



# VIRGINIA

## REGISTER OF REGULATIONS

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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**

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating

agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

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

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Ryan T. McDougle**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### June 2020 through May 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020
36:26	July 29, 2020	August 17, 2020
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 ( <b>Monday</b> )	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021

\*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 DENTISTRY

#### Agency Decision

**Title of Regulation: 18VAC60-30. Regulations Governing the Practice of Dental Assistants.**

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

**Name of Petitioner:** Misty Meismer for Virginia Dental Hygiene Program Directors' Consortium.

**Nature of Petitioner's Request:** The petitioner is requesting an amendment to require dental assistants to be certified in infection control procedures and radiation health and safety recognized by the Dental Assisting National Board or the National Entry Level Dental Assistant.

**Agency Decision:** Request granted.

**Statement of Reason for Decision:** At the board meeting on March 13, 2020, the board determined that it will publish a Notice of Intended Regulatory Action to initiate rulemaking relating to a requirement for dental assistants to have training in infection control. The regulatory action may include certification in infection control procedures recognized by the Dental Assisting National Board or the National Entry Level Dental Assistant or other training and education.

**Agency Contact:** Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, or email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

VA.R. Doc. No. R20-15; Filed April 23, 2020, 9:06 a.m.

### BOARD OF OPTOMETRY

#### Initial Agency Notice

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

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

**Name of Petitioner:** David Haine.

**Nature of Petitioner's Request:** To amend 18VAC105-20-45 to include the number of contact lenses that can be dispensed from a prescription for contact lenses.

**Agency Plan for Disposition of Request:** The petition will be published in the Virginia Register of Regulations on May 25, 2020, with public comment requested until June 24, 2020. The board will consider all comments and the petition and decide whether to initiate rulemaking at its next meeting scheduled for July 17, 2020.

**Public Comment Deadline:** June 24, 2020.

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

VA.R. Doc. No. R20-39; Filed April 22, 2020, 14:04 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **4VAC25-101, Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells; 4VAC25-110, Regulations Governing Blasting in Surface Mining Operations; 4VAC25-120, Requirements for Installation and Use of Cabs and Canopies; and 4VAC25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment begins May 25, 2020, and ends June 15, 2020.

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

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC5-80, Permits for Stationary Sources** and **9VAC5-230, Variance for International Paper Franklin Paper Mill.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins May 25, 2020, and ends June 15, 2020.

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

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4319, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

### STATE WATER CONTROL BOARD

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation, and 9VAC25-194, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Vehicle Wash Facilities and Laundry Facilities.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).



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# Periodic Reviews and Small Business Impact Reviews

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

Public comment period begins May 25, 2020, and ends June 15, 2020.

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

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, 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).

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## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### DEPARTMENT OF HISTORIC RESOURCES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Historic Resources conducted a periodic review and a small business impact review of **17VAC10-30, Historic Rehabilitation Tax Credit**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated May 5, 2020, to support this decision.

This regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018) as it is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable.

This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals. The regulation is, therefore, being retained without amendment.

This regulation continues to be needed to meet the requirements of state law and regulations concerning historic rehabilitation tax credits. No complaints or comments have

been received concerning the content of the regulation or its complexity. The regulation sets out the state requirements for historic rehabilitation tax credits and does not overlap, duplicate, or conflict with other state laws or regulations.

Contact Information: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, or email [stephanie.williams@dhr.virginia.gov](mailto:stephanie.williams@dhr.virginia.gov).

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-675, Personnel Policies for Local Departments of Social Services**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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.

Public comment period begins May 25, 2020, and ends June 15, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Lori Schamerhorn,, Senior Human Resource Policy Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264, FAX (804) 819-7019, or email [lori.schamerhorn@dss.virginia.gov](mailto:lori.schamerhorn@dss.virginia.gov).

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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 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Forms

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

**Title of Regulation:** **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

**Contact Information:** Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4209, email [debra.harris@deq.virginia.gov](mailto:debra.harris@deq.virginia.gov).

FORMS (9VAC20-90)

~~Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 11/2014)~~

[Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions \(rev. 12/2018\)](#)

[Solid Waste Annual Permit Fee Quarter Payment Form PF001 \(rev. 6/2019\)](#)

VA.R. Doc. No. R20-6311; Filed April 28, 2020, 8:27 a.m.

#### Forms

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

**Title of Regulation:** **9VAC20-150. Waste Tire End User Reimbursement Regulation.**

**Contact Information:** Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main

Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

FORMS (9VAC20-150)

[Waste Tire Pile Certification, DEQ-CERT, No. 154 \(rev. 3/2010\)](#)

[End User Reimbursement Application, DEQ-EURR \(rev. 5/2016\)](#)

~~[Waste Tire Certification, DEQ-WTC \(rev. 4/2016\)](#)~~

[Waste Tire Certification, DEQ-WTC \(rev. 4/2020\)](#)

VA.R. Doc. No. R20-6358; Filed April 30, 2020, 2:10 p.m.

### STATE WATER CONTROL BOARD

#### Forms

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

**Title of Regulation:** **9VAC25-740. Water Reclamation and Reuse Regulation.**

**Contact Information:** Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

FORMS (9VAC25-740)

~~[Application for an Emergency Authorization to Produce, Distribute or Reuse Reclaimed Water \(12/2015\)](#)~~

~~[Application for Reclaimed Water Hauling Operations, DEQ Form WR&R 2 \(eff. 10/2018\)](#)~~

~~[Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, DEQ Form WR&R 1 \(rev. 1/2019\)](#)~~

~~[Water Reclamation and Reuse Variance Application \(12/2015\)](#)~~

[Application for an Emergency Authorization to Produce, Distribute or Reuse Reclaimed Water, DEQ Form WR&R-4 \(rev. 4/2020\)](#)

[Application for Reclaimed Water Hauling Operations, DEQ Form WR&R-2 \(rev. 4/2020\)](#)

[Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, DEQ Form WR&R-1 \(rev. 4/2020\)](#)

[Water Reclamation and Reuse Variance Application, DEQ Form WR&R-3 \(rev. 4/2020\)](#)

VA.R. Doc. No. R20-6366; Filed May 1, 2020, 4:34 p.m.



**TITLE 19. PUBLIC SAFETY**

**DEPARTMENT OF STATE POLICE**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of State Police will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-40, 19VAC30-20-70, 19VAC30-20-80, 19VAC30-20-130, 19VAC30-20-150, 19VAC30-20-220 through 19VAC30-20-250, 19VAC30-20-300; repealing 19VAC30-20-20, 19VAC30-20-30).**

**Statutory Authority:** § 52-8.4 of the Code of Virginia.

**Effective Date:** July 1, 2020.

**Agency Contact:** Lieutenant Sean Stewart, Assistant Safety Officer, Motor Carrier Safety Unit, Department of State Police, P.O. Box 27472, Richmond, VA 23261, telephone (804) 278-5303, or email [sean.stewart@vsp.virginia.gov](mailto:sean.stewart@vsp.virginia.gov).

**Summary:**

*The amendments align Virginia's Motor Carrier Safety Regulations, 19VAC30-20, with the Federal Motor Carrier Safety Regulations and include (i) clarifying an incorporation by reference and a valid (V) restriction on a commercial driving license, (ii) conforming acceptable notice delivery methods (electronic) to those accepted in federal regulation and in statute, (iii) adding intermodal equipment to vehicle requirements, and (iv) making minor changes to correct spelling and grammatical errors.*

Part II

General Information and Legislative Authority

**19VAC30-20-20. Authority for regulation. (Repealed.)**

~~A. These regulations are issued under authority of § 52-8.4 of the Code of Virginia, Powers and duties to promulgate regulations; inspection of certain records.~~

~~B. Section 52-8.4 of the Code of Virginia mandates that the Superintendent of State Police, with the cooperation of such other agencies of the Commonwealth as may be necessary, shall promulgate regulations pertaining to commercial motor vehicle safety pursuant to the United States Motor Carrier Act of 1984.~~

~~C. These regulations, as promulgated, shall be no more restrictive than the applicable provisions of the Federal Motor Carrier Safety Regulations of the United States Department of Transportation.~~

**19VAC30-20-30. Purpose of regulations. (Repealed.)**

~~These regulations shall set forth criteria relating to driver, vehicle, and cargo safety inspections with which motor carriers and transport vehicles shall comply.~~

**19VAC30-20-40. Application of regulations.**

~~A. These regulations~~ This chapter and those the regulations contained in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart Subparts E and F, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, unless excepted, shall be applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate and intrastate commerce.

~~B. These regulations~~ This chapter shall not apply to hours worked by any carrier when transporting passengers or property to or from any portion of the Commonwealth for the purpose of (i) providing relief or assistance in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, major loss of utility services, or other calamity or disaster or (ii) engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned, or unscheduled. The suspension of the regulation this chapter provided for in § 52-8.4 A of the Code of Virginia shall expire if the Secretary of the United States U.S. Department of Transportation determines that it is in conflict with the intent of Federal Motor Carrier Safety Regulations.

