



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# 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 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Mark J. Vucci**.

Staff of the Virginia Register: **Karen Perrine**, Acting Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Alexandra Stewart**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

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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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### April 2018 through April 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 ( <b>Tuesday</b> )	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 ( <b>Monday</b> )	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 ( <b>Friday</b> )	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February 18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF VETERINARY MEDICINE

#### Agency Decision

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

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

Name of Petitioner: Claire Webster.

Nature of Petitioner's Request: To authorize the delegation of administration of Schedule II-V drugs by any route to an unlicensed assistant under the direction and supervision of a veterinarian or a veterinary technician.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition and the comments on the petition were considered by the board at its meeting on March 15, 2018. Members of the board voted to deny the petition because they believe delegation of administration of Schedules II through V drugs to unlicensed assistants is not consistent with protection of public health and safety. There is no measure of competency and no direct accountability for practice by an unlicensed person. Additionally, there does not appear to be any authority in the Virginia Drug Control Act for such delegation of administration of controlled substances.

Agency Contact: Leslie L. Knachel, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

VA.R. Doc. No. R18-07; Filed March 15, 2018, 3:33 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-190, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining**. The purpose of the proposed action is to amend and reissue the VPDES general permit for wastewater and stormwater discharges from nonmetallic mineral mines. The current permit expires on June 30, 2019, and needs to be reissued so that nonmetallic mineral mines with point source discharges of wastewater and stormwater to surface waters can continue to have general permit coverage. The proposed action also will update the general permit as necessary to ensure it remains current, clear, and effective and will continue to protect water quality from discharges associated with this industry.

The proposed rulemaking is essential to the protection of health, safety, or welfare of the citizens of the Commonwealth. Proper permitting requirements for discharges protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses, and conservation in general. Other issues that may need consideration are whether (i) additional total maximum daily load (TMDL) requirements are needed for impaired waters; (ii) additional requirements are needed to address ammonia; (iii) stormwater management requirements need to be updated to correspond with U.S. Environmental Protection Agency's 2015 multi-sector general permit; (iv) additional benchmarks, limits, or special conditions are needed; (v) registration statement questions need to be added, deleted, or updated; or (vi) clarification of other aspects of the permit, regulation, forms, or instructions is needed.

In addition, this regulation will undergo a periodic review pursuant to Executive Order 17 (2014) and a small business impact review pursuant to § 2.2-4007.1 of the Code of Virginia to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

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

Public Comment Deadline: May 16, 2018.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email [peter.sherman@deq.virginia.gov](mailto:peter.sherman@deq.virginia.gov).

VA.R. Doc. No. R18-5446; Filed March 23, 2018, 10:58 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.</p>
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Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-20, 4VAC20-510-25, 4VAC20-510-33).**

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

Effective Date: April 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

#### Summary:

*The amendments establish (i) a daily vessel limit of six amberjack or cobia for all commercial gears and (ii) a daily possession limit of two amberjack or cobia per commercial fisherman registration licensee for all commercial gears and change the end of the recreational season from September 15 to September 30.*

#### **4VAC20-510-20. Recreational fishery possession limits; season closure; vessel allowance; prohibition on gaffing.**

A. It shall be unlawful for any person fishing recreationally to possess more than two amberjack or more than one cobia at any time. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any 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 two for amberjack or one for cobia, except there is a maximum vessel limit of three cobia per vessel per day. That vessel limit may only include one cobia greater than 50 inches in total length. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~B. In 2017, it~~ It shall be unlawful for any person fishing recreationally to harvest or possess any cobia before June 1 or after September ~~15~~ 30.

~~C. It shall be unlawful for any person fishing recreationally to gaff or attempt to gaff any cobia.~~

#### **4VAC20-510-25. Commercial fishery possession limits and season.**

~~A.~~ A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any 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~~ valid commercial fisherman registration licensees on board ~~legally eligible to fish~~ multiplied by two, ~~except there is a maximum vessel limit of six cobia per vessel per day.~~ The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~B. In 2017 it shall be unlawful for any person fishing commercially to harvest or possess any cobia after September 30.~~

#### **4VAC20-510-33. Exceptions to possession limits and minimum size limits.**

A. Nothing in 4VAC20-510-25 shall limit the possession of amberjack or cobia by licensed seafood buyers or wholesale and retail seafood establishments when operating in their capacity as buyer, wholesaler, or retailer.

B. Nothing in 4VAC20-510-25 and 4VAC20-510-30 shall limit the possession of cobia by an aquaculture facility that is permitted in accordance with the provisions of 4VAC20-510-35.

