



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 36 ISS. 26

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 17, 2020

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Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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# 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; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **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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## September 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 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 VETERINARY MEDICINE

#### Agency Decision

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

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

Name of Petitioner: Jeffree Hudson.

Nature of Petitioner's Request: To amend regulations to require sedation of an animal to be euthanized.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on July 28, 2020, the board reviewed copies of all comments on the petition, as well as copies of the directive from the Virginia Department of Agriculture and Consumer Services (VDACS) and the State Veterinarian on euthanasia and the guidelines on euthanasia from the American Veterinary Medical Association. The board acknowledged that veterinarians take very seriously their responsibility to animals and their owners to reduce suffering as humanely as possible. Veterinarians are expected to use their professional judgment in such situations. Owners who are concerned about the process may consult with the veterinarian about the euthanasia process and the possible need for sedation. The commenter noted the VDACS directive on euthanasia. According to that agency, shelters typically do sedate an animal because they use nonveterinarian staff for euthanasia, so there is no opportunity for professional judgment by a veterinarian as to whether sedation is advisable.

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

VA.R. Doc. No. R20-25; Filed July 28, 2020, 11:14 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER 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: **2VAC5-11, Public Participation Guidelines**. The review 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 August 17, 2020, and ends September 7, 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: Kevin Schmidt, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Suite 219, Richmond, VA 23219, telephone (804) 786-1346, FAX (804) 371-7679, or email [kevin.schmidt@vdacs.virginia.gov](mailto:kevin.schmidt@vdacs.virginia.gov).

#### 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: **2VAC5-61, Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock; 2VAC5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia; 2VAC5-80, Requirements Governing the Branding of Cattle in Virginia; 2VAC5-111, Public and Private Animal Shelters; and 2VAC5-190, Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins August 17, 2020, and ends September 7, 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: Dr. Carolyn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TDD (800) 828-1120, or email [carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

#### 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: **2VAC5-240, Rules and Regulations for Enforcement of the Grain Handlers Law**. The review 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 August 17, 2020, and ends September 7, 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.

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## Periodic Reviews and Small Business Impact Reviews

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Contact Information: Olivia Wilson, Deputy Director, Commodity Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2112, FAX (804) 225-4434, TDD (800) 828-1120, or email [olivia.wilson@vdacs.virginia.gov](mailto:olivia.wilson@vdacs.virginia.gov).

### 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: **2VAC5-319, Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability; 2VAC5-330, Rules and Regulations for Enforcement of the Virginia Pest Law-Virginia Gypsy Moth Quarantine; 2VAC5-360, Regulations for the Enforcement of the Virginia Commercial Feed Act; and 2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law.** The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins August 17, 2020, and ends September 7, 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: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515, FAX (804) 371-7793, TDD (800) 828-1120, or email [david.gianino@vdacs.virginia.gov](mailto:david.gianino@vdacs.virginia.gov).

### 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: **2VAC5-350, Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law, and 2VAC5-480, Regulation Governing the Oxygenation of Gasoline.** The review will

be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins August 17, 2020, and ends September 7, 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: Gary Milton, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, FAX (804) 786-1571, TDD (800) 828-1120, or email [gary.milton@vdacs.virginia.gov](mailto:gary.milton@vdacs.virginia.gov).

### 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: **2VAC5-550, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Sausage; 2VAC5-560, Rules and Regulations Pertaining to Labeling and Sale of Infant Formula; 2VAC5-570, Rules and Regulations Defining Standards for Grades/Sizes of Shell Eggs; and 2VAC5-585, Retail Food Establishment Regulations.** The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins August 17, 2020, and ends September 7, 2020.

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# Periodic Reviews and Small Business Impact Reviews

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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: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, FAX (804) 371-7792, TDD (800) 828-1120, or email [ryan.davis@vdacs.virginia.gov](mailto:ryan.davis@vdacs.virginia.gov).

