David E. Anderson, Esquire, LeClair Ryan, Riverfront Plaza, East Tower, P.O. Box 2499, Richmond, Virginia 23218-2499; Irene C. Leech, Virginia Citizens Consumer Council, 4220 North Fork Road, Elliston, Virginia 24087; E. Ford Stephens, Esquire, Christian & Barton, LLP, 909 E Main Street, Suite 1200, Richmond, Virginia 23219-3095; Jeanne W. Stockman, Esquire, Sprint, Mailstop: NCWKFR0313, 1411 Capital Boulevard, Wake Forest, North Carolina 27587; Jennifer L. McClellan, Esquire, Verizon Virginia Inc., 703 East Grace Street, 7th Floor, Richmond, Virginia 23219; C. Meade Browder, Jr., Esquire, Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and all local exchange carriers certificated in Virginia as set out in Appendix A, and all interexchange carriers certificated in Virginia as set out in Appendix B. A copy hereof shall be delivered to the Commission's Office of General Counsel and Division of Communications.

**20VAC5-417-10. Definitions.**

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

"Attestation" means a written statement regarding compliance with a requirement or condition contained in this chapter, signed by an officer, director, or comparable official of the applicant or new entrant.

"Basic telephone service" means the customer's dial tone line and local usage. Local usage can be purchased on a flat rate, measured, or on a per message basis, or some combination thereof.

"Bundled service" means a designated group of services or products offered to customers at a package or set price. A bundled service may consist of regulated and nonregulated services or products.

"Casual user service" means a local exchange telecommunications service of a competitive local exchange

carrier or municipal local exchange carrier that does not require a customer to actively subscribe or contract with the competitive local exchange carrier or municipal local exchange carrier to use the service. For example, these services may require alternate billing arrangements such as a calling card to use the service.

"Commission" means the State Corporation Commission.

"Competitive local exchange carrier" ("CLEC") means an entity, other than a locality, certificated to provide local exchange telecommunications services in Virginia after January 1, 1996, pursuant to § 56-265.4:4 of the Code of Virginia. An incumbent local exchange carrier shall be considered a CLEC in any territory that is outside the territory it was certificated to serve as of December 31, 1995, for which it obtains a certificate to provide local exchange telecommunications services on or after January 1, 1996.

"Customer" means any person, firm, partnership, corporation, or lawful entity that purchases local exchange telecommunications services.

"Incumbent local exchange carrier" or "incumbent" ("ILEC") means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Individual customer pricing" means the offering of service or services to a specific customer at rates, terms, or conditions provided through an agreement instead of pursuant to tariff.

"Interconnection" means the point of interface between local exchange carriers' networks. Interconnection can be achieved at different points of the network.

~~"Interexchange carrier" ("IXC") means a carrier that provides intrastate interexchange long distance telephone service.~~

"Interstate service" means service that originates in one state and terminates in another state.

"Intrastate service" means service that originates and terminates within a state.

"Local exchange carrier" ("LEC") means a certificated provider of local exchange telecommunications services, whether an incumbent or new entrant.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, [ ~~or~~ ] county [ , or authority ] that operates an electric distribution system in Virginia.

"Municipal local exchange carrier" ("MLEC") means a locality certificated to provide local exchange

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telecommunications services pursuant to § 56-265.4:4 of the Code of Virginia.

"New entrant" means a CLEC or an MLEC.

"Promotion or promotional rates" means an offering of limited duration that reduces, waives, or otherwise modifies applicable tariffed rates, terms, or conditions.

"Retail [ local exchange ] telecommunications service or services" means telecommunications service or services that are offered for sale directly to the public.

"Service charges" means charges associated with work activities performed by the LEC in conjunction with providing service. These include, but are not limited to, charges for installation, activation, order processing, line restoration, maintenance visits, or changes in service.

"Switched access charges" means the per minute rates billed by LECs to IXCs or other LECs for the use of the LEC's network when an end user makes or receives a long distance call.

"Tariff" means schedules on file with the commission that are open to public inspection that detail a local exchange carrier's services, rates, charges, terms, and conditions of service.

## **20VAC5-417-20. Application requirements for certification.**

A. An original and 15 copies of an application for a certificate of public convenience and necessity shall be filed with the Clerk of the Commission.

1. The applicant shall deliver a copy of the application to the Division of Communications [~~and a copy to the Division of Economics and Finance~~] at the same time it is filed with the Clerk of the Commission.

2. A copy of all confidential information filed under seal with the Clerk of the Commission in connection with the application shall be provided by the applicant, at the time of filing, to the Division of Communications [~~the Division of Economics and Finance,~~] and the Office of General Counsel pursuant to 5VAC5-20-170.

3. Any amendment or supplement to the application shall be filed in compliance with this section.

B. Notice of the application shall be given to all certificated local exchange carriers and other interested parties in Virginia in a form to be prescribed by the commission pursuant to an order.

C. The application shall identify the applicant including: (i) its name, address, telephone number, fax number, and website address, if any; (ii) the name, address, telephone number, fax number, type of entity (e.g., corporation, limited liability company), and website address of its parent or parents, if any; (iii) a list of its officers and directors or, if the applicant is not

a corporation, a list of its principals or comparable officials; (iv) a toll-free telephone number for customer complaints and inquiries, if available; and (v) the name, address, telephone number, fax number, and e-mail address of the primary in-house regulatory contact.

D. An incorporated CLEC applicant shall demonstrate that it is organized under the laws of Virginia as a public service company by providing (i) a true and correct copy of its articles of incorporation and all amendments thereto, and (ii) a copy of the certificate and order issued by the commission.

E. An unincorporated CLEC applicant shall demonstrate that it is authorized to do business in the Commonwealth of Virginia by providing the following:

1. In the case of an unincorporated entity formed under the laws of Virginia: (i) a true and correct copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto; and (ii) a copy of the certificate and order issued by the commission.

2. In the case of an unincorporated entity formed under the laws of a jurisdiction other than Virginia: (i) a copy of the certificate or statement of registration to do business in Virginia issued to it by the commission, and (ii) a true and correct copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto.

F. An MLEC applicant shall include a copy of its applicable city, town, or county charter.

G. An applicant shall be required to show its financial, managerial, and technical ability to render local exchange telecommunications services.