C. Any person employed by a permitted cobia aquaculture facility for the purpose of harvesting cobia as broodstock for the aquaculture facility shall be exempt from the provisions of 4VAC20-510-20 and 4VAC20-510-30 provided that person possesses a scientific collection permit issued by the commissioner.

~~D. The daily possession limit for cobia for any vessel operated by at least one legal commercial hook and line licensee shall be no more than six cobia, regardless of the number of crew on that vessel.~~

VA.R. Doc. No. R18-5453; Filed March 29, 2018, 9:16 a.m.

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# Regulations

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## Final Regulation

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

**Title of Regulation:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40, 4VAC20-620-50).

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

**Effective Date:** April 1, 2018.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

### Summary:

*The amendments (i) establish a 16.5-inch minimum size limit for the 2018 recreational summer flounder fishery in Virginia waters and (ii) allow New Jersey vessels that possess summer flounder harvested commercially from federal waters to enter Virginia waters but not to offload summer flounder in Virginia.*

### 4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina or New Jersey vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina or New Jersey vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From March 1 through April 30, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the

Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 7,500 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From October 16 through December 31 of each year, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 7,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer

flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

L. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

**4VAC20-620-50. Minimum size limits.**

A. The minimum size for summer flounder harvested by commercial fishing gear shall be 14 inches; in total length.

B. The minimum size of summer flounder harvested by recreational fishing gear, including ~~but not limited to~~ hook and line, rod and reel, spear and gig, shall be ~~17~~ 16.5 inches; in total length, except that the minimum size of summer

flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any summer flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R18-5452; Filed March 29, 2018, 9:28 a.m.

**Final Regulation**

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

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-30).**

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

Effective Date: April 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

*The amendment changes the required recertification time interval for Shellfish Harvest Safety Training Certification from two years to five years to conform to National Shellfish Sanitation Program guidelines.*

**4VAC20-1230-30. Public health and warm water harvest restrictions for shellfish.**

A. Beginning December 1, 2014, it shall be unlawful for any commission employee or representative to issue any shellfish license, shellfish permit, or oyster resource user fee to any person unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. Beginning January 1, 2015, it shall be unlawful for any person to harvest or attempt to harvest shellfish unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. The Shellfish Harvest Safety Training Certification shall be valid from the date of issuance through the next ~~two~~ five calendar years.

B. No provisions in this chapter shall apply to seed clams or seed oysters.



# Regulations

C. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.

D. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.

E. From May 1 through September 30, all shellfish shall be shaded during land-based deliveries.

F. From June 1 through August 31, it shall be unlawful for any person to leave the dock or shore, prior to one hour before sunrise, to harvest or attempt to harvest shellfish from private grounds.

V.A.R. Doc. No. R18-5454; Filed March 29, 2018, 9:07 a.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Final Regulation

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

*interest communities applying on or before June 30, 2019, and (ii) renewal fees for associations renewing on or before June 30, 2019.*

#### 18VAC48-60-60. Registration fee.

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

Number of Lots/Units	Application Fee	Renewal Fee
1 - 50	\$45	\$30
51 - 100	\$65	\$50
101 - 200	\$100	\$80
201 - 500	\$135	\$115
501 - 1000	\$145	\$130
1001 - 5000	\$165	\$150
5001+	\$180	\$170

The application fee for registration of a residential common interest community received on or before June 30, ~~2018~~ 2019, shall be \$10 regardless of size. For annual renewal of a residential common interest community registration received on or before June 30, ~~2018~~ 2019, the fee shall be \$10 regardless of size.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** 18VAC48-60. Common Interest Community Board Management Information Fund Regulations (amending 18VAC48-60-60).

**Statutory Authority:** § 54.1-2349 of the Code of Virginia.

**Effective Date:** June 1, 2018.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

#### Summary:

To remain in compliance with § 54.1-113 of the Code of Virginia, the amendments extend the existing reduction in (i) the application registration fee for residential common

#### FORMS (18VAC48-60)

~~Community Association Registration Application, A492-0550REG v4 (eff. 9/2017)~~

~~Community Association Annual Report, A492-0550ANRPT v6 (eff. 9/2017)~~

[Community Association Registration Application, A492-0550REG-v5 \(3/2018\)](#)

[Community Association Annual Report, A492-0550ANRPT-v7 \(3/2018\)](#)

[Community Association Governing Board Change Form, A492-0550GBCHG-v1 \(eff. 9/2013\)](#)

[Community Association Point of Contact/Management Change Form, A492-0550POCCHG-v2 \(eff. 9/2017\)](#)

V.A.R. Doc. No. R18-5433; Filed March 28, 2018, 11:54 a.m.