**19VAC30-20-70. Penalties.**

Except for those offenses listed in § 52-8.4:2 of the Code of Virginia, any violation of the provisions of ~~the regulations~~ this chapter adopted pursuant to § 52-8.4 of the Code of Virginia shall constitute a traffic infraction punishable by a fine of not more than \$1,000 for the first offense or by a fine of not more than \$5,000 for a subsequent offense. Each day of violation shall constitute a separate offense; however, any violation of any out-of-service order issued under authority of

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# Regulations

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~~such regulations this chapter~~ or under authority of the federal Federal Motor Carrier Safety Regulations shall be punished as provided in § 46.2-341.21 of the Code of Virginia and the disqualification provisions of § 46.2-341.21 of the Code of Virginia also shall apply to any driver as convicted. Notwithstanding subsection C of § 52-8.4 of the Code of Virginia, any violation of certain provisions of ~~the regulations this chapter~~ adopted pursuant to § 52-8.4, and listed in § 52-8.4:2, shall constitute traffic infractions as defined in § 46.2-100 of the Code of Virginia and shall be eligible for designation as traffic infractions for which a pretrial waiver of appearance, plea of guilty, and fine payment may be accepted pursuant to § 16.1-69.40:1 of the Code of Virginia.

Part III  
Incorporation by Reference  
Article 1  
Compliance with Federal Regulations

## 19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to ~~the Motor Carrier Safety Regulations this chapter~~ operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the ~~United States U.S.~~ Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~July 1, 2019~~ January 1, 2020, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 ~~Subpart~~ Subparts E and E, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in ~~these regulations this chapter~~ by reference, with certain exceptions.

## 19VAC30-20-130. Investigations and inquiries - § 391.23.

Except as provided in ~~subpart Subpart G of this part~~ 49 CFR 391, each intrastate motor carrier shall make investigations and inquiries required by paragraphs (a)(1) and (a)(2) of ~~this section~~ 49 CFR § 391.23 with respect to each driver it employs, other than a person who has been a regularly employed driver of the intrastate motor carrier for a continuous period which began before July 9, 1986.

## 19VAC30-20-150. Waiver of certain physical defects - § 391.49.

A person who is not physically qualified to drive under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), and is not subject to Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and Regulations Governing the Transportation of Hazardous Materials (9VAC20-110), and is otherwise qualified to drive a commercial motor vehicle may drive a commercial motor vehicle in intrastate commerce if granted a waiver by the commissioner. Intrastate drivers with a valid ~~(L)(9) endorsement~~ (V) restriction on their commercial driver's license will be deemed to be in

compliance with this section and 49 CFR 391.49, even when the waiver is not in their possession.

## 19VAC30-20-220. Responsibilities of motor carriers - § 395.13(c)(2).

A motor carrier shall complete the "Motor Carrier's ~~Report of Compliance with this Notice~~ Certification of Action Taken" portion of the ~~Driver Vehicle Inspection~~ Driver/Vehicle Examination Report and deliver the copy of the form either personally or by mail, email, or facsimile to the Department of State Police, Motor Carrier Safety, at the address specified upon the form within 15 days following the date of the examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

Article 8  
Part 396 - Inspection, Repair, and Maintenance

## 19VAC30-20-230. Inspection of motor vehicles and intermodal equipment in operation - § 396.9(a).

Law-enforcement officers specifically designated by the superintendent are authorized to enter upon and perform inspections of motor carrier vehicles and intermodal equipment in operation.

## 19VAC30-20-240. Motor vehicles and intermodal equipment declared "out of service" - § 396.9(c).

Authorized personnel defined in 19VAC30-20-230 shall declare and mark "out of service" any motor vehicle ~~which or~~ intermodal equipment that by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An "Out of Service Vehicle" sticker shall be used to mark vehicles and intermodal equipment "out of service."

## 19VAC30-20-250. Motor carrier's carrier or intermodal equipment provider's disposition - § 396.9(d)(3)(ii).

Motor carriers and intermodal equipment providers shall return the completed ~~Driver Vehicle Inspection~~ Driver/Vehicle Examination Report to the Department of State Police at the address indicated on the report.

Article 13  
Part 382 - Controlled Substances and Alcohol Use and Testing

## 19VAC30-20-300. Retention of records - § 382.401(d).

Location of records. All records required by this part shall be maintained as required by 49 CFR ~~390.31~~ 390.29 and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized specially trained member of the Department of State Police designated for that purpose by the superintendent.

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

FORMS (19VAC30-20)

~~Virginia State Police Driver/Vehicle Inspection Report, SP 233 (rev. 7/2004)~~

[Virginia State Police Driver/Vehicle Inspection Report, SP-233 \(rev. 1/2016\)](#)

[Virginia State Police Driver/Vehicle Inspection Report Continuation Sheet SP233-A \(rev. 7/2004\)](#)

V.A.R. Doc. No. R20-6263; Filed May 4, 2020, 10:56 a.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption 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.

**Title of Regulation:** 20VAC5-200. Public Utility Accounting (amending 20VAC5-200-21).

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

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** September 7, 2020.

**Agency Contact:** Justin Morgan, Manager, Division of Utility Accounting and Finance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9981, FAX (804) 225-1071, or email [justin.morgan@scc.virginia.gov](mailto:justin.morgan@scc.virginia.gov).

**Summary:**

*The proposed amendments (i) clarify the circumstances under which a cooperative may use the streamlined ratemaking procedures, (ii) clarify how customers are to be notified of the proposed rates, and (iii) specify when the*

*commission will hold a hearing to consider proposed rates under the streamlined procedures. Outdated references to a division of the commission are corrected.*

AT RICHMOND, APRIL 28, 2020

PETITION OF THE VIRGINIA, MARYLAND & DELAWARE ASSOCIATION OF ELECTRIC COOPERATIVES

CASE NO. PUR-2020-00023

For Rulemaking to Amend the Commission's Streamlined Rate Case Rules for Electric Cooperatives

ORDER ESTABLISHING PROCEEDING

On February 10, 2020, the Virginia, Maryland and Delaware Association of Electric Cooperatives (the "Association") filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking to revise the Commission's Streamlined Rate Case Rules (the "Streamlined Rules"), at 20 VAC 5-200-21(C).

The Streamlined Rules allow electric cooperatives, under specific delineated circumstances, to make rate adjustments outside of general rate proceedings (which are otherwise governed by the remainder of 20 VAC 5-200-21). According to the Petition, the Association wishes to work constructively with this Commission and its Staff to create a process, as other states have done, to streamline Cooperative ratemaking in those cases when a general rate proceeding is not necessary. This streamlined process will allow the Cooperatives to make adjustments larger in scope than the adjustments pursuant to their statutory authority, but not as large or complex as those that might be contemplated by a general rate proceeding.

The Association states that it has worked with the Office of Attorney General's Division of Consumer Counsel and the Staff of the Commission to craft proposed changes to the Streamlined Rules.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to consider the Association's proposed changes to the Streamlined Rules. The rules proposed by the Association ("Proposed Rules") are appended to this Order. We direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on or propose modifications or supplements to the Proposed Rules. We further direct that each of the Association's Virginia members serve a copy of this Order upon each of their member-customers and file a certificate of service.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both

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the state and federal levels. The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding. Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments and pleadings unless such filings contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2020-00023.

(2) All documents required to be served in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure ("Rules of Practice").

Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, Confidential information. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5 VAC 5-20-140, Filing and service, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no person or the Staff is impeded from participating in this case.

(4) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(5) On or before June 1, 2020, each of the Association's Virginia members shall serve a copy of this Order upon each of their customers and file a certificate of service no later than June 15, 2020, consistent with the directive above.

(6) On or before July 7, 2020, any interested person may comment on or propose modifications or supplements to the Proposed Rules by following the instructions available at the Commission's website:

<https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Interested parties shall refer in their comments or requests to Case No. PUR-2020-00023.

(7) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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<sup>1</sup>The Virginia members of the Association include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

<sup>2</sup>Petition at 4.

<sup>3</sup>Id. at 5.

<sup>4</sup>See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Governor Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam.

<sup>5</sup>See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

<sup>6</sup>5 VAC 5-20-10 et seq.

<sup>7</sup>As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

AT RICHMOND, MAY 6, 2020

APPLICATION OF  
THE VIRGINIA, MARYLAND &  
DELAWARE ASSOCIATION OF  
ELECTRIC COOPERATIVES

CASE NO. PUR-2020-00023

For Rulemaking to Amend the Commission's  
Streamlined Rate Case Rules for Electric  
Cooperatives

ORDER

On February 10, 2020, the Virginia, Maryland and Delaware Association of Electric Cooperatives (the "Association")<sup>1</sup> filed an Application for Rulemaking ("Application") requesting that the State Corporation Commission

("Commission") initiate a rulemaking to revise the Commission's Streamlined Rate Case Rules, at 20 VAC 5-200-21(C).