1. To demonstrate financial ability, each CLEC applicant shall, at a minimum, provide the following:

a. The per books balance sheet, income statement, and statement of changes in financial position of the applicant or the entity responsible for the financing of the applicant, for the two most recent annual periods. Audited financial statements shall be provided, if available, including notes to the financial statements and auditor's letter. Published financial information that includes Securities and Exchange Commission forms 10K and 10Q shall be provided, if available.

b. A continuous performance or surety bond in a minimum amount of \$50,000, in a form to be prescribed by the commission staff. The bond shall be provided to the Division of [~~Economics and Finance~~ Communications] within 30 days of the issuance of the Order for Notice and Comment.

2. To demonstrate financial ability, each MLEC applicant shall, at a minimum, provide the following information:

- a. The two most recent annual financial statements for the entity responsible for financing. Financial statements shall include a balance sheet, income statement, statement of changes in financial position, notes to the financial statements, and auditor's letter.
  - b. Proof of a minimum bond (or other senior debt) rating of "BB" or an equivalent rating by a major rating agency, or a guarantee by a guarantor possessing a credit rating of "BB" or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, the applicant shall submit other evidence that will demonstrate financial responsibility. This evidence may include, but not necessarily be limited to, letters of credit, irrevocable lines of credit, and surety or performance bonds.
3. To demonstrate managerial and technical ability, each CLEC applicant shall, at a minimum, provide the following information:
- a. A description of its or its parent's history and experience of providing telecommunications or other relevant services, if any; and
  - ~~b. Any documentation that supports its technical abilities; and~~
  - ~~e. b.~~ The managerial and technical experience of each principal officer or member and appropriate senior management and technical personnel.
4. To demonstrate managerial and technical ability, each MLEC applicant shall, at a minimum, provide the following information:
- a. A description of the locality's history of providing electric distribution services and other utility services, if any;
  - b. A description of its experience in providing telecommunications or other relevant services, if any;
  - c. A list of the geographic areas in which it has provided and is currently providing utility, telecommunications, or other relevant services; and
  - d. The managerial and technical experience of senior management and technical personnel.
5. The applicant shall provide a list of the states where the applicant, parent, or any affiliate holds authority to provide local exchange telecommunications services; ~~interexchange telecommunications services, or both,~~ and where service is actually being provided, including the date service was commenced for each.
6. The applicant shall also provide a list of any state where authorization was previously held or service was provided and subsequently discontinued and the applicable dates.
7. The applicant shall provide a list of the states where applicant, parent, or any affiliate has had certification or

authorization denied, suspended, terminated, or revoked. The list shall include the reason for such denial, suspension, or revocation and copies of any orders issued by a state commission or regulatory authority addressing such action.

~~H. Each application shall include an illustrative tariff or tariffs, which shall include, at a minimum, the applicant's proposed terms and conditions of service. Applicants that desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with 20VAC5-417-50.~~

~~I. H.~~ Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in 20VAC5-417-50.

~~J. I.~~ A CLEC application shall be for statewide authority unless otherwise requested by the CLEC. If less than statewide authority is being requested, the CLEC shall identify the geographic area or areas for which the CLEC is requesting authority to provide service.

~~K. J.~~ An MLEC application shall identify the geographic area or areas for which the MLEC is requesting authority to provide service. The applicant should consult § 15.2-2160 A of the Code of Virginia for determining the limits of its proposed service area.

~~L. An MLEC applicant shall provide an attestation that it will comply with the requirements in 20VAC5-417-40, MLEC requirements.~~

~~M. All applicants shall provide an attestation that they will comply with the requirements in 20VAC5-417-30, conditions for new entrants.~~

~~N. K.~~ The MLEC applicant shall provide a map of its electric distribution facilities in place as of March 1, 2002. The map should be in sufficient detail to identify the city, town, and county boundaries.

~~O. L.~~ Upon request of the commission staff, an applicant shall provide such information with respect to any of its services or practices as may be relevant to the review of the application.

**20VAC5-417-30. Conditions for new entrants. (Repealed.)**

~~A. A new entrant shall, either directly or through arrangements with others, provide the following:~~

- ~~1. Access to 911 and E911 services;~~
- ~~2. White page directory listings;~~
- ~~3. Access to telephone relay services;~~
- ~~4. Access to directory assistance;~~
- ~~5. Access to operator services;~~
- ~~6. Equal access to interLATA long distance carriers;~~

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~~7. Free blocking of 900 and 700 type services so long as the same requirement applies to incumbent local exchange companies; and~~

~~8. Interconnection on a nondiscriminatory basis with other local exchange carriers.~~

~~B. To the extent economically and technically feasible, the new entrant shall provide service to all customers in the same service classification in its designated geographic service areas in accordance with its tariff offerings.~~

~~C. The new entrant shall have procedures to prevent deceptive and unfair marketing practices.~~

~~D. The new entrant shall be subject to applicable commission rules and regulations, including but not limited to, service quality and billing standards or rules, the rules governing disconnection of local exchange telephone service (i.e., 20VAC5-413), and rules governing the discontinuance of local exchange telecommunications services (i.e., 20VAC5-423).~~

~~E. The new entrant shall comply with the applicable intraLATA toll dialing parity requirements of local exchange carriers as determined in Case No. PUC 1997-00009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: Implementation of IntraLATA Toll Dialing Parity pursuant to the provisions of 47 USC § 251 (b) (3).~~

~~F. A new entrant shall, prior to collecting any customer deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union, which is unaffiliated with the applicant. The Division of Economics and Finance shall be notified of this arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the staff or commission determines it is no longer necessary.~~

## [ 20VAC5-417-40. MLEC requirements.

A. An MLEC that is a city, town, or county shall file data annually with the Division of Communications to demonstrate that, in the aggregate, revenues associated with intrastate telecommunications services cover the incremental and any required imputed or allocated costs of providing such telecommunications services except in circumstances where permitted by § 56-265.4:4 B 3 of the Code of Virginia. The first filing shall be 60 days after the end of the MLEC's city, town, or county's calendar or fiscal year during which the MLEC city, town, or county began providing intrastate telecommunications services and shall continue annually thereafter.