This regulation does not overlap, duplicate, or conflict with any state or federal law. This regulation does interact with three other state regulations. The four separate regulations work together to protect public health and welfare concerning the siting of hazardous waste facility sites.

This regulation last underwent a periodic review in 2016. This regulation was amended in August 2012 to update a mailing address within the regulation.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses.

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 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and small business impact review of **9VAC20-20, Schedule of Fees for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 29, 2020, to support this decision.

The regulation is authorized by state law and is necessary to protect public health and welfare. Without this regulation, the Commonwealth would be required to pay all costs associated with processing applications and site certifications for hazardous waste management sites, which would reduce funding of other service areas. The regulation is technical in nature; however, it is clearly written and easily understandable.

The regulation continues to be needed and is being retained without changes.

The board is authorized to adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications, and this regulation complies with the board's statutory authority. These fees defray costs associated with the review of these site certifications.

No public comments were received during the periodic review of this regulation.

This regulation is one regulation in a series all of which are related to hazardous waste facility site certifications. Maintaining multiple regulations each of which address different aspects of hazardous waste facility site certifications removes complexity from the regulatory process and allows users to focus on applicable requirements.

#### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and small business impact review of **9VAC20-30, Technical Assistance Fund Administrative Procedures**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 29, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. This regulation sets forth the process for a community hosting a hazardous waste facility to obtain technical assistance funds for a thorough and efficient review by the host community's local government of the proposed hazardous waste facility's impact on public health, safety, and welfare and on the environment. Without this fund, it is unlikely that the host community's local government would be able to conduct this evaluation.

The regulation is effective and continues to be needed and is being retained.

The regulation continues to be needed to provide a governing body of a community hosting a hazardous waste facility with a process for obtaining technical assistance funds to evaluate the proposed hazardous waste facility's impact on public health, safety, and welfare and on the environment.

No public comments were received during the public comment period.

This regulation has been written to establish the process for a governing body of a community hosting a hazardous waste facility to obtain technical assistance funds. It is clearly written and is consistent with the requirements of statute and other related regulations.

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## Periodic Reviews and Small Business Impact Reviews

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This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process.

A periodic review was last conducted on this regulation in 2016, and the regulation remains current.

This regulation allows localities a governing body of a community hosting a hazardous waste facility to obtain technical assistance funds. Small businesses are not impacted by this regulation.

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).

### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and small business impact review of **9VAC20-40, Administrative Procedures for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 29, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. This regulation establishes administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites, including the processing of applications and public notice requirements. This regulation is technical in nature and is clearly written and easily understandable.

The regulation is effective and continues to be needed and is being retained.

The regulation continues to be needed to establish administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites, including the processing of applications and public notice requirements.

No public comments were received during the public comment period.

This regulation establishes administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites, including the processing of applications and public notice requirements. It is clearly written and is consistent with the requirements of statute and other related regulations.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process.

A periodic review was last conducted on this regulation in 2016, and the regulation remains current.

The department has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses while meeting the requirements of state law.

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).

### Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and small business impact review of **9VAC20-50, Hazardous Waste Facility Siting Criteria**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 29, 2020, to support this decision.

This regulation establishes the siting criteria for hazardous waste facilities and is protective of human health and the environment. The regulation is clearly written and easily understandable.

The regulation is effective and continues to be needed and is being retained.

The regulation continues to be needed to establish siting criteria for hazardous waste facilities.

No public comments were received during the public comment period.

This regulation establishes siting criteria for hazardous waste facility sites. It is clearly written and is consistent with the requirements of statute and other related regulations.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process.

A periodic review was last conducted on this regulation in 2016, and the regulation remains current.

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# Periodic Reviews and Small Business Impact Reviews

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The department has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses while meeting the requirements of state law.

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).