On April 28, 2020, the Commission issued an Order Establishing Proceeding, which, among other things, directed that the revisions proposed by the Association (hereafter, "Proposed Rules") be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations, and invited comments from the public on the Proposed Rules. Ordering Paragraph (5) of the Order Establishing Proceeding required that "[o]n or before June 1, 2020, each of the Association's Virginia members shall serve a copy of this Order upon each of their customers and file a certificate of service no later than June 15, 2020...."

On April 30, 2020, the Association filed a Motion to Amend Notice Requirements and Procedural Schedule ("Motion"), in which the Association requested that the Commission modify the public notice required in the Order Establishing Proceeding and permit the Association's members to provide notice by publication. According to the Motion, "[n]otice by individual (first class) mail to each Cooperative member-consumer in Virginia would be extremely costly and approach—and possibly exceed—\$1 million."<sup>2</sup> The Association states that notice by publication is consistent with the Commission's practice in cooperative rate cases. The Association indicates that the Commission Staff and the Office of the Attorney General, Division of Consumer Counsel are not opposed to the relief requested in the Motion.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the Association's Motion should be granted.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's April 28, 2020 Order Establishing Proceeding shall be modified as discussed herein.

(2) On or before July 1, 2020, each of the Association's Virginia members shall cause the following notice to be published in the Current Communicator (for Central Virginia Electric Cooperative) or Cooperative Living (for the remaining Virginia members of the Association):

VIRGINIA'S ELECTRIC COOPERATIVES  
NOTICE OF PROPOSED RULEMAKING

CASE NO. PUR-2020-00023

On February 10, 2020, the Virginia, Maryland & Delaware Association of Electric Cooperatives ("VMDAEC" or "Association") filed with the State Corporation Commission ("Commission") an Application to Initiate a Rulemaking ("Application") pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Specifically, VMDAEC seeks a rulemaking to revise the Cooperative Streamlined Rate Case Rules

contained in 20 VAC 5-200-21(C) (the "Streamlined Rate Case Rules" or "Streamlined Rules"). According to VMDAEC, these revisions would assist electric cooperatives subject to regulation by this Commission by making ratemaking proceedings more efficient through the increased use of the Streamlined Rate Case Rules outside of a general rate proceeding.

VMDAEC states that the Association has worked through a collaborative process with various stakeholders to propose the revisions, which would:

- Limit streamlined cooperative rate increases to 4% of total operating revenues;
- Remove references to the Consumer Price Index (CPI-U) for purposes of calculating rate change minimums or maximums;
- Add a new and additional Times Interest Earned Ratio (TIER) limit of 2.5 (or other appropriate metrics), consistent with the Commission's history of rate regulation for electric cooperatives;
- Allow for participation from member-consumers affected by rate changes;
- Remove references in the current rules that would limit use of the rules by the cooperatives in a period of years from their last general rate case;
- Limit use of the Streamlined Rules to no more than three (3) times in any ten (10) year period;
- Limit use of Streamlined Rules such that any such rate change approved by the Commission would also limit use of a cooperative's statutory authority, limiting rate changes to once every three years (absent other order of the Commission); and
- Make other miscellaneous updates to the Streamlined Rules, including adding references to websites and the use of electronic mail in addition to traditional notification methods.

Interested persons are encouraged to review the Application for further details of the Association's proposals.

Copies of the Application and the Order Establishing Proceeding that the Commission entered in this case may be obtained by submitting a written request to counsel for the Association, Samuel R. Brumberg, Esquire, VMDAEC, 4201 Dominion Boulevard, Suite 101; Glen Allen, Virginia 23060, or via email to [sbrumberg@vmdaec.com](mailto:sbrumberg@vmdaec.com).

Copies of the Application and the proposed Streamlined Rules also are available for interested persons to review at the website of each Virginia Electric Cooperative. Interested persons also may download unofficial copies from the Commission's website and the Association's website:

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<http://www.scc.virginia.gov/pages/Case-Information> and  
<http://www.vmdaec.com/streamlined-rules/>.

On or before September 7, any interested person wishing to comment on the Association's Application may comment on or propose modifications or supplements to the Streamlined Rules by following the instructions available at the Commission's website:  
<https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Refer to Case No. PUR-2020-00023. Any person needing to hand deliver or physically file or submit any pleading or other document may need to contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery, pursuant to the Commission's Rules of Practice, as amended by the Commission's COVID-related Revised Operating Procedures Order, available at the Commission's website at:  
<http://www.scc.virginia.gov/pages/Case-Information> and  
<https://scc.virginia.gov/docketsearch/DOCS/41yc01!.pdf>.

## VIRGINIA'S ELECTRIC COOPERATIVES

(3) On or before July 15, 2020, the Association's Virginia members shall file a certificate of service, consistent with the directive above.

(4) On or before September 7, 2020, any interested person may comment on or propose modifications or supplements to the Proposed Rules by following the instructions available at the Commission's website:  
<https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Interested parties shall refer in their comments or requests to Case No. PUR-2020-00023.

(5) Unless modified herein, the remaining provisions of the Commission's Order Establishing Proceeding shall remain in full force and effect.

(6) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(7) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

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<sup>1</sup>The Virginia members of the Association include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

<sup>2</sup>Motion at 2.

## 20VAC5-200-21. Streamlined rate proceedings and general rate proceedings for electric cooperatives subject to the State Corporation Commission's rate jurisdiction.

A. Nothing in this section shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

B. All streamlined or general rate applications for jurisdictional electric distribution cooperatives ("cooperatives" or "applicants") shall be subject to the following requirements:

1. Pursuant to § 56-235.4 of the Code of Virginia and the exceptions stated therein, the regulated operating revenues of a cooperative shall not be increased more than once within any 12-month period. However, streamlined rate relief may become effective in less than 12 months after a preceding increase provided that regulated base operating revenues are not increased more than once in any calendar year.

2. An applicant may select any test period it wishes to use to support its application.

3. Any increase in revenues under this section shall be allocated in accordance with a properly designed cost of service study.

4. A cooperative which has outstanding wholesale power cost riders which reflect permanent changes in power costs approved by a regulatory agency shall adjust its base rates to reflect such changes at the same time it increases its rates in a rate application.

5. a. Except as otherwise provided herein, all applications for rate relief shall be filed in the original and 15 copies with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

b. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

Filings containing confidential (or redacted) information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

6. An electric cooperative intending to file a rate application shall notify the State Corporation Commission ("commission") and all parties of record appearing in the

cooperative's last rate case at least 60 days in advance of the filing of the application. Also, public notice of the intent to file a rate application shall be provided 60 days in advance of the filing of said application to all of the cooperative's customers, using any of the methods of publication set out in subdivision C 12 of this section.

7. The commission retains the right to waive any or all parts of this section for good cause shown.

8. An application shall not be deemed filed under § 56-238 of the Code of Virginia unless it is in full compliance with this section.

C. An applicant may file a complete application for streamlined rate relief provided the ~~following~~ limitations in subdivisions 1 through 17 of this subsection are met. Should any provision of this subsection conflict with other portions of this section, this subsection shall prevail with respect to filings pursuant to this section.

1. The increase in total operating revenues as calculated in column (5) of Schedule 3 of Appendix A, ~~included herein,~~ is not more than ~~the test period increase in the Consumer Price Index ("CPI"), or 5.0%, whichever is less. The CPI shall be defined as the Consumer Price Index for all Urban Consumers (CPI-U) for all items, as estimated by the U.S. Department of Labor, Bureau of Labor Statistics, and published in its Summary Data from the Consumer Price Index News Release, or its successor. As calculated in this publication, the percentage change in the CPI-U for a test year will be the index for the last month of the test year divided by the index for the same month one year prior, minus one, multiplied by 100;~~ 4.0%; and

2. Earnings after the proposed increase must not produce financial ratios ~~which exceed the level approved by the commission in the applicant's most recent general rate case beyond a times interest earned ration (TIER) of 2.5, a rate of return of 4.2%, or such other relevant ratios that the cooperative proposes that satisfy the burden of proof as just and reasonable.~~ Subject to the provisions set forth below in this subsection, a cooperative ~~which that~~ files an application for streamlined rate relief may petition the commission requesting that its rates be made permanent no less than 30 days from the date the application is deemed complete and filed with the commission if there are insufficient customer objections to the application or if the commission does not suspend the proposed increase and convene a hearing.

3. A cooperative filing a rate application under the streamlined rate procedure shall not:

a. Increase rates by more than ~~the increase in the test period CPI or 5.0% (whichever is less)~~ 4.0% of adjusted Virginia jurisdictional operating revenues;

b. Request earnings, after the proposed increase, which produce inappropriate financial ratios that exceed those ~~approved by the commission in the applicant's most recent general rate case~~ stated within subdivision C 2 of this section; or

c. ~~Propose revisions to its terms and conditions of service; or~~

d. ~~Propose revisions to its rate structure as part of its application.~~

4. The commission may, on its own motion, suspend a cooperative's proposed rate increase and tariff revisions pursuant to § 56-238 of the Code of Virginia and may convene a hearing on the cooperative's streamlined application.