B. An MLEC that is a city, town, or county shall maintain incremental cost studies for each service offered demonstrating that the associated charges: (i) do not include

any subsidies, unless approved by the commission; and (ii) take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs incurred by for-profit providers. The applicable study or studies shall be filed with the commission and the Division of Communications within 30 days of a complaint alleging that an individual local exchange service offering or offerings of an MLEC a city, town, or county fails to comply with these requirements.

C. An MLEC that is a city, town, or county shall maintain accounting records for the revenues, expenses, property, and source of investment dollars pertaining to its telecommunications services that are separate from the accounting records of its affiliated county, city, or town. ]

## 20VAC5-417-50. Regulation of new entrants providing local exchange telecommunications services.

~~A. Unless otherwise allowed by the commission, tariffs~~ Tariffs are permitted but not required for any or all local exchange telecommunications service offerings except those that are comparable to offerings of any ILEC that does not require tariffs terms, conditions, or rates of a new entrant's retail local exchange telecommunications service offerings. Unless otherwise allowed by the commission, tariffs are required for nonretail telecommunications services, [ i.e., such as switched ] access charges.

1. A new entrant electing not to tariff any or all of its retail service or services shall provide customers with access to adequate and complete information regarding the applicable terms, conditions, and rates of its nontariffed retail service or services. The form of such information is not limited to, but may be provided through, individual contracts, online website access to service guides, or other user documents. A new entrant shall provide the Division of Communications with link information to any online website information.

2. A new entrant shall advise the Division of Communications in writing if it elects not to submit tariffs for any of its retail services. The notification shall include the extent of the nontariffing, i.e., whether all retail services will not be tarified or only some services or some terms, conditions, or rates will not be tarified.

3. A new entrant that has tariffs on file with the Division of Communications may elect to eliminate the tariff of any or all terms, conditions, or rates of its retail services as an administrative or nonprice tariff change as prescribed by subdivision F 4 of this section.

B. A new entrant that has received certification to provide local exchange telecommunications services shall, ~~prior to offering such services,~~ submit its proposed initial tariffs to the Division of Communications. A new entrant shall not offer any local exchange telecommunications services until its

~~tariffs have been accepted by the Division of Communications and are effective. such time as:~~

1. The new entrant has complied with notifying the Division of Communications pursuant to subdivision A 2 of this section, for terms, conditions, or rates of retail services it elects not to tariff.

2. The new entrant has submitted initial tariffs to the Division of Communications for nonretail services and for any retail services that it elects to tariff, and the tariffs have been reviewed and accepted by the Division of Communications.

~~C. A new entrant may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings. Any deregulatory or detariffing treatment for any comparable service, class of customers, or geographic area granted to an ILEC shall be applicable to a new entrant under like conditions that elects not to tariff any or all terms, conditions, or rates of its retail local exchange telecommunications service offerings may determine subsequently to submit tariffs to the Division of Communications for any such retail local exchange telecommunications services. Any subsequent filings shall be submitted to the Division of Communications for review and acceptance. A new entrant shall continue offering its retail services on a nontariffed basis until such time as the tariffs are reviewed and accepted by the Division of Communications, and on a tariffed basis thereafter.~~

~~D. Unless otherwise allowed by the commission, prices for basic telephone service and associated service charges, not purchased as part of a bundled service, shall not exceed the highest of the comparable tariffed or applicable ceiling rates, as determined by the commission, of an incumbent local exchange carrier or carriers in the same service territory.~~

~~E. D. 1. Beginning December 1, 2007, unless~~ Unless otherwise allowed by the commission, prices for a new entrant's intrastate access services shall not exceed the highest of the following:

a. The new entrant's comparable interstate switched access charge rates.

b. The aggregate intrastate switched access charge rates of the ILEC in whose service territory the new entrant is providing service. A new entrant may utilize a blended or composite rate to reflect applicable price ceilings of more than one ILEC or to reflect an alternative rate structure to the ILEC.

~~e. An intrastate switched access charge benchmark rate of \$.029 per minute for a transition period from December 1, 2007, through March 30, 2008. Effective April 1, 2008, this subdivision no longer applies.~~

2. A new entrant may be required to submit supporting documentation to justify its switched access rates,

structure, and appropriate functions to the Division of Communications.

3. Unless otherwise ordered by the commission, if an ILEC lowers its switched access charges on its own, such reductions shall not be reflected in applicable price ceilings and a new entrant is not required to adjust its rates in such circumstances.

4. If an ILEC lowers switched access charges pursuant to a commission order, a new entrant shall have 90 days to adjust and implement its switched access rates to correspond to the new applicable price ceiling. Applicable access tariffs shall be filed with the Division of Communications at least 10 days prior to the effective date. The commission may approve an alternative implementation schedule for a new entrant or new entrants to adjust their switched access rates.

~~F. Tariff changes~~ E. Any price increase for [ retail ] local exchange telecommunications services of new entrants shall ~~be implemented as follows:~~

~~1. Price decreases shall be noticed to the Division of Communications no later than three days after the effective date.~~

~~2. Price increases shall become effective after at least 30 days' written notice is provided to affected customers and at least seven business days' written notice to the Division of Communications.~~

~~a. 1. Written notice to affected customers shall be provided through bill inserts, bill messages, or direct mail, or electronic mail or other forms of electronic communications when the customer has requested or authorized electronic bill delivery or other electronic communications.~~

~~b. 2. Notice for price increases for a casual user or nonsubscriber service shall be provided through publication once as display advertising in newspapers having general circulation in the areas served by the new entrant. Display advertising shall only be used for notice for casual user or nonsubscriber services unless otherwise authorized by the commission.~~

F. Tariff changes for local exchange telecommunications services of new entrants shall be implemented as follows:

1. Price increases, in addition to the requirements in subsection E of this section, shall be submitted to the Division of Communications at least seven business days prior to the effective date.

~~e. a.~~ a. A copy of the customer notice, the date or dates of such notification, and proof of publication, if applicable, shall be included with the ~~notice~~ submission to the Division of Communications.

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~~d. An allowable~~ b. A rate increase, if there are no current customers, shall not require customer notice. The ~~notice submission~~ to the Division of Communications shall include an attestation by the new entrant that it has no customers.

2. Price decreases shall be submitted to the Division of Communications no later than three days after the effective date.