## 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: **9VAC25-210, Virginia Water Protection Permit Program Regulation; 9VAC25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half Acre; 9VAC25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities; 9VAC25-680, Virginia Water Protection General Permit for Linear Transportation Projects; and 9VAC25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.** The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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

Public comment period begins August 17, 2020, and ends September 7, 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: Melissa Porterfield, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4178, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.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 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-252. **Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-30, 4VAC20-252-50, 4VAC20-252-80 through 4VAC20-252-110, 4VAC20-252-130, 4VAC20-252-140, 4VAC20-252-150, 4VAC20-252-155, 4VAC20-252-160, 4VAC20-252-200, 4VAC20-252-210; repealing 4VAC20-252-115).**

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

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

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

#### Summary:

*The amendments (i) require the use of non-offset, non-stainless steel circle hooks when fishing for striped bass recreationally with bait; (ii) clarify that the captain or operator of any recreational boat or vessel shall be responsible for any minimum or maximum size limits; and (iii) repeal exemptions from size limits and closed fishing seasons for recreational striped bass fishing tournaments.*

#### 4VAC20-252-20. Definitions.

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

"Chesapeake Bay area" means the commercial fishing area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by in this section.

"Circle hook" means a non-offset, non-stainless steel hook with the point turned sharply and straight back toward the shank.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commercial fishing," ~~or "fishing commercially,"~~ or "commercial fishery" means fishing by any person where the catch is ~~for sale, barter, trade, or any commercial purpose,~~ or is intended for sale, barter, trade, or any commercial purpose.

"Commission" means the Marine Resources Commission.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; ~~thence~~ extending to the southernmost point of Tangier Island, and ~~thence~~ north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, ~~thence and then~~ westerly along the Virginia-Maryland state boundary to Smith Point.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond ~~thence~~ extending upstream to the District of Columbia boundary.

"Recreational fishing," ~~or "fishing recreationally,"~~ or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not or is not intended for sale, barter, trade, or any commercial purpose, ~~or is not intended for sale, barter, trade, or any commercial purpose.~~

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat participating in the recreational striped bass fishery.

"Share" means a percentage of the striped bass commercial harvest quota.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

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"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.
4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species *Morone saxatilis*, including or any hybrid of the species *Morone saxatilis*.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

## 4VAC20-252-30. General prohibitions and requirements.

~~A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.~~

~~B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.~~

~~C. Except for those persons permitted in accordance with 4VAC20-252-170, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.~~

~~D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs, except as described in 4VAC20-252-115.~~

~~E. A. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.~~

~~F. B. It shall be unlawful for any person to gaff or attempt to gaff any striped bass at any time.~~

~~G. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge tunnel, jetty, or pier during Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through 6 a.m. Friday.~~

~~H. Unless specified differently in other regulations, it C. It shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.~~

~~I. D. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored gill net or staked gill net, for any purpose, within the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.~~

~~J. Holding any E. Any license or permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect, measure, weigh, or take biological samples from any striped bass in possession of the ~~permit holder~~ licensee or permittee.~~

~~K. F. Nothing in this chapter shall preclude any person, who is legally eligible to fish, from possessing any striped bass tagged with a Virginia Institute of Marine Science (VIMS) fluorescent green tag. Possession of these VIMS-tagged striped bass shall not count towards the personal recreational possession limit, and permitted. Permitted commercial striped bass individual transferable quota (ITQ) holders shall not be required to apply a tamper evident, numbered tag provided by the commission, in order to possess any striped bass tagged with a VIMS-inscribed green fluorescent tag. It shall be unlawful for any person to retain any of these VIMS-tagged striped bass for a period of time that is longer than necessary except to provide the VIMS-tagged striped bass to a VIMS representative. Under no circumstance shall any VIMS-tagged striped bass be stored for future use or sale or delivered to any person who is not a VIMS representative.~~

## 4VAC20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take, catch, or attempt to take or catch any striped bass by any gear or method other than ~~hook and line~~ hook-and-line, rod and reel, hand line, or spearing.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass

season, except as described in 4VAC20-252-115. Striped bass caught contrary to this provision shall be returned to the water immediately.