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## GUIDANCE DOCUMENTS

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Section 2.2-4103.1 of the Code of Virginia requires annual publication in the *Virginia Register* of guidance document lists from state agencies. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

### DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Copies of the following documents may be viewed during regular work days from 8:15 a.m. until 4:30 p.m. in the offices of the Virginia Department for the Deaf and Hard of Hearing (VDDHH), 1602 Rolling Hills Drive, Suite 203, Richmond, VA 23229-5012. Copies may be obtained free of charge by contacting Leslie G. Hutcheson at the same address, telephone (804) 662-9703 (V/TTY), FAX (804) 662-9718, or email [leslie.hutcheson@vddhh.virginia.gov](mailto:leslie.hutcheson@vddhh.virginia.gov).

Some of the documents may be available to be downloaded from the VDDHH homepage at <http://www.vddhh.org>.

Questions regarding interpretation or implementation of these documents may also be directed to Leslie Hutcheson.

#### Guidance Documents:

VDDHH Policies and Procedures implementing 22VAC20-20 (Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Assistive Technology Devices); updated annually

VDDHH Policies and Procedures implementing 22VAC20-30 (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing); updated annually

Directory of Qualified Interpreters, implementing 22VAC20-30 (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing); updated monthly

Virginia Quality Assurance Screening Applicant Packet, implementing 22VAC20-30 (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing); updated annually

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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality (DEQ) on behalf of the Air Pollution Control Board is conducting a periodic review and small business impact review of portions of **9VAC5-40, Existing Stationary Sources**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The specific regulations being reviewed are as follows:

9VAC5-40, Existing Stationary Sources

Part I - Special Provisions (9VAC5-40-10 et seq.)

Part II - Emission Standards:

Article 1, Visible Emissions and Fugitive Dust/Emissions

Article 2, Emission Standards for Odor

Article 4, Emission Standards for General Process Operations

Article 5, Emission Standards for Synthesized Pharmaceutical Products Manufacturing Operations

Article 6, Emission Standards for Rubber Tire Manufacturing Operations

Article 7, Emission Standards for Incinerators

Article 8, Emission Standards for Fuel Burning Equipment

Article 9, Emission Standards for Coke Ovens

Article 10, Emission Standards for Asphalt Concrete Plants

Article 11, Emission Standards for Petroleum Refinery Operations

Article 12, Emission Standards for Chemical Fertilizer Manufacturing Operations

Article 13, Emission Standards for Pulp and Paper Mills

Article 14, Emission Standards for Sand and Gravel Processing Operations and Stone Quarrying and Processing Operations

Article 15, Emission Standards for Coal Preparation Plants

Article 16, Emission Standards for Portland Cement Plants

Article 17, Emission Standards for Woodworking Operations

Article 18, Emission Standards for Primary and Secondary Metal Operations

Article 19, Emission Standards for Lightweight Aggregate Process Operations

Article 20, Emission Standards for Feed Manufacturing Operations

Article 21, Emissions Standards for Sulfuric Acid Production Units

Article 22, Emission Standards for Sulfur Recovery Operations

Article 23, Emission Standards for Nitric Acid Production Units

Article 24, Emission Standards for Solvent Metal Cleaning Operations Using Nonhalogenated Solvents

Article 25, Emission Standards for Volatile Organic Compound Storage and Transfer Operations

Article 26, Emission Standards for Large Appliance Coating Application Systems

Article 27, Emission Standards for Magnet Wire Coating Application Systems

Article 28, Emission Standards for Automobile and Light Duty Truck Coating Application Systems

Article 29, Emission Standards for Can Coating Application Systems

Article 30, Emission Standards for Metal Coil Coating Application Systems

Article 31, Emission Standards for Paper and Fabric Coating Application Systems

Article 32, Emission Standards for Vinyl Coating Application Systems

Article 33, Emission Standards for Metal Furniture Coating Application Systems

Article 35, Emission Standards for Flatwood Paneling Coating Application Systems

Article 36, Emission Standards for Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines

Article 46, Emission Standards for Small Municipal Waste Combustors

Article 47, Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area

Article 48, Emission Standards for Mobile Equipment Repair and Refinishing Operations

Article 52, Emission Standards for Stationary Sources Subject to Case-by-Case BART Determinations

Article 54, Emission Standards for Large Municipal Waste Combustors

Article 55, Emission Standards for Sewage Sludge Incineration Units

The regulations may be viewed on the DEQ air regulation webpage at <http://www.deq.virginia.gov/Programs/Air/Laws,Regulations,Guidance.aspx>.