3. New service tariff offerings shall become effective after at least three business days' ~~written notice~~ submission to the Division of Communications.

4. Administrative or nonprice tariff changes shall become effective after at least three business days' ~~written notice~~ submission to the Division of Communications.

5. A new entrant, subject to prior approval of the Division of Communications, may seek to file tariff price changes in less than the prescribed timeframe stated above.

G. A new entrant may petition the commission for approval of pricing structures or rates that do not conform with access price ceiling requirements in subsections subsection D and E of this section. The new entrant shall provide appropriate documentation and rationale to support any request. The commission may permit such alternative pricing structures and rates if the public interest will not be harmed.

~~H. Unless otherwise ordered by the commission, price ceiling requirements shall not apply to a new entrant's services other than those specified in subsections D and E of this section.~~

~~I. H.~~ H. Tariff filings and revisions shall be submitted to the Director of the Division of Communications and shall include an original and two copies.

~~J. I.~~ I. A new entrant may, for a specified period of time, offer promotional rates, terms, or conditions for its local exchange telecommunications services offerings that differ from the rates, terms, or conditions in its tariffs. Promotions may be submitted by letter and become effective after at least three business days' written notice to the Director of the Division of Communications. [ Upon request from a new entrant, the Division of Communications may grant a shorter effective date for the promotion. ]

~~K. J.~~ J. A new entrant may offer individual customer pricing for local exchange telecommunications services to a customer that may differ from those in its tariffs in a competitive bid or procurement situation. The new entrant shall retain records of any such agreements and make same available to the Division of Communications upon request.

~~L. K.~~ K. A new entrant may, pursuant to § 56-481.2 of the Code of Virginia, submit for the commission's consideration an alternative regulatory plan for the commission's consideration or seek other deregulatory treatment or

detariffing for nonretail services in the applicant's certification proceeding or at a later date if it desires regulation different from that specified in this section.

~~M. L.~~ L. A new entrant providing local exchange telecommunications services shall not abandon or discontinue such services except as prescribed in 20VAC5-423, Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers.

~~N. M.~~ M. An MLEC may petition the commission for authority to include a subsidy in any of its local exchange services. The commission may approve such a subsidy if it is deemed to be in the public interest. Any subsidy approved by the commission may not result in a price for the service lower than the price for the same service charged by the ILEC provider in the area.

~~O. N.~~ N. A new entrant requesting authority to expand its geographic service territory not covered by its existing certificate shall file a petition with the commission.

O. A new entrant shall, prior to collecting any customer deposits, establish and maintain an escrow account for such funds, held in a [ Virginia office of a ] duly chartered state or national bank, savings and loan association, savings bank, or credit union, which is unaffiliated with the applicant. The Division of [ Economics and Finance Communications ] shall be notified of this arrangement at its inception and of any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the staff or commission determines it is no longer necessary.

P. The new entrant shall be subject to applicable commission rules and regulations.

Q. The new entrant shall provide interconnection on a nondiscriminatory basis with other local exchange carriers.

## **20VAC5-417-60. Reporting requirements for new entrants.**

A. A new entrant shall provide the name, address, telephone number, fax number, and e-mail address of the person designated to receive all official mailings or notices from the Divisions of ~~[ Economics and Finance; ]~~ [ ; ] Communications and Public Service Taxation. Updates to this information shall be provided to each division within 30 days of any change.

B. A new entrant shall comply with the following economic reporting requirements:

1. At a minimum annually, or as deemed necessary by the staff or the commission, a new entrant shall be required to provide information to the Division of ~~[ Economics and Finance Communications ]~~ [ ; ] that includes the number of access lines served, reported by residential lines and

business lines [ ~~, number of customers, reported by residential customers and business customers, ] and Virginia intrastate revenue.~~

2. A new entrant shall, on an annual basis or upon request of the staff or the commission, specify to the Division of [ ~~Economics and Finance Communications ] the geographic areas served within Virginia. Such information shall include the identification of specific exchanges where service is provided or offered and the wire centers associated with all collocation arrangements.~~

C. A new entrant shall ~~comply with the following tax reporting requirements:~~ 1. A new entrant shall file all reports and provide all information required for the administration of tax statutes by the Division of Public Service Taxation. Information filed with the Division of Public Service Taxation shall include financial statements and other statements showing Virginia revenues. If available, audited financial statements shall be filed. A new entrant shall maintain records of all its real property and tangible personal property located in Virginia. Such records shall include the property's original cost and location by city, county, or town and district.

~~2. A new entrant shall remit the telecommunications relay surcharge prescribed by the commission pursuant to § 56-484.6 of the Code of Virginia and 20VAC5-415. The new entrant shall file all reports and make all payments as directed by the Division of Public Service Taxation.~~

D. If a new entrant establishes exchange boundaries that are not in conformance with the exchange boundaries of the incumbent local exchange carriers, maps depicting the new entrant's exchange boundaries shall be filed with the Division of Communications.

E. Should the commission determine that a new entrant has a monopoly over any of its services, whether or not those services are telephone services, it may order the new entrant to file annually with the Division of Communications data to demonstrate that its revenues from local exchange telecommunications services cover the long run incremental costs of such services in the aggregate.

F. A new entrant shall, upon request of the commission staff, file additional information with respect to any of its services or practices.

**20VAC5-417-70. Name changes and use of assumed and fictitious names by a new entrant.**

A. A new entrant shall comply with all provisions of Virginia law that regulate the change of name of a business entity. Within 30 days of the acceptance by the Clerk of the Commission of all documents required for the change of name of a business entity not related to the merger or reorganization of a new entrant, the new entrant shall file with the Clerk of the Commission an application to amend and

reissue its certificate of public convenience and necessity to provide local exchange telecommunications services in its new name. The application shall conform to the commission's Rules of Practice and Procedure, 5VAC5-20.

B. A new entrant shall, before using an assumed or fictitious name in Virginia, comply with §§ 59.1-69 and 59.1-70 of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia, Transacting Business Under Assumed Name. In addition, a new entrant shall:

1. File with the Division of Communications a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia. A new entrant shall identify all its fictitious and assumed names in ~~its~~ any tariffs on file with the Division of Communications.