~~C. It shall be unlawful for any person fishing recreationally to possess, land, and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24 hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.~~

B. Any person fishing recreationally shall use non-offset, corrodible, non-stainless steel circle hooks when fishing with bait, live or chunk.

C. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the captain or operator of the boat or vessel shall be responsible for any minimum or maximum size limits.

~~D. E.~~ It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

~~E. F.~~ It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, ~~except as described in 4VAC20-252-115. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.~~

~~F. It shall be unlawful for any person to sell, offer for sale, trade, or barter any striped bass taken by hook and line, rod and reel, hand line, or spearing provided, however, this provision shall not apply to persons possessing a commercial hook and line license and a striped bass permit and meeting the other requirements of this chapter.~~

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

**4VAC20-252-80. Chesapeake Bay and its tributaries spring/summer striped bass recreational fishery.**

A. The open season for the Chesapeake Bay and its tributaries spring/summer striped bass recreational fishery shall be May 16 through June 15 inclusive.

~~B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.~~

~~C. B.~~ The minimum size limit for this fishery shall be 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length.

C. The maximum size limit shall be 28 inches total length.

~~D. The daily possession limit for this fishery shall be one fish per person.~~

**4VAC20-252-90. Chesapeake Bay and its tributaries fall striped bass recreational fishery.**

A. The open season for the bay Chesapeake Bay and its tributaries fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

~~B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.~~

~~C. B.~~ The minimum size limit for this fishery shall be 20 inches total length.

~~D. C.~~ The maximum size limit for this fishery shall be 36 inches total length.

~~E. D.~~ The daily possession limit for this fishery shall be one fish per person.

**4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.**

A. The open season for the Potomac River tributaries summer/fall striped bass recreational fishery shall correspond to the open summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

~~B. The area open for this fishery shall be the Potomac River tributaries.~~

~~C. B.~~ The minimum size limit for this fishery shall be 20 inches total length.

~~D. C.~~ From May 16 through June 15 the maximum size limit for this fishery shall be 28 inches total length.

~~E. D.~~ From June 16 through December 31 the maximum size limit for this fishery shall be 36 inches total length.

~~F. E.~~ The daily possession limit for this fishery shall be one fish per person.

**4VAC20-252-110. Coastal area striped bass recreational fishery.**

A. The open seasons for the coastal area striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

~~B. The area open for this fishery shall be the coastal area as defined in this chapter.~~

~~C. B.~~ The minimum size limit for this fishery shall be 28 inches total length.

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~~D. C.~~ The maximum size limit for this fishery shall be 36 inches total length.

~~E. D.~~ The daily possession limit for this fishery shall be one fish per person per day.

## **4VAC20-252-115. Exemptions from size limits and closed fishing seasons for recreational striped bass fishing tournaments. (Repealed.)**

~~A.~~ The commissioner or his designee may grant exemptions for any recreational fishing tournament from size and season limitations described in 4VAC20-252-80, 4VAC 20-252-90, 4VAC20-252-100 and 4VAC20-252-110 provided that the tournament meets all of the following conditions:

~~1.~~ The tournament operates for a limited duration, with a maximum of three consecutive days.

~~2.~~ The tournament format provides for the live release of all fish and significant penalties for entrants bringing in or weighing in dead striped bass.

~~3.~~ The tournament director submits a written proposal to the commissioner detailing the measures the tournament will use to ensure the survivability of fish entered in the tournament, to include capture, handling and storage of fish by tournament entrants on the water during the competition, by tournament officials at the weigh-in, by tournament officials when transporting and returning the fish to the water, and any penalties that will apply to entrants bringing in or weighing dead fish. Such proposal must be submitted no later than 120 days prior to the tournament, and the proposal must be determined by the commissioner to adequately address potential mortality issues.

~~4.~~ Tournament officials must agree to provide any or all fish entered in the tournament to the Marine Resources Commission, or to any designee of the Marine Resources Commission, upon written request, and tournament officials agree to allow Marine Resources Commission staff access to all tournament areas during the event for the purposes of observation and assessment, upon request.