5. The commission may suspend a cooperative's proposed tariff revisions and increase in rates and shall schedule a hearing thereon if ~~the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge object to the proposed revision or increase in a rate or if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of a cooperative object to the proposed rate or tariff revision.~~ any of the following object to a proposed tariff revision or increase in rates: (i) the lesser of 150 or 5.0% of any of the cooperative's members; (ii) one-quarter of the customers with a rate class that is the subject of a revision or increase; or (iii) all of the customers within a rate class that is the subject of a revision or increase if the rate class contains 20 or fewer customers. Customers on a contract rate are excluded from those customers who may count toward objections for purposes of this subsection.

6. The commission may, in its discretion, suspend an electric cooperative's rate increase and proposed tariff revisions in a streamlined rate proceeding on the motion of its own staff, on the motion of the Virginia Attorney General's Division of Consumer Counsel, or on the motion of any person subject to such change who requests a hearing and states a substantive reason why a hearing is necessary.

7. The requested rate increase for streamlined rate relief shall be supported by a fully adjusted financial status statement (Schedule 3 of Appendix A included herein).

8. Adjustments to test year cost of service shall be limited to the amount of increase or decrease that will be in effect during the rate year.

9. A cooperative shall not file more than three ~~consecutive~~ applications for streamlined rate relief; ~~nor shall there lapse more than five years since the later of the date of the final order or the effective date of rates specified in the final order in the applicant's last general rate case when filing an~~

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~~application for streamlined rate relief in any 10-year period and any application for streamlined rate relief that is granted by the commission will begin a new three-year period for purposes of any use of statutory authority by the cooperative pursuant to § 56-585.3 A 2 of the Code of Virginia.~~

10. An application filed under the streamlined rate procedure shall include:

- a. The name ~~and~~, post office address, and website of the applicant and the name and post office address of counsel of record, if any.
- b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a change in rates and tariff revisions. This statement shall include a description of the actions taken by the cooperative to advise its membership of the change in rates and contents of its application.
- c. A copy of the resolution calling for a change in rates adopted by the Board of Directors of the cooperative.
- d. A copy of the completed notice given to the public by the cooperative, including a description of the method of publication used.
- e. Schedules 1 through 9 of Appendix A included herein.

11. Public notice of the increase and tariff revisions shall be completed 30 days in advance of the date the cooperative files its application for revised rates with the commission. Actual proof of public notice shall be furnished to the commission as part of the rate application.

12. The public notice of the increase and tariff revisions in an application for streamlined rate relief may be given by:

- a. Direct mailing to each customer (bill inserts or bill messages are acceptable);
- b. Publication in Cooperative Living magazine, or the cooperative's regular member publication;
- c. Newspapers of general circulation in the area served;
- d. Electronic notice to customers via email addresses (provided that notice pursuant to subdivision C 12 a, b, or c of this section is also given);
- e. Publication of the notice on the cooperative's website (provided that notice pursuant to subdivision C 12 a, b, or c of this subsection is also given);
- ~~d.~~ f. Any combination of these methods; or
- e. g. Any other method of publication authorized by the commission.

13. A copy of the notice shall be served on the ~~Commonwealth's Attorney and Chairman~~ Chair of the Board of Supervisors of each county (or equivalent

officials in the counties having alternative forms of government) ~~in the state~~ in which the cooperative offers service in the Commonwealth, and on the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state in which the cooperative offers service and upon the Division of Consumer Counsel, Office of the Attorney General. Service shall be made by either personal delivery or first class mail, postage prepaid, to the customary place of business of the person served or to ~~his~~ the person's residence.

14. The public notice shall, at a minimum, include the following information:

- a. The amount of the total increase in revenues, both in percentages and dollar amounts;
- b. The percentage increase being applied to each of the cooperative's rate schedules;
- c. The identity of all wholesale power cost riders to be rolled-in to base rates;
- d. The locations where copies of the information required to be filed with the commission can be reviewed;
- e. The date the application will be delivered to the commission;
- f. A notice that any person subject to the change or changes proposed by the cooperative has the right to request a hearing within 30 days of the application's delivery to the commission;
- g. A notification that requests for hearing should be directed to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218;
- h. A statement advising that the commission may convene a hearing, and if a hearing is held, the commission may order rate relief, redesign rates or adopt tariff revisions which differ from those appearing in the cooperative's application;
- i. A statement advising the public that if ~~the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge do not request a hearing, and if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of the cooperative do not object to a rate change or tariff revision~~ the commission receives fewer objections than set forth in subdivision C 5 of this section, the cooperative may petition the commission to make rates permanent without hearing within 30 days after the application is filed with the commission; and
- j. A statement advising the public of the cooperative's proposed effective date for its new rates.

15. If the commission determines that a hearing on the application for streamlined rate relief is required, then the commission shall issue a procedural order which, among other things, shall specify the date by which the cooperative shall file with the Clerk of the Commission an original and 15 copies of any direct testimony the cooperative intends to rely on in support of its application, together with the remaining schedules set forth in Appendix A. That order shall specify such additional notice of the hearing to the electric cooperative's members that the commission deems appropriate.

16. Subdivision B 6 of this section shall not apply to streamlined applications under subsection C of this section, except that the cooperative shall notify the staff of the commission no less than 60 days in advance of the cooperative's filing.

17. The commission may waive any provision of these streamlined rules upon its own motion or for good cause shown.

D. 1. A cooperative seeking (i) an increase that produces financial ratios in excess of those allowed in the applicant's most recent general rate case; (ii) an increase in jurisdictional adjusted operating revenues of more than the test period increase in the CPI (as defined in subdivision 1 of subsection C of this section); (iii) revision of its terms and conditions of service; or (iv) to redesign or restructure its rates shall file an original and 15 copies of a general rate application with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

2. An application seeking a general rate increase shall include:

- a. The name and post office address of the applicant and the name and post office address of counsel of record, if any.
- b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a change in rates and tariff revisions. This statement shall include a description of the actions taken by the cooperative to advise its membership of the change in rates and contents of the rate application.
- c. A copy of the resolution calling for a change in rates adopted by the cooperative's Board of Directors.
- d. All direct testimony which the cooperative intends to rely on in support of its rate application.
- e. Exhibits consisting of the Schedules 1 through 14, found in Appendix A included herein. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in Appendix A included herein and the following general instructions:

(1) Attach a table of contents to the cooperative's application, including exhibits.

(2) The applicant shall be expected to verify the accuracy of all data and calculations contained in and pertaining to every exhibit submitted, as well as support any adjustments, allocations or rate design upon which it relies.

(3) Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as shown below:

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or Schedule Number

The first page of all exhibits shall contain a caption which describes the subject matter of the exhibit.

(4) The required accounting and statistical data shall include three copies of all work papers and other information necessary to ensure that the items, statements and schedules found in the application are not misleading.

f. Exhibits consisting of additional schedules may be submitted with the cooperative's direct testimony. Such schedules shall be identified as Schedule 15 (this exhibit may include numerous subschedules labeled 15A et seq.) and shall conform to the general instructions contained in subdivision 2e of subsection D of this section.

g. The commission shall prescribe the general notice to be given to the public and the date by which such notice shall be completed in its procedural order.

h. The applicant shall serve a copy of the information required in subdivisions ~~2a through 2c of subsection D~~ 2 a, b, and c of this section upon the Commonwealth's Attorney and ~~Chairman~~ Chair of the Board of Supervisors of each county or (equivalent officials in counties having alternative forms of government) in the state affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state affected by the proposed increase. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained by such official at no cost by making a request thereof orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General in Virginia. All such service specified by this section shall be made either by (i) personal delivery or (ii) first class mail, to the customary place of business or to the residence of the person served.

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E. Rate reductions and tariff revisions filed pursuant to § 56-40 of the Code of Virginia shall be filed with the commission's Division of ~~Energy Regulation~~ Public Utility Regulation and shall include the following:

1. A descriptive statement of and justification for the tariff revision;
2. Load data if applicable;
3. A certified excerpt from the minutes of the cooperative's Board of Directors, wherein the ~~Board~~ board approved the tariff revision;
4. Identification of all customers that may be eligible for the tariff revision;
5. A revenue impact study; and
6. An affidavit by the cooperative's manager that the proposed tariff revision affects no increase in rates.

EDITOR'S NOTE: Subsections F, G, and H and Appendix A of 20VAC5-200-21 are not amended; therefore, the text of those subsections and Appendix A is not set out.

VA.R. Doc. No. R20-6353; Filed April 28, 2020, 1:22 p.m.



## TITLE 21. SECURITIES AND RETAIL FRANCHISING

### STATE CORPORATION COMMISSION Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption 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.

**Title of Regulation:** 21VAC5-40. Exempt Securities and Transactions (amending 21VAC5-40-190; adding 21VAC5-40-200).

**Statutory Authority:** §§ 12.1-13 and 13.1-514 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** June 8, 2020.

**Agency Contact:** Jude Richnafsky, Principal Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9883,

FAX (804) 371-9911, or email [jude.richnafsky@scc.virginia.gov](mailto:jude.richnafsky@scc.virginia.gov).