2. File with the Division of Public Service Taxation a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia.

**DOCUMENTS INCORPORATED BY REFERENCE (20VAC5-417)**

[Form 10Q, General Instructions, United States Securities and Exchange Commission.](#)

[Form 10K, Annual Report Pursuant to Section 13 or 15\(d\) of the Securities Exchange Act of 1934.](#)

~~Case No. PUC970009, Implementation of IntraLATA Toll Dialing Parity Pursuant to 47 USC § 251(b)(3).~~

VA.R. Doc. No. R11-2926; Filed January 17, 2012, 3:19 p.m.

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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality (DEQ) is conducting a periodic review of a regulation of the State Air Pollution Control Board, specifically, 9VAC5-130, Regulation for Open Burning.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form.

The department and the board are seeking public comments on the review of any issue relating to the regulation including whether (i) the regulation is effective in achieving its goals; (ii) the regulation is essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulation; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulation; and (v) the regulation is clearly written and easily understandable by the affected persons. The department and board are also seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulation.

In addition, the department and board seek public input on the following specific issues.

1. Since the open burning regulation was originally promulgated in 1972, methods for addressing open burning have evolved. Although the population has increased and cities and towns have expanded, so too have methods of dealing with certain waste materials; for example, opportunities for composting have increased. Numerous localities have also adopted open burning ordinances that address their local concerns. In addition, areas with recognized pollution problems, such as ozone nonattainment areas, have open burning restrictions that enable the Commonwealth to meet targeted national standards. In the interests of encouraging local control of what is essentially a local issue, should the statewide open burning regulation be limited to VOC/NO<sub>x</sub> control areas (see 9VAC5-20-206), which correspond to localities with recognized air pollution issues?

2. If a statewide rule is retained: 9VAC5-130-40 A 5 allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard, and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of

collection service. Urban areas are defined generally in 9VAC5-10 (General Definitions), with the specific localities listed in 9VAC5-20-201. This list is based in part on the federal list of urbanized areas. Since population characteristics are not necessarily indicative of an air pollution problem, should the criteria for burning limitations be based on urban areas, or simply whether or not collection service is available? If urban areas continue to be a determining criteria, should the state list be revised to reflect the most current federal list of urbanized areas and clusters? Or perhaps something else?

3. If a statewide rule is retained: The term "on-site" originally was added to limit open burning where the waste material was generated. However, it is believed that there may be air pollution and waste management benefits associated with removal of debris from one site and burning it at another. Should open burning be limited to on-site destruction of waste generated at the site, or should open burning be allowed off-site?

The regulation may be viewed on the DEQ air regulation webpage at <http://www.deq.state.va.us/air/regulations/air130.html>.

The purpose of the regulation is (i) to limit or, in some instances, prohibit open burning and to establish requirements to restrict emissions of particulates and volatile organic compounds (VOCs) during the peak ozone season to the level necessary for the protection of public health and welfare and (ii) to provide guidance to local governments on the adoption of ordinances to regulate open burning. This regulation is designed to protect the public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Mary E. Major, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4424, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

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 the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## STATE CORPORATION COMMISSION

### Bureau of Insurance

February 1, 2012

Administrative Letter 2012-01

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia

RE: Credit Insurance Experience Exhibits  
§ 38.2-3730 of the Code of Virginia

In accordance with § 38.2-3730 B of the Code of Virginia, adjustments to the prima facie rates applicable to credit life and credit accident and sickness insurance for the triennium commencing January 1, 2013 will be established and published later this year.

This letter serves as a reminder to all carriers licensed to write either or both of these coverages that the Credit Insurance Experience Exhibit (CIEE) for the 2011 reporting year, from which information will be obtained to properly calculate these rates, must be submitted to the Commission no later than April 1, 2012.

In order to expedite the review process, we are requesting that ALL carriers complete the attached questionnaire. This questionnaire will enable the Bureau of Insurance (the Bureau) to identify carriers who have Virginia experience to report on the CIEE from those who do not have any Virginia experience to report. Carriers who have experience to report must answer all questions and submit the questionnaire and the completed CIEE to the Life and Health Forms and Rates Section of the Bureau. Because of the time constraints under which the rate calculation must be completed, it is imperative that complete and accurate CIEEs are provided to the Bureau on or before April 1, 2012. Please note that carriers with no experience to report are not required to answer questions 1-9 on the questionnaire, however, all carriers must return the questionnaire to the Bureau with the company's name, NAIC # and contact information completed.

New this year is a Company Filing Portal that will allow carriers to submit the questionnaire and, if required, the CIEE electronically. To access the questionnaire and the portal, go to <http://www.scc.virginia.gov/boi/co/miscforms.aspx>, and scroll down to "Credit Insurance Experience Exhibit". You will also note that there are instructions on the website for submitting the documents through the portal.

Attached to this administrative letter are examples of some of the problems identified with CIEE filings in previous years. In some instances, although information was correct, an explanation was necessary to properly evaluate the information. Carriers are hereby directed to review the attachment to ensure that similar problems do not recur this year. Please note that the CIEE must be filed on a direct basis, i.e. before taking into account reinsurance ceded. Only

carriers who have Virginia experience to report are required to complete and submit the CIEE to the Bureau. All carriers must submit the completed questionnaire.

We strongly encourage all carriers to submit the questionnaires and the CIEEs, if required, to the Life and Health Forms and Rates Section via the portal.

Please contact the Bureau with any questions or requests for clarification. Questions or requests for clarification regarding the filing of required documents should be directed to Amanda McCauley, telephone (804) 371-0034, or email [amanda.mccauley@scc.virginia.gov](mailto:amanda.mccauley@scc.virginia.gov).

Questions or requests for clarification regarding the use of the portal should be directed to Trish Todd, telephone (804) 371-9195, or email [trish.todd@scc.virginia.gov](mailto:trish.todd@scc.virginia.gov).

/s/ Jacqueline K. Cunningham  
Commissioner of Insurance

The following are examples of problems identified in filings of the Credit Insurance Experience Exhibits (CIEEs) in previous reporting years. Companies are directed to review the information below to ensure that similar problems do not recur in their 2011 CIEEs. Any of the following situations legitimately applicable to a 2011 CIEE should include an appropriate explanation in the attached questionnaire.