~~B.~~ Any determination by the commissioner or his designee that approval of any requested recreational striped bass tournament could jeopardize the status of the striped bass stock or prove to be an issue of compliance with the interstate fishery management plan will result in disapproval of that request.

## **4VAC20-252-130. Entry limits, permits, and reports.**

A. There is established a special permit for engaging in either the Chesapeake Bay area commercial fishery for striped bass or the coastal area commercial fishery for striped bass, and it. It shall be unlawful for any person to engage in either commercial fishery for striped bass without first having

obtained the permit from the commission and meeting the following conditions:

1. The person shall be a licensed registered commercial fisherman.

2. The person shall have reported all prior fishing activity in accordance with 4VAC20-610 and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation.

B. Permits for the commercial harvest of striped bass in the Chesapeake Bay area or coastal area shall be issued to any registered commercial fishermen holding striped bass quota shares issued under the provisions of 4VAC20-252-150 and 4VAC20-252-160.

C. Permits shall be in the possession of the permittee while catching, harvesting, selling, or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

D. It shall be unlawful for any person, business, or corporation, except for licensed restaurants, to purchase from the harvester any quantity of striped bass greater than 10 pounds in total weight taken from Virginia's tidal waters for the purpose of resale without first obtaining a striped bass buyer's permit from the commission, except as described in subsection E of this section. Such permit shall be completed in full by the permittee and kept in possession of the permittee while selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

E. Restaurants shall not be required to obtain a striped bass buyer's permit from the commission but shall be required to certify and maintain a record of any striped bass purchased from any harvester for a period of not less than one year.

F. All permitted commercial harvesters of striped bass shall report to the commission in accordance with 4VAC20-610. In addition to the reporting requirements of 4VAC20-610, all permitted commercial harvesters of striped bass shall record and report daily striped bass harvest by specifying the number of tags used on striped bass harvested for each day in either the Chesapeake Bay area or coastal area and reporting the daily total whole weight of striped bass harvested in either the Chesapeake Bay area or coastal area. Daily striped bass tag use on harvested striped bass and daily total whole weight of harvested striped bass from either the Chesapeake Bay area or coastal area, within any month, shall be recorded on forms provided by the commission and shall accompany the monthly catch report submitted no later than the fifth day of the following month.

G. Any permitted commercial harvester of striped bass who self markets his striped bass to a restaurant, individual person, or out-of-state market shall be required to prepare a receipt describing each sale greater than 10 pounds in total weight.

Each receipt shall be a record and report of the date of transaction, name and signature of buyer, address and phone number of buyer, number and total weight of striped bass sold, and name and signature of harvester. Copies of each receipt shall be forwarded to the commission in accordance with 4VAC20-610.

H. Any buyer permitted to purchase striped bass harvested from Virginia tidal waters shall provide written reports to the commission of daily purchases and harvest information on forms provided by the Marine Resources Commission. Such information shall include the date of the purchase, buyer's name, and harvester's Commercial Fisherman Registration License number. In addition, for each different purchase of striped bass harvested from Virginia waters, the buyer shall record the weight of whole fish and number and type of tags (Chesapeake Bay area or coastal area) that applies to that harvest. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the fifth day of the following month.

I. Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

#### **4VAC20-252-140. Commercial seasons, areas, and size limits.**

Except as may be adjusted pursuant to 4VAC20-252-150, the open commercial striped bass fishing seasons, areas, and applicable size limits shall be as follows:

1. In the Chesapeake Bay area, the open commercial season shall be from January 16 through December 31, inclusive. The minimum size limit shall be 18 inches total length during the periods of January 16 through December 31. The maximum size limit shall be 28 inches from March 15 through June 15.
2. In the coastal area, the open commercial season shall be January 16 through December 31, inclusive, ~~and the~~ The minimum size limit shall be 28 inches total length.