The comment period begins April 16, 2018, and ends May 7, 2018.

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 Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, 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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Revised Powells Farm Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) Permit by Rule - Halifax County**

The Department of Environmental Quality received a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project. Powells Farm Solar LLC is now proposing a larger solar farm project, 70 megawatts, to be located in Halifax County on six parcels totaling approximately 710 acres off of Hendricks Lane. The project will be comprised of arrays of polycrystalline solar collectors, inverters, and associated equipment.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Revised Sunnybrook Farm Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) Permit by Rule - Halifax County**

The Department of Environmental Quality has received a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) from Sunnybrook Farm Solar LLC. The project is still proposed to be located in Halifax County and to be a 51-megawatt alternating current photovoltaic solar facility. The revised project will be on portions of seven parcels totaling approximately 352 acres off of Long Branch Lane outside of Scottsburg. The project will be comprised of approximately 210,000 polycrystalline solar collectors and associated equipment.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## VIRGINIA LOTTERY

### Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on March 28, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

#### Director's Order Number Thirty-One (18)

Virginia Lottery "Beats<sup>®</sup> This Sales Contest" Retailer Incentive Promotion (This Director's Order becomes effective on April 3, 2018, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

#### Director's Order Number Thirty-Two (18)

Certain Virginia Promotion; Rescission of Promotion - Beats This Sales Contest Incentive Promotion (172 2017) (This Director's Order is effective on April 3, 2018, and shall remain in full force and effect unless or rescinded by further Director's Order)

#### Director's Order Number Thirty-Three (18)

Virginia Lottery's "2018 Richmond Raceway Torque Club Ticket Giveaway" Promotion Final Rules for Operation (This Director's Order becomes effective on April 20, 2018, and shall remain in full force and effect through the end promotion date unless amended or rescinded by further Director's Order)

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## General Notices/Errata

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### Director's Order Number Thirty-Four (18)

Virginia Lottery's "Wawa Sports Partnership Promotion" Final Rules for Operation (This Director's Order becomes effective on April 1, 2018, and shall remain in full force and effect through the end promotion date unless amended or rescinded by further Director's Order)

### Director's Order Number Thirty-Five (18)

Virginia Lottery's "Thank A Teacher" Final Rules for Operation (This Director's Order becomes effective on Monday, April 2, 2018, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

#### **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

#### **Chapter V (All Provider Manuals) Virginia Birth- Related Neurological Compensation Program Update Draft for Stakeholder Input**

Comment period: March 28, 2018, to April 27, 2018.

The draft Virginia Birth-Related Neurological Compensation Program (Program) language will be incorporated into Chapter V of all Department of Medical Assistance Services (DMAS) provider manuals and is posted on the DMAS website at <http://townhall.virginia.gov> for public comment through April 27, 2018. Please see the overview below for more details.

Overview of Changes: Information regarding the processing of claims for members who receive benefits from the Program will be added to Chapter V (Billing) of all DMAS provider manuals. Effective May 1, 2018, providers must assure that the Third Party Administrator, Best Life, and the Program receive and adjudicate claims prior to submitting to Virginia Medicaid.

Chapter V of all DMAS provider manuals will be finalized and officially posted by May 1, 2018, at <https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManuals>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

#### **BOARD OF NURSING**

#### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing is currently reviewing each of the regulations listed below to

determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

#### **18VAC90-15, Regulations Governing Delegation to an Agency Subordinate**

#### **18VAC90-25, Regulations Governing Certified Nurse Aides**

#### **18VAC90-26, Regulations for Nurse Aide Education Programs**

#### **18VAC90-60, Regulations Governing the Registration of Medication Aides**

Contact Information: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

The comment period begins April 16, 2018, and ends May 8, 2018.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

#### **STATE WATER CONTROL BOARD**

#### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC25-280, Ground Water Standards**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the

economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 16, 2018, and ends May 7, 2018.

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 Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

### Proposed Consent Order for the Town of Elkton

The State Water Control Board proposes to issue a consent order to the Town of Elkton for the purpose of incorporating a plan to address flows in excess of 95% of the authorized design capacity at the Elkton Sewage Treatment Plant into an enforceable document. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Tamara Ambler will accept comments by email at [tamara.ambler@deq.virginia.gov](mailto:tamara.ambler@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from April 16, 2018, to May 16, 2018.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is

available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the *Virginia Register of Regulations*:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