- Wrong state submitted, state not indicated, or Virginia experience not separated. The Bureau received a number of exhibits in which a section was missing, the wrong state or year was submitted, or Virginia experience was not provided separately, i.e. Grand Totals.
- Prima facie premium not listed. The prima facie premium is needed to evaluate the rates. Each company should explicitly state the prima facie premium on the appropriate exhibit line, even if it is the same as earned premium.
- Prima facie premiums greater than earned premiums. While this may not be a problem, our experience is that most companies charge the maximum rate allowed. This may be indicative of a miscalculation, especially on MOB business.
- Earned premiums greater than prima facie premium. For MOB business, this may be indicative of a miscalculation. Such premiums violate statutes unless the premium rates have been approved. If the premium rates have been approved, we ask that reporting carriers provide the Bureau with the approval date(s) to facilitate our analysis.
- Changes in the reserves reported from the end of one reporting year to the beginning of the subsequent reporting year. This can cause previously charged premium and claims to disappear. It can also cause

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claims without corresponding premium and vice versa. Restatement of opening reserves merely results in delay and unnecessary expense for the Bureau and, in light of the purpose of these CIEEs, companies should ensure that opening reserves (at the beginning of the year) are equal to closing reserves (at the end of the previous year).

- Claim reserve errors. These cause inaccurate incurred claims and may also indicate inadequate reserves for the product line.
- Premium reserve errors. These cause inaccurate premium reserve calculations.
- Assumption reinsurance transactions. If any business is transferred by assumption reinsurance, include a cover letter identifying the companies involved and the reserve amounts impacted by the transaction.
- Company Name Changes or Mergers. If the reporting company has changed its name and/or has been involved in a merger, full details should be provided to enable the Bureau of Insurance to appropriately combine experience for the past three years.
- Calculation of Earned Premium at Prima Facie Rates. Prima facie premium must be calculated using the prima facie rates approved and published by the Bureau effective January 1, 2010. Approval by the Bureau to charge alternate rates or use alternative rate structures does not constitute a change to the published prima facie rates, and these alternative rates or rates structures should not be used in calculating earned premium at prima facie rates.

### Questionnaire

Company Name: \_\_\_\_\_

NAIC #: \_\_\_\_\_

For calendar year 2011, did the company have any earned premiums or incurred claims?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If "yes," please complete the entire questionnaire. If "no," please proceed to the last page and complete the contact information only. Responses to questions 1-9 are not required.

1. Are both the earned premiums and earned premiums at prima facie rates stated?

\_\_\_\_\_ Yes \_\_\_\_\_ No

What adjustments, if any, were made to the earned premiums at prima facie rates? Please explain in detail how the adjustments were made. If none were made, please explain why not.

2. Are incurred claims stated without stating earned premiums and earned premiums at prima facie rates? \_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," please explain.

3. Are the beginning of year (BOY) reserves equal to the prior years' stated end of year (EOY) reserves? \_\_\_\_\_ Yes \_\_\_\_\_ No If "no," please provide a detailed explanation. (This applies to the premium, IBNR and claim reserves.)

4. Are the BOY reserves positive but no data was reported last year? \_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," please explain.

5. Has the reserve methodology changed since the prior year's CIEE was filed in Virginia?

\_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," please explain.

6. Was any business transferred by assumption reinsurance? \_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," identify the companies involved and explain how any values in the CIEE have been impacted by the transaction.

7. Has the Company changed its name or has the Company been involved in a merger since the prior year's CIEE was filed in Virginia? \_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," please provide complete details in order that the Bureau of Insurance can appropriately combine experience for the past three years.

8. Have all totals been verified as correct? \_\_\_\_\_ Yes \_\_\_\_\_ No If "no," please explain.

9. Does the CIEE contain any negative numbers? \_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," please provide a detailed explanation.

Completed by: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Phone #: \_\_\_\_\_

Email Address: \_\_\_\_\_

(Revised 2/1/12)

## Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality (DEQ) is conducting a periodic review of the Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility, 9VAC5-220.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of the review is to determine whether the regulation should be terminated, amended, or retained in its current form. The department and the board are seeking public comments on the review of any issue relating to the regulation including whether (i) the regulation is effective in achieving its goals; (ii) the regulation is essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulation; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulation; and (v) the regulation is clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comment on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulation.

The regulation may be viewed on the DEQ air regulation webpage at <http://www.deq.state.va.us/air/regulations/air220.html>.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Mary E. Major, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4424, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

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 the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## STATE BOARD OF ELECTIONS

### Revised Help America Vote Act State Plan - Notice of Public Comment Period

The Virginia State Board of Elections (SBE) is required to develop and adopt a state plan, pursuant to 42 USC § 15404, to receive federal funds under the Help America Vote Act of 2002 (HAVA). The state plan is developed in consultation with a committee of stakeholders in the electoral process and is amended whenever there is a material change to the plan. The Commonwealth's plan was last amended in 2006. SBE has developed proposed revisions to the HAVA state plan in consultation with its HAVA advisory committee.

In accordance with 42 USC § 15406, the SBE will be accepting public comments on the adoption of the revised HAVA state plan from February 1, 2012, to March 1, 2012. The draft state plan and instructions for submitting comments will be available on SBE's website at [www.sbe.virginia.gov](http://www.sbe.virginia.gov) beginning February 1, 2012. All comments will be considered prior to final adoption of the state plan.

Contact Information: Edgardo Cortes, Grants Manager, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8901, or email [edgardo.cortes@sbe.virginia.gov](mailto:edgardo.cortes@sbe.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality (DEQ) is conducting a periodic review of 9VAC15-30, Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. The department is seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department is seeking public comments on ways to minimize

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the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of these regulations is to provide the procedures and rules by which § 58.1-3661 of the Code of Virginia may be administered. The statute specifies that recycling machinery and equipment certified by the Department of Environmental Quality may be eligible for a local property tax exemption. This section of the statute allows the governing body of any county, city, or town to exempt or partially exempt qualifying machinery or equipment from local taxation. Section 58.1-3661 of the Code of Virginia requires that these regulations be promulgated. These regulations are designed to provide procedures for the certification of recycling machinery with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered. The regulations may be viewed in their entirety at <http://leg1.state.va.us/000/reg/TOC09015.HTM#C0030>.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

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 the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### **Proposed Revision to the Commonwealth of Virginia State Implementation Plan**

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit relevant portions of the amended regulations to EPA as revisions to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations affected by this action are as follows: Emission Standards for Municipal Solid Waste

Landfills, Article 43 of 9VAC5-40, Existing Stationary Sources; Environmental Protection Agency Standards of Performance for New Stationary Sources, Article 5 of 9VAC5-50, New and Modified Stationary Sources; and Regulation for Open Burning, 9VAC5-130.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: February 13, 2012, to March 14, 2012.