#### Summary:

*The proposed amendments include (i) allowing entities that are based in Virginia but organized outside of Virginia to claim the intrastate crowdfunding exemption in accordance with Chapters 279 and 331 of the 2020 Acts of Assembly by adding federal Securities and Exchange Commission Rule 147A issuers, (ii) eliminating the prohibition on debt securities for intrastate crowdfunding offerings, (iii) adding an exemption for nonissuer distribution securities transactions in accordance with Chapter 256 of the 2020 Acts of Assembly, and (iv) restricting such nonissuer distribution transactions to the OTCQX Tier of the OTC Market.*

AT RICHMOND, APRIL 29, 2020

COMMONWEALTH OF VIRGINIA, ex rel.  
STATE CORPORATION COMMISSION

CASE NO. SEC-2020-00022

Ex Parte: In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

#### ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

The Division of Securities and Retail Franchising ("Division") proposes revisions to Chapter 40 (Exempt Securities and Transactions), 21 VAC 5-40-10 et seq., following recent legislative changes to the Act. Specifically, the Division seeks to: (a) amend 21 VAC 5-40-190 concerning the Intrastate Crowdfunding Exemption; and (b) create a new rule (21 VAC 5-40-200) allowing an exemption for non-issuer distribution.

I. Amendment to the Intrastate Crowdfunding Exemption in 21 VAC 5-40-190.

The 2015 General Assembly passed legislation to adopt an exemption from registration under certain conditions for intrastate offerings pursuant to crowdfunding in § 13.1-514 B

21 (g) of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia. The legislation was set to sunset on July 1, 2020. The exemption only applied to issuers that were corporations and entities formed under the laws of Virginia, authorized to do business in Virginia, and that had their principal place of business in Virginia. On July 31, 2015, the Commission adopted 21 VAC 5-40-190 concerning the requirements for the exemption.

During the 2020 legislative session, the General Assembly passed House Bill 1339 (Chapter 331 of the 2020 Acts of the Assembly) and Senate Bill 542 (Chapter 279 of the 2020 Acts of the Assembly). First, this legislation removed the sunset provision of the exemption. Second, the legislation broadened the exemption to allow corporations and entities that are Virginia-based but organized outside of Virginia to also claim the exemption.

The Division of Securities and Retail Franchising ("Division") proposes to amend 21 VAC 5-40-190 to conform the regulation to this recent legislative change by adding Rule 147 A (17 C.F.R. §230.147A) issuers to the exemption. In addition, to further implement the intent of the legislation and promote small businesses, the Division will remove the prohibition on debt offerings for crowdfunding issuers.

#### II. Adding an Exemption for Non-Issuer Distribution (21 VAC 5-40-200).

The 2020 General Assembly passed House Bill 1457 (Chapter 256 of the Acts of the Assembly) that amended § 13.1-514 B of the Act by adding a new subsection 23 that provides for a self-executing exemption for non-issuer distribution by securities issuers whose securities are listed on an electronic exchange, marketplace system, or disclosure repository which that makes information freely available to the public and is registered with the SEC under the Securities and Exchange Act of 1934, or is an alternative trading system regulated by the SEC.

A non-issuer distribution occurs in the secondary market and allows purchasers to freely purchase and sell securities that were originally purchased from the original issuer. A self-executing exemption allows the purchaser or seller to use the exemption without registration under the Act.

To implement the new legislation, the Division proposes adding a new section 21 VAC 5-40-200 for this exemption. As noted above, the exemption may apply to issuers whose securities are listed on an electronic exchange, marketplace exchange or disclosure repository, or alternative trading system that meet certain requirements. Here, the Division proposes that the new exemption apply only to those issuers who securities are listed on the OTC Markets Group ("OTG") OTCQX, as this tier applies the strictest listing standards of the electronic markets.

As of this date of this Order, roughly thirty-two states have a similar exemption that recognizes transactions placed on the OTCQX Tier.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by e-mail request and also can be found at the Division's website: <http://www.scc.virginia.gov/division/srf>. Any comments to the proposed rules must be received by June 8, 2020.

IT IS THEREFORE ORDERED that:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218, on or before June 8, 2020. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2020-00022. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>.

(3) The proposed revisions shall be posted on the Commission's website at <https://scc.virginia.gov/pages/Case-Information> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons may also request a copy of the proposed revisions from the Division by e-mail.

A COPY HEREOF, together with a copy of the proposed revisions, shall be provided to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

A COPY HEREOF shall be sent to the Director of the Division of Securities and Retail Franchising, who shall forthwith provide notice of this Order via U.S. mail or e-mail a copy of this Order to any interested persons as he may designate.

#### **21VAC5-40-190. Intrastate crowdfunding exemption.**

A. In accordance with § 13.1-514 B 21 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer and agent registration requirements of the Act if the offer or sale meets all of the following requirements:

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1. The issuer of the security is a business entity:

a. Formed under the laws of the Commonwealth; however, if conducting an offering in accordance with SEC Rule 147A, the issuer may be formed and organized outside the Commonwealth provided the issuer meets one of the requirements as stated in subdivision 3 of this subsection;

b. Authorized to do business in the Commonwealth; and

c. That has its principal place of business in the Commonwealth.

2. The offering is sold only to residents of the Commonwealth in compliance with the requirements for the federal exemption for intrastate offerings under § 3(a)(11) of the Securities Act of 1933, 15 USC 77c(a)(11), and SEC Rule 147, 17 CFR 230.147 or SEC Rule 147A. If an offering is conducted by an issuer using SEC Rule 147A the offering may be made available to residents outside the Commonwealth as long as the sale of the security is made to residents of the Commonwealth.

3. ~~The securities offered and sold pursuant to this exemption are equity securities of the issuer. This exemption is not available to debt offerings. Issuers utilizing SEC Rule 147A that are not formed under the laws of the Commonwealth must meet one of the following requirements of conducting business in the Commonwealth:~~

a. The issuer derived at least 80% of its consolidated gross revenues from the operation of a business or of real property located in the Commonwealth or from the rendering of services in the Commonwealth.

b. The issuer had at least 80% of its consolidated assets located in the Commonwealth.

c. The issuer intends to use and uses at least 80% of the net proceeds from the offering toward the operation of a business or of real property in the Commonwealth, the purchase of real property located in the Commonwealth, or the rendering of services in the Commonwealth.

d. A majority of the issuer's employees are based in the Commonwealth.

4. The sum of all cash and other consideration to be received for all sales of the securities in reliance on this exemption does not exceed \$2 million, less the aggregate amount received for all sales of securities by the issuer within 12 months before the first offer or sale made in reliance upon this exemption, and if the offering is:

a. \$500,000 or less, if the issuer has financial statements prepared the previous year that have been certified by the principal executive officer of the issuer to be true and complete in all material respects;

b. More than \$500,000 but less than \$1 million, if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles; or

c. \$1 million or more, if the issuer has undergone an audit of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles.

5. The issuer has not accepted more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D, 17 CFR 230.501.

6. At least 20 days before an offer of securities is made in reliance on this exemption or the use of any publicly available Internet website in connection with an offering of securities in reliance on this exemption, the issuer files with the commission in writing or in electronic form, all of the following:

a. A notice of claim of exemption from registration on Form ICE specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by a nonrefundable filing fee of \$250 payable to the Treasurer of Virginia.

b. A copy of the disclosure statement or Form ICE to be provided to prospective investors in connection with the offering. The disclosure statement or Form ICE shall contain all of the following:

(1) A description of the issuer, including type of entity, the address and telephone number of its principal office, its formation history, and its business plan;

(2) A description of the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(3) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer and the amount of said securities held by such person;

(4) The identity of the executive officers, directors, or managing members of the issuer and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior business experience;

(5) The terms and conditions of the securities being offered including:

(a) The type and amounts of any outstanding securities of the issuer;

(b) The minimum and maximum amount of securities being offered, if any;

(c) Either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;

(d) The price per share, unit, or interest of the securities being offered;

(e) Any restrictions on transfer of the securities being offered; and

(f) A disclosure of any anticipated future issuance of securities that might dilute the value of the securities being offered;

(6) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offer and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(7) For each person identified as required in subdivision 6 b (6) of this subsection, a description of the consideration being paid to the person for such assistance;

(8) A description of any litigation or legal proceedings involving the issuer or any executive officer, director, or managing member or other person occupying a similar status or performing similar functions on behalf of the issuer;

(9) The issuer's financial statements for the three most recent fiscal years or for as much time as the issuer has been in existence, if less than three years;

(10) The name and address, including the uniform resource locator, of each Internet website that will be used by the issuer to offer or sell securities under an exemption under this section; and

(11) Any additional information material to the offering, including, if appropriate, a discussion of significant risk factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

c. An escrow agreement with a bank or other depository institution located in this Commonwealth, in which the purchaser funds will be deposited. At a minimum the escrow agreement shall provide that all offering proceeds

will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached; however such fees shall not be deducted from purchaser funds if the target offering amount is not raised by the time stated in the disclosure statement. The issuer shall disclose in its disclosure statement or Form ICE whether any interest earned on escrowed purchaser funds will be paid to purchasers on a pro rata basis if the minimum target amount, as described above, is not raised.