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

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 3 of the Administrative Process Act as they are changes in form, style, and technical corrections. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision will consist of amendments to existing regulation provisions to update regulatory cross-references. The Solid Waste Management Regulations were amended and recodified to create a new chapter 9VAC20-81, which became effective March 16, 2011. It is now necessary to update the citations to the Solid Waste Management Regulations in the State Air Pollution Control Board's regulations.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit the provisions of the proposal relevant to Article 43 of 9VAC5-40 and 9VAC5-130 as revisions to the Commonwealth of Virginia SIP. The provisions of Article 5 of 9VAC5-50 and 9VAC5-130-100 are not part of the Commonwealth's SIP; those provisions will be provided for information only and not as part of the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last

day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact for public comments, document requests, and additional information: Karen G. Sabastanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email [karen.sabastanski@deq.virginia.gov](mailto:karen.sabastanski@deq.virginia.gov).

### **Total Maximum Daily Load for Washington County**

Purpose of notice: To seek public comment on (i) a draft permit from the Department of Environmental Quality (DEQ) that will allow the continued release of treated wastewater into a water body in Washington County, Virginia and (ii) a proposed modification to the completed total maximum daily load (TMDL) study for that same water body.

First public notice issue date: February 13, 2012.

Public comment period: February 13, 2012, to March 14, 2012.

Permit name and number: Virginia Pollutant Discharge Elimination System Permit - Wastewater (VA0087378) issued by DEQ under the authority of the State Water Control Board.

Name and address of applicant: Washington County Public Service Authority, 25122 Regal Drive, Abingdon, VA 24212.

Name and address of facility: Hall Creek WWTP, 32430 Lee Highway, Glade Spring, VA 24340

Project description - Permit reissuance: Washington County Service Authority has applied for reissuance of the referenced permit. The applicant proposes to release treated sewage wastewater at a rate of 0.95 million gallons per day (MGD) into Hall Creek in Washington County in the Lower Middle Fork Holston watershed. A watershed is the land area drained by a river and its incoming streams. The permit will limit the following pollutants to amounts that protect water quality: pH, BOD<sub>5</sub>, suspended solids, total residual chlorine, bacteria, ammonia nitrogen, and dissolved oxygen. The permit conditions and effluent limitations and monitoring requirements are being tiered for the existing design flow of 0.63 MGD and the future design flow of 0.95 MGD. The sludge disposal plan consists of shipment of the stabilized and dewatered sludge to the BFI Carters' Valley Landfill in Hawkins County, Tennessee.

How to comment and/or request a public hearing for the permit reissuance: DEQ accepts comments and requests for public hearing by email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter/requester and of all persons represented by the commenter/requester. A request for public hearing must include: (i) the reason why a public hearing is requested; (ii) a brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requestor, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. DEQ may hold a public hearing, including another comment period, if public response is significant and there are substantial, disputed issues relevant to the permit.

Project description - Cedar, Hall, Byers, and Hutton Creek TMDL (three creeks) study modifications:

- 1) The TMDL for sediment was approved by the Environmental Protection Agency on June 17, 2004, and can be found at the following website: <http://www.deq.virginia.gov/tmdl/apptmdls/tenbigrvr/mfholb.c.pdf>. DEQ proposes to revise the sediment TMDL to accommodate the changes to the original TMDL accounting used to calculate the Hall Creek water quality TMDL allocations for TSS as outlined below.

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2) The TMDL for bacteria was approved on February 2, 2001, and can be found at the following website: <http://www.deq.virginia.gov/tmdl/apptmdls/tenbigvr/mfholstn.pdf>. The revised bacteria and sediment TMDLs will be changed to accommodate a flow discharge rate of 0.95 million gallons per day for the previously permitted facility, Hall Creek WWTP (VA0087378). Future growth allocation will also be incorporated into both TMDL studies. Previously overlooked preexisting construction permits will be incorporated as modeled. A conversion from fecal coliform to E. coli will be implemented to accommodate a change in water quality standards for bacteria. Updating the allocations, reductions, and associated text in the Three Creeks TMDLs will protect and preserve water quality, will replace the original and incorrect data used in TMDL development, and will not result in a TMDL value change.

How to comment on the TMDL modification: DEQ accepts comments by email, fax, or postal mail. All comments must be in writing and be received by DEQ during the comment period. The public also may request a public meeting. Submittals must include the names, mailing addresses, and telephone numbers of the commenter and of all persons represented by the commenter.

Contact for public comments, document requests and additional information: Allen Newman, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4800, FAX (276) 676-4899, or email [allen.newman@deq.virginia.gov](mailto:allen.newman@deq.virginia.gov).

The public may review the documents at the DEQ office named above.

### STATE LOTTERY DEPARTMENT

#### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 19, 2012, January 20, 2012, and January 24, 2012. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

#### Director's Order Number One (12)

Virginia's On-Line Game "Cash 5" Final Rules for Game Operation (effective January 24, 2012. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Cash 5" game rules.)

#### Director's Order Number Fifteen (12)

Virginia's Instant Game Lottery 1321; "Virginia Lottery Black" Final Rules for Game Operation (effective January 18, 2012)

#### Director's Order Number Sixteen (12)

Virginia Lottery's "Bonus Raffle Promotion" Final Rules for Game Operation (effective January 12, 2012)

#### Director's Order Number Seventeen (12)

Virginia Lottery's "Bonus Raffle" Final Rules for Game Operation (effective January 12, 2012)

#### Director's Order Number Nineteen (12)

"Seibert's Eat & Win Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Rules (effective January 24, 2012 and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director.)