7. The issuer is not, either before or as a result of the offering:

a. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, including an investment company as defined by 15 USC § 80a-3, or a hedge fund, commodity pool, or similar investment vehicle;

b. Subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m and 78o(d);

c. A company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger with or acquisition of an unspecified business entity or entities, or without an allocation of proceeds to sufficiently identifiable properties or objectives; or

d. A company that is engaged in or proposes to engage in petroleum exploration or production, mining, or other extractive industries.

8. The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER SECTION 13.1-514 OF THE VIRGINIA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF VIRGINIA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AS CONTAINED IN SUBSECTIONS (e)

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AND (f) OF SEC RULE 147, 17 CFR 230.147. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND THAT THEY MAY LOSE ALL OF THE INVESTMENT AND CAN AFFORD THE LOSS OF THE INVESTMENT.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THESE ENTITIES CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9. If the offer and sale of securities under this section is made through the Internet, all of the following requirements are met:

a. Any person acting as the Internet website operator shall be an issuer, a registered broker-dealer, or a funding portal that is in compliance with all commission, SEC, and FINRA requirements, including, if it is a funding portal, making any required notice filings with the commission;

b. Internet website operators shall comply with all commission, SEC, and FINRA requirements applicable to intrastate offerings through the Internet;

c. Internet website operators shall maintain records of all offers and sales of securities effected through its Internet website for five years from the close of the offering; and

d. The issuer and the Internet website operator shall keep and maintain records of the offers and sales of securities made through the Internet website for five years from the close of the offering. The issuer and the Internet website operator shall promptly provide ready access to the records to the commission on request. The commission may access, inspect, and review any Internet website described in this subdivision 9 and its records.

10. All payments for the purchase of securities are directed to and held by the depository institution subject to the provisions of subdivision 6 c of this subsection.

11. The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he is registered as a broker-dealer agent under the Act. An executive officer, director, managing

member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the agent registration requirements of the Act if he does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

12. The issuer provides a copy of Form ICE or the disclosure statement provided to the commission under subdivision 6 b of this subsection to each prospective purchaser at the time the offer of securities is made to the prospective purchaser.

13. The term of the offering does not exceed 12 months after the date of the first offer.

B. The issuer shall provide an annual report to the issuer's purchasers for each of the issuer's next three fiscal years, the first of which being that fiscal year that ends following the commencement of the offering. All of the following apply to the annual report described in this subsection:

1. The issuer shall provide the report free of charge to the purchasers;

2. An issuer may satisfy the report requirement under this subsection by making the information available on an Internet website if the information is made available within 45 days after the end of each fiscal year and remains available until the next annual report is issued;

3. The issuer shall file each report with the commission and shall provide a written copy of the report to any purchaser on request; and

4. The report shall include all of the following:

a. The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

b. An analysis by management of the issuer's business operations and financial condition.

C. The exemption provided in this section shall not be used in conjunction with any other exemption under the Act, except offers and sales to control persons shall not count toward the limitation in subdivision A 4 of this section.

D. The exemption described in this section shall not be available to the issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, or any control person of the issuer:

1. Within the past 10 years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

2. Within the past 10 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past 10 years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past 10 years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

E. Subsection D of this section shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

F. An Internet website through which an offer or sale of securities under this section is made is not subject to the broker-dealer or agent registration requirements of the Act if the Internet website meets all of the following conditions:

1. It does not offer investment advice or recommendations;

2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;

3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website; and

4. It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

G. As used in this section, "financial review" means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a certified public accountant for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles.

H. As used in this section, "control person" means (i) an officer, director, partner, managing member, trustee, or other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or

otherwise; or (ii) a person that owns 10% or more of any class of the outstanding securities of the issuer.

I. As used in this section, "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to § 4(6) of the Securities Act of 1933 that does not:

1. Offer investment advice or recommendations;

2. Solicit purchases, sales, or offers to buy the securities offered or displayed on its Internet website or portal;

3. Compensate employees, agents, or other persons for such solicitation or based on the sales of securities displayed or referenced on its Internet website or portal;

4. Hold, manage, possess, or otherwise handle investor funds or securities; or

5. Engage in such other activities as the SEC, by rule, determines inappropriate.

J. The issuer or other designated person shall be notified by letter or electronic communication when the exemption filing is effective. If, however, on or before the initial commencement date of the offering, and after timely filing the materials required by subdivision A 6 of this section with the commission, the issuer has not been notified that any one or more of the filed materials fails to conform to the requirements of this section, the proposed offering shall be deemed effective.

K. Upon completion of an offering made in reliance on this exemption, the issuer shall file a final sales report with the commission, by letter or electronic communication, no later than 30 days after the last sale in the offering that includes the following information:

1. The time period in which the offering was open;

2. The number of investors that purchased shares or units in the offering;

3. The dollar amount sold in the offering; and

4. The dollar amount, if any, returned to investors, purchasers, or subscribers.

**21VAC5-40-200. Nonissuer distribution.**

In accordance with § 13.1-514 B 23 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer, and agent registration requirements of the Act if the offer or sale meets all of the following requirements:

1. Securities involved in these transactions are for nonissuer distribution only; and

2. Securities in these transactions are to be limited to the OTCQX Market Tier of the OTC Market.

VA.R. Doc. No. R20-6357; Filed April 30, 2020, 10:31 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER FIFTY-EIGHT (2020)

### **Access to Medicaid-Covered Health Care Services in Response to Novel Coronavirus (COVID-19)**

#### Importance of the Issue

The COVID-19 disease, caused by a virus that spreads easily from person to person that may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic. This virus has spread throughout the Commonwealth. Based on information from the Virginia Department of Health and the Centers for Disease Control and Prevention, the number of cases of COVID-19 continues to increase within the Commonwealth and in neighboring states. It is anticipated that COVID-19 will result in increased demand for certain health care services, that, coupled with significant burden on the health care system, will require additional flexibilities for healthcare providers to ensure access to care for Medicaid and Family Access to Medical Insurance Security (FAMIS) members. Waiving copays for Medicaid and FAMIS members, suspending certain requirements for replacement durable medical equipment (DME), and ensuring new and updated information is immediately received by providers will assist in meeting beneficiary access to care needs. Extending allowable timeframes for certain background checks for personal care, respite services, and companion services will expand the availability of critical long term care providers.

#### Directive

Therefore, by virtue of the authority vested in me by the Constitution of Virginia and § 44-146.17 of the Code of Virginia, and in furtherance of the state of emergency declared in Executive Order 51, I hereby order the following:

1. The Department of Medical Assistance Services (DMAS) will suspend preadmission screening pursuant to § 32.1-330 of the Code of Virginia. All new nursing facility admissions will be treated like exempted hospital discharges.
2. Copays required under § 32.1-351(C) of the Code of Virginia for Virginians receiving health insurance through the Family Access to Medical Insurance Security Plan are waived.
3. Requirements pursuant to § 32.1-325(A)(14) of the Code of Virginia concerning certificates of medical necessity and any supporting verifiable documentation are waived with respect to replacement of durable medical equipment (DME). DMAS will also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost, destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.

4. Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the Code Virginia, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This section does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.

5. Requirements under § 2.2-4002.1 of the Code Virginia related to the 30-day advance public notice and comment period are waived as to DMAS only, so that the DMAS can issue Medicaid Memos to ensure that healthcare providers receive immediate information on flexibilities to ensure access to care for Medicaid members.

#### Effective Date of this Executive Order

This Executive Order shall be effective April 23, 2020, and shall remain in full force and in effect until June 10, 2020, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of April, 2020.

/s/ Ralph S. Northam  
Governor

## EXECUTIVE ORDER NUMBER FIFTY-NINE (2020)

### **Postponing May 5, 2020 General and Special Elections to May 19, 2020 Due to Novel Coronavirus (COVID-19)**

#### Importance of the Issue

The Commonwealth continues to respond to the threat posed by the novel coronavirus (COVID-19). The actions we take now will help protect the health and safety of our citizens for months to come. These actions include when to hold our elections. Voting is a fundamental right and no one should have to choose between their health and safety and their right to vote.

#### Directive

To continue with the Commonwealth's response to COVID-19 and in furtherance of Executive Order 51 (March 12, 2020), Amended Executive Order 53 (April 15, 2020), and

Executive Order 55 (March 30, 2020), and by virtue of the authority vested in me by § 24.2-603.1 of the Code of Virginia, I order the following:

1. The provisions of this Order shall apply to the general and special elections scheduled to be held on May 5, 2020.
2. That the general and special elections scheduled for May 5, 2020, shall be held on May 19, 2020.
3. Only those candidates who qualified to have their names printed on the official ballot for the May 5, 2020, general and special elections shall be listed for those offices on the ballot at the May 19, 2020, general and special elections. No other person shall be entitled to qualify to have their name printed on the official ballot for any office that was scheduled to be elected at the general and special elections held on May 5, 2020.
4. Pursuant to § 24.2-603.1 of the Code of Virginia, only those voters duly registered to vote on the date of the original election shall be able to participate in the postponed election.
5. Pursuant to § 24.2-701(B)(1) of the Code of Virginia, the last day to vote absentee in person shall be May 16, 2020.
  - a. Pursuant to § 24.2-701(B)(2) of the Code of Virginia, qualified voters shall have until May 12, 2020, to request an absentee ballot using the "my disability or illness reason" by mail, e-mail, or fax.
  - b. Pursuant to § 24.2-709(A) of the Code of Virginia, the deadline for returning an absentee ballot shall be 7 p.m. on May 19, 2020, except as provided under § 24.2-709(B) of the Code of Virginia.
6. Pursuant to § 24.2-603.1 of the Code of Virginia, the Department of Elections shall prescribe appropriate procedures to implement the provisions of this section. The Department of Elections shall also prescribe procedures in accordance with the Centers for Disease Control and Prevention and Virginia Department of Health to assist in ensuring the safety and well-being of election officials, officers of election, and voters. The Department of Elections shall partner with the Virginia Department of Health and the Virginia Medical Reserve Corps to train election officials on preventive actions to reduce the risk of exposure to COVID-19 and to provide support at polling locations.

Effective Date of this Executive Order

This Executive Order shall be effective on April 24, 2020 and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of April, 2020.

/s/ Ralph S. Northam  
Governor

EXECUTIVE ORDER NUMBER SIXTY (2020)

**Clarification of Certain Immunity from Liability for Healthcare Providers in Response to Novel Coronavirus (COVID-19)**

Importance of the Issue

The Commonwealth of Virginia continues to respond to the COVID-19 pandemic. The number of confirmed cases, hospitalizations, and persons under investigation in Virginia has increased substantially. As testing increases, it is highly likely that these numbers will continue to rise. Hospitals and nursing homes across the Commonwealth are reporting large numbers of patients presenting with COVID-19 symptoms, which is putting significant stress on these facilities, as they were already dealing with a more severe seasonal influenza than usual. Healthcare providers are experiencing critical shortages of personal protective equipment (PPE) and other supplies. In some cases, they are being required to reuse PPE where possible and appropriate. Healthcare providers are not able to quickly resupply these critical resources due to severe supply chain disruptions as a result of increased equipment use in the worldwide COVID-19 response. In addition, staffing levels at hospitals are often strained by the inability to transfer patients with COVID-19 to other sites of care such as assisted living facilities, hospice facilities, and nursing homes because of the need to contain the spread of the virus. All of these difficulties are created by the effects of COVID-19 and present less than optimal conditions to deliver the healthcare indicated by conventional standards of care.

Response to the COVID-19 disaster will require both public and private healthcare providers and other persons to deliver care using personnel, supplies, and equipment in ways that would not be undertaken in conventional practices. Examples could include the need to use a single ventilator for multiple patients at the same time, reuse of PPE, and withholding healthcare services in certain situations. It is in the public interest to afford healthcare providers involved in the delivery of healthcare impacted by COVID-19 with adequate protection against liability for good faith actions or omissions taken in their efforts to combat this health emergency.

Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia provide certain liability protection to healthcare providers during a state of emergency.

Section 8.01-225.01 provides in relevant part:

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the

requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.

Section 8.01-225.02 in relevant part provides:

In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue.

It is apparent that in enacting these provisions, the General Assembly intended to afford healthcare providers immunity from certain liability in exactly the circumstances presented by the COVID-19 health crisis. And so, is it imperative that it is clear that the liability protections in these provisions are meant to protect healthcare providers providing healthcare in response to the COVID-19 health emergency.

#### Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia and in furtherance of Executive Order No. 51, I clarify the following with respect to my executive actions and §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia:

1. COVID-19 is a "communicable disease of public health threat" as defined in § 44-146.16 of the Code of Virginia that constitutes a "disaster" as defined in § 44-146.16 of the Code of Virginia.
2. Executive Order No. 51 declares a state emergency in response to the COVID-19 disaster.
3. "Responds to a disaster" includes but is not limited to, pursuant to Order of Public Health Emergency Two as amended, temporary withholding of the provision of procedures, consultations or surgeries performed in an inpatient or outpatient surgical hospital licensed under 12VAC5-410, free-standing emergency department or endoscopy center, physicians' office, or dental, orthodontic, oral surgeon, or endodontic offices that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death.
4. "Emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of

the emergency" shall be deemed to include but is not limited to: (i) insufficient availability of PPE, ventilators, or other drugs, blood products, supplies or equipment; (ii) insufficient availability of trained staff; (iii) having licensed healthcare professionals deliver care that, while included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other health care facility at which they deliver services or exceeds the scope of the services that they normally provide; (iv) implementation or execution of triage protocols or scarce resource allocation policies necessitated by healthcare provider declaration of crisis standards of care; and (v) using supplies or equipment in innovative ways that are different from the way that these supplies and equipment are normally used.

5. Nothing in this Executive Order shall affect the right or ability to claim immunity from liability for any cause of action under any other federal or state law, regulation, rule, or order or any theory of common law immunity nor the right of any person to receive benefits to which he would otherwise be entitled under law nor the right of any such person to receive any benefits or compensation under any act of the General Assembly or United States Congress.

#### Effective Date of this Executive Order

This Executive Order shall be effective until the expiration of Executive Order 51 unless sooner amended or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 28th day of April, 2020.

/s/ Ralph S. Northam  
Governor

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### STATE BOARD OF EDUCATION

Title of Document: [Emergency Career and Technical Education Work-Based Learning Guidelines for Internship and Cooperative Education Experiences.](#)

Public Comment Deadline: July 8, 2020.

Effective Date: May 7, 2020.

Agency Contact: Michael Bolling, Assistant Superintendent for Learning and Innovation, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2034, email [michael.bolling@doe.virginia.gov](mailto:michael.bolling@doe.virginia.gov).

### DEPARTMENT OF LABOR AND INDUSTRY

Title of Document: [Virginia BUILT Policies and Procedures Manual.](#)

Public Comment Deadline: June 24, 2020.

Effective Date: June 25, 2020.

Agency Contact: Holly Trice, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2641, or email [holly.trice@doli.virginia.gov](mailto:holly.trice@doli.virginia.gov).

### STATE WATER CONTROL BOARD

Title of Document: [Virginia's Nonpoint Source Implementation Best Management Practice Guidelines - Fiscal Year 2021.](#)

Public Comment Deadline: June 24, 2020.

Effective Date: July 1, 2020.

Agency Contact: Lauren Linville, Nonpoint Source Program Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4096, or email [lauren.linville@deq.virginia.gov](mailto:lauren.linville@deq.virginia.gov).

### DEPARTMENT OF MOTOR VEHICLES

Title of Document: [Obtaining a Virginia Driver's License or Card.](#)

Public Comment Deadline: June 24, 2020.

Effective Date: June 25, 2020.

Agency Contact: Melissa K. Velazquez, Legislative Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.virginia.gov).

### DEPARTMENT OF TAXATION

Title of Document: [Guidelines and Rules for the Tobacco Products Tax.](#)

Public Comment Deadline: June 24, 2020.

Effective Date: June 25, 2020.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email [joseph.mayer@tax.virginia.gov](mailto:joseph.mayer@tax.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

April 22, 2020

Administrative Letter-2020-03

TO: All Carriers Licensed to Write Accident and Sickness Insurance in Virginia, All Health Services Plans and Health Maintenance Organizations Licensed in Virginia, and Interested Parties

RE: Implementation and Enforcement of House Bill 1503/Senate Bill 1031 § 38.2-3418.17 of the Code of Virginia, as Amended

The purpose of this Administrative Letter is to provide guidance to health carriers regarding the implementation and enforcement of the above-referenced statute that was amended and reenacted by the 2020 Virginia General Assembly and that will take effect on January 1, 2021. The Bureau of Insurance (Bureau) is tasked with applying state law and will enforce all provisions of § 38.2-3418.17 of the Code of Virginia (Code). The explanation below provides guidance regarding such enforcement.

Section 38.2-3418.17 of the Code requires coverage for treatment of autism spectrum disorder (ASD), to include applied behavior analysis (ABA) services, in the large group market in Virginia. Identical bills HB 1503/SB 1031 will require such coverage to be extended to policies, contracts or plans issued, reissued or extended in the individual and small group markets on or after January 1, 2021, except as limited by certain subsections.

Virginia's essential health benefits (EHB) benchmark plan currently excludes ABA services.<sup>1</sup> Other treatment for ASD, to include medically necessary behavioral health treatment, pharmacy care, psychiatric care, psychological care, and therapeutic care, is covered under the EHB benchmark plan currently.

Subsection 38.2-3418.17 D of the Code requires that benefits provided pursuant to this section are not subject to any visit limits or separate cost sharing. Since this subsection may require an extension of existing benefits and not additional EHB, the Bureau has determined that ABA services are the only services required under § 38.2-3418.17 of the Code that exceed EHB.