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The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on January 20, 2012.

#### Director's Order Number Eighteen (12)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on January 20, 2012.

Game 1076	Win for Life (TOP)
Game 1101	Bingo Tripler (TOP)
Game 1110	Lucky Casino (TOP)
Game 1138	Dreamin' of Dollar\$
Game 1173	Muscle Car Money
Game 1180	Movie Night
Game 1217	Super Bonus Crossword (TOP)
Game 1222	Fat Cat Returns!
Game 1224	Virginia's Riches
Game 1226	Hot Slots (TOP)
Game 1238	Mad Money
Game 1241	7 Come 11®
Game 1243	Wild Cherry Crossword (TOP)
Game 1247	Monopoly (TOP)
Game 1249	Winner's Circle Doubler
Game 1265	5X the Money (TOP)
Game 1266	Spicy 7's
Game 1276	Money Tree
Game 1277	Turkey Tripler
Game 1279	Silver & Gold
Game 1280	Sweet Treats
Game 1281	Peng-Win!

Game 1282	Happy Holidays
Game 1283	Jingle Bells
Game 1296	Plants vs. Zombies™

The last day for lottery retailers to return for credit unsold tickets from any of these games will be February 24, 2012. The last day to redeem winning tickets for any of these games will be July 18, 2012, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of July 18, 2012, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto  
Executive Director  
January 18, 2012

## **VIRGINIA WASTE MANAGEMENT BOARD**

### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality (DEQ), on behalf of the Virginia Waste Management Board, will conduct a periodic review of 9VAC20-190, Litter Receptacle Regulations.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether this regulation should be terminated, amended, or retained in its current form.

The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and

easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of these regulations is to establish reasonable guidelines for the placement and maintenance of litter receptacles. The regulations describe the responsibility of owners and operators of establishments and public places, throughout the Commonwealth, to place and maintain receptacles for receiving litter. The regulations also establish which places must be provided with litter receptacles, the standards for the receptacles, and the requirements for removal of the litter from the receptacles. Section 10.1-1419 of the Code of Virginia requires that these regulations be promulgated and specifies certain requirements that are included as part of these regulations. These regulations are designed to protect the public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

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 the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will conduct a periodic review of 9VAC20-200, Mercury Switch Regulations.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. The department and the board are seeking public comments on the review of any issue relating to the

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regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of these regulations is to reduce the quantity of mercury released into the environment by establishing standards and procedures for the removal of mercury switches from end-of-life vehicles demolished in the Commonwealth. The regulations also provide for the storage, shipping, recycling, or disposal of mercury switches removed from vehicles. Section 10.1-1402 of the Code of Virginia requires that these regulations be promulgated. Section 46.2-635 of the Code of Virginia specifies certain requirements that are included as part of these regulations. These regulations are designed to protect the public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The comment period begins February 13, 2012, and ends on March 5, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

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 the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Order for the Dinwiddie County School Board

An enforcement action has been proposed for the Dinwiddie County School Board for alleged violations at the Dinwiddie Middle School in Dinwiddie County, Virginia. The State Water Control Board proposes to issue a consent special order

to the Dinwiddie County School Board to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Cynthia Akers will accept comments by email at [cynthia.akers@deq.virginia.gov](mailto:cynthia.akers@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from February 13, 2012, to March 14, 2012.

#### Proposed Consent Order for Kerr's Creek, LLC

An enforcement action has been proposed for Kerr's Creek, LLC for violations in Rockbridge County. A proposed consent order describes a settlement to resolve unauthorized discharge violations from the Kerr's Creek sewage treatment plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from February 13, 2012, to March 14, 2012.

#### Proposed Consent Order for Windcrest Holsteins, Inc.

An enforcement action has been proposed for Windcrest Holsteins, Inc. for violations in Rockingham County. A proposed consent order describes a settlement to resolve an unauthorized discharge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Karen Hensley will accept comments by email at [karen.hensley@deq.virginia.gov](mailto:karen.hensley@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from February 13, 2012, to March 14, 2012.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](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 <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).**

**22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).**

Publication: 27:25 VA.R. 2675-2717 August 15, 2011.

Correction to Final Regulation:

Page 2682, 22VAC40-131-80 C, line 4, replace "22VAC40-131-90 B 2 a (1) and (2)" with "subdivisions B 2 a (1) and (2) of this section"

Page 2717, 22VAC40-131-610 C 3, line 1, after "requirements" insert "of"

VA.R. Doc. No. R10-2036; Filed January 31, 2012, 11:09 a.m.

### COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: **24VAC30-72. Access Management Regulations: Principal Arterials (amending 24VAC30-72-10, 24VAC30-72-20, 24VAC30-72-40, 24VAC30-72-50, 24VAC30-72-60, 24VAC30-72-70, 24VAC30-72-80, 24VAC30-72-120, 24VAC30-72-150; repealing 24VAC30-72-140, 24VAC30-72-170).**

Publication: 28:8 VA.R. 738-745 December 19, 2011.

Correction to Final Regulation:

Page 745, FORMS (24VAC30-72), second column, as follows:

In the title of the form "LUP-SP" before "Special" insert "Land Use Permit"

In the title of the form "LUP-LC" before "Letter" omit "Irrevocable"

In the title of the form "LUP-SB" before "Surety" insert "Permit"

VA.R. Doc. No. R12-3066; Filed January 23, 2012, 11:26 a.m.

Title of Regulation: **24VAC30-155. Traffic Impact Analysis Regulations (amending 24VAC30-155-10, 24VAC30-155-20, 24VAC30-155-30, 24VAC30-155-40, 24VAC30-155-60, 24VAC30-155-70, 24VAC30-155-80; repealing 24VAC30-155-50, 24VAC30-155-100).**

Publication: 28:8 VA.R. 719-737 December 19, 2011.

Correction to Final Regulation:

Page 724, 24VAC30-155-40 D, first column, lines 15-17, after "that" insert "(i)"; after "practice" replace "or" with ", (ii) the package"; and after "or" replace "if" with "(iii)"

Page 737, DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-155), in the listing for "ITE Manual of Traffic Signal Design" before "1998" delete "effective"

VA.R. Doc. No. R12-2999; Filed January 23, 2012, 11:26 a.m.