Pursuant to subsection 38.2-3418.17 L, qualified health plans (QHPs) offered through an exchange in the individual or small group markets are not required to provide the benefits stated in this section to the extent they exceed EHB. All on-exchange plans (QHPs) generally are required to be offered and made available off-exchange pursuant to § 38.2-3448 of the Code. Therefore, QHPs (with the same plan ID number) issued off-exchange also are not required to provide benefits that exceed EHB, i.e., ABA services.

The state, therefore, is not required to defray costs pursuant to 45 CFR 155.170 since no state mandate applies to QHPs for ABA services that would be in addition to EHB. Additionally, the state is not required to defray costs for any QHPs that provide benefits in accordance with § 38.2-3418.17 of the Code voluntarily, since no state mandate applies to QHPs (on or off the exchange) for this benefit. Should a QHP be required to provide ABA services under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), the state is not required to defray those benefits pursuant to 45 CFR 155.170.

All non-QHPs providing individual or group health insurance coverage must provide benefits for treatment of ASD (including ABA) as stated in § 38.2-3418.17 of the Code. The state is not responsible to defray any costs related to these requirements for non-QHPs pursuant to 45 CFR 155.170.

The Bureau offers the following questions and answers to provide further clarification of its enforcement:

#### Treatment of Autism Spectrum Disorder FAQs

1. Q: What are the effects of amendments to § 38.2-3418.17 (HB 1503/SB 1031) in the 2020 General Assembly session?

A: For Applied Behavior Analysis (ABA) services: HB 1503/SB 1031 require coverage of ABA services for the treatment of autism spectrum disorder (ASD) for plans in the individual and small group markets. The essential health benefits (EHB) checklist indicates that ABA is excluded in Virginia's EHB benchmark plan. Therefore, the Bureau has determined that the new application of this section to individual and small employer group health insurance coverage would require benefits that exceed EHB.

For other services: HB 1503/SB 1031 require plans in the individual and small group markets to cover treatment of ASD, to include medically necessary behavioral health treatment, pharmacy care, psychiatric care, psychological care, and therapeutic care, with no visit limits. The EHB benchmark plan currently provides these benefits but allows certain services to be limited. For example, the benchmark plan provides a minimum for habilitative services of 30 visits per year.

Subsection 38.2-3418.17 L provides exemption to the benefits required in this section to the extent this section requires benefits that exceed essential health benefits (EHB) for plans offered by a carrier through an exchange (qualified health plans or QHPs). Additionally, Subsection L requires that plans offered outside an exchange (non-QHPs) comply with the provisions of § 38.2-3418.17.

A QHP is a plan offered through an exchange but under guaranteed availability provisions that same plan also is required to be provided off-exchange. A QHP is the same plan whether offered on or off the exchange, therefore, the off-exchange version also is not required to provide ABA

benefits required by this section. A non-QHP is a plan that is offered solely off the exchange.

Historically, the Bureau and Virginia have determined that benefits required that expand an existing EHB are not considered an "additional required benefit" but rather an extension of an existing required benefit. Therefore, the requirement in subsection 38.2-3418.17 D to remove visit limits from coverage provided under this section can be applied to all individual health insurance coverage and small employer group health insurance coverage since that does not require an additional EHB.

In Summary: Non-QHPs must cover all benefits required by this section. The requirements of this section to cover ABA services do not apply to QHPs (on and off the exchange) for individual and small employer group health insurance coverage. The requirement to cover other treatments listed in this section with no visit limits are required of all QHPs and non-QHPs. No mandate under this section applicable to QHPs is determined to be in addition to EHBs, therefore, the state is not required to defray costs.

2. Q: How is ASD defined?

A: According to MHPAEA and per 45 CFR § 146.136 (a), all conditions, including ASD, covered under a plan or coverage must be defined as either a mental health (MH) or medical/surgical (M/S) condition. Virginia Code defines ASD, but this definition does not clearly define ASD as either a MH or M/S condition. Therefore, plans or coverage must define ASD as either a MH or M/S condition.

3. Q: For large group plans, how are the requirements of § 38.2-3418.17 applied?

A: If the plan or coverage defines autism as a M/S condition, then all the requirements in § 38.2-3418.17 apply, including no visit limits, and minimum dollar caps may be applied to ABA services.

If the plan or coverage defines autism as a MH condition, the carrier shall not impose visit limits and may be able to apply the \$35,000 minimum dollar cap for ABA benefits per plan year if compliant with MHPAEA requirements.

4. Q: For individual and small group plans, what are the requirements for the treatment of ASD?

A: The treatment of ASD is required under EHBs. The plan must first define ASD as either a M/S condition or a MH condition and apply all covered treatment as either M/S benefits or MH benefits (but not both) in accordance with the applicable rules. The plan must provide benefits in accordance with § 38.2-3418.17 of the Code, except a QHP is not required to provide benefits for ABA services under this section, unless required pursuant to MHPAEA.

5. Q: Are there circumstances under which QHPs in the individual and small group markets are required to cover ABA?

A: Yes. Coverage for ABA may be specifically excluded per the EHB benchmark plan, and as explained above, QHPs are not subject to the requirements of § 38.2-3418.17 to cover ABA. However, if the carrier defines ASD as a MH condition, then the methodology for treatment limitations on ABA must be no more restrictive than treatment limitations on any M/S condition in any given classification under MHPAEA.

6. Q: Can QHPs voluntarily cover ABA?

A: Yes. ABA treatment consists of a number of therapy sessions. ABA therapy sessions may be considered rehabilitative services, mental health services, or ambulatory patient services, and may be covered under any of those. Costs associated with the voluntary coverage of ABA will not be defrayed by the State given that it is determined this mandate does not apply to QHPs.

7. Q: Can QHPs that voluntarily cover ABA therapy visits under rehabilitative services still impose the \$35,000 or 30-visit limit?

A: Possibly, since ABA benefits are not EHB and are not required to be offered by QHPs pursuant to § 38.2-3418.17 of the Code, a carrier may place a dollar or visit limit on ABA services. However, if the carrier defines the condition for which the ABA therapy is being used to treat as a MH condition, then MHPAEA calculation requirements apply and it is possible this would require no dollar limit, a revised dollar limit, or visits limits to be increased or unlimited.

8. Q: If compliance with MHPAEA requires a carrier to exceed EHB benchmark limits, must the state defray the cost?

A: No. Compliance with MHPAEA does not require defrayal of cost.

This letter describes and summarizes the requirements of § 38.2-3418.17 of the Code. The provisions of which should be reviewed carefully for compliance.

Any questions concerning this Administrative Letter may be addressed to: Brant Lyons, Senior Insurance Market Examiner, Life & Health Division, Bureau of Insurance, telephone (804) 371-9490, or email [brant.lyons@scc.virginia.gov](mailto:brant.lyons@scc.virginia.gov).

/s/ Scott A. White  
Commissioner of Insurance

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<sup>1</sup>See <https://scc.virginia.gov/getattachment/0c71fa06-32c4-47cf-a4f9-313bf059230c/ehbfillin.pdf>

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Draft Pharmacy Appendix D for Stakeholder Input

Comment period: May 1, 2020, to May 31, 2020.

The draft Appendix D of the Pharmacy provider manual is now available on the Department of Medical Assistance

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## General Notices/Errata

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Services (DMAS) website at <http://www.dmas.virginia.gov/#/manualdraft> for public comment until May 31, 2020.

The Pharmacy provider manual update reflects updates to the Virginia Medicaid's fee-for-service Preferred Drug List program and drug service authorization requirements for drugs reviewed by the DMAS Pharmacy and Therapeutics Committee and the Drug Utilization Review Board.

**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).

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Order for the City of Covington

An enforcement action has been proposed for the City of Covington for violations in Covington, Virginia. The State Water Control Board proposes to issue a special order by consent to the City of Covington to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Nelson Dail will accept comments by email at [nelson.dail@deq.virginia.gov](mailto:nelson.dail@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Blue Ridge Office, 901 Russell Drive, Salem, VA 24153, from May 25, 2020, to June 25, 2020.

#### Proposed Consent Order for Virginia Black Granite Inc.

An enforcement action has been proposed for Virginia Black Granite Inc. for violations of the State Water Control Law and regulations at the Virginia Black Granite facility located in Rapidan, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Virginia Black Granite facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Benjamin Holland will accept comments by email at [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@deq.virginia.gov), or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 26, 2020, through June 25, 2020.

## 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.

## ERRATA

### STATE CORPORATION COMMISSION

**Title of Regulation:** 14VAC5-300. Rules Governing Credit for Reinsurance.

**Publication:** 36:19 VA.R. 2172-2186 May 11, 2020.

**Correction to Agency Contact:**

Page 2172, column 1, after "telephone" change "(804) 371-9152" to "(804) 371-9499"

VA.R. Doc. No. R20-6333; Filed May 12, 2020, 12:18 p.m.