#### **4VAC20-252-150. Individual commercial harvest quota.**

A. The commercial harvest quota for the Chesapeake Bay area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be 983,393 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake Bay area is projected to reach 983,393 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake Bay area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine

Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 125,034 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 125,034 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning tags to ~~an individual a~~ person for commercial harvests in the Chesapeake Bay area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted ~~individual~~ person during the previous fishing year. The number of striped bass tags issued to each ~~individual~~ person will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each ~~individual~~ person.

D. For the purposes of assigning tags to ~~an individual a~~ person for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the reported average coastal area harvest weight of striped bass harvested by the permitted ~~individual~~ person during the previous fishing year, except as described in subsection E of this section. The number of striped bass tags issued to each ~~individual~~ person will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each ~~individual~~ person.

E. For any ~~individual~~ person whose reported average coastal area harvest weight of striped bass in the previous fishing year was less than 12 pounds, a 12-pound minimum weight shall be used to convert that ~~individual's~~ person's harvest quota of striped bass, in pounds of fish, to harvest quota in number of fish.

#### **4VAC20-252-155. Individual transferable shares monitoring and penalties.**

A. Any initial overage by any person of an individual commercial harvest quota during any calendar year shall be considered a first offense, with penalties prescribed according to the severity of the overage as described in subdivisions 1 through 5 of this subsection.

1. Any overages that are less than 76 pounds shall result in a warning being issued.
2. Any overages that range from 76 to 250 pounds shall result in a ~~one year~~ one-year deduction of that overage from that individual commercial harvest quota during the following calendar year.

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3. Any overages that range from 251 to 475 pounds shall result in a ~~one-year~~ one-year deduction of two times that overage from that individual commercial harvest quota during the following calendar year.

4. Any overages that range from 476 to 725 pounds shall result in that overage being permanently deducted from that individual commercial harvest quota and a ~~one-year~~ one-year suspension of that ~~individual person~~ from the commercial fishery for striped bass.

5. Any overages that are greater than 725 pounds shall result in the revocation of that individual striped bass permit, and that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

B. Any second overage by any person of an individual commercial harvest quota within five years of a previous offense shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 through 4 of this subsection.

1. Any overages that are less than 76 pounds shall result in a ~~one-year~~ one-year deduction of the overage from that individual commercial harvest quota during the following calendar year.

2. Any overages that range from 76 to 250 pounds shall result in a ~~one-year~~ one-year deduction of two times the overage from that individual commercial harvest quota during the following calendar year.

3. Any overages that range from 251 to 475 pounds shall result in the overage being permanently deducted from the individual commercial harvest quota and a ~~one-year~~ one-year suspension of that ~~individual person~~ from the commercial fishery for striped bass.

4. Any overages that are greater than 475 pounds shall result in the revocation of that individual striped bass permit, and that ~~individual person~~ shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

C. Any third overage by any person of an individual commercial harvest quota within five years of two previous offenses shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 through 3 of this subsection.

1. Any overages that are less than 76 pounds shall result in a ~~one-year~~ one-year deduction of two times the overage from that individual commercial harvest quota during the following calendar year.

2. Any overages that range from 76 to 250 pounds shall result in the overage being permanently deducted from that individual commercial harvest quota and a ~~one-year~~ one-

year suspension of the ~~individual person~~ from the commercial fishery for striped bass.

3. Any overages that are greater than 250 pounds shall result in the revocation of that individual striped bass permit, and that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

D. Any fourth overage by any person of an individual commercial harvest quota within five years of three previous offenses shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 and 2 of this subsection.

1. Any overages that are less than 76 pounds shall result in the overage being permanently deducted from that individual commercial harvest quota and a ~~one-year~~ one-year suspension of the ~~individual person~~ from the commercial fishery for striped bass.

2. Any overages that are greater than 75 pounds shall result in the revocation of that individual striped bass permit, and that ~~individual person~~ shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

#### **4VAC20-252-160. Individual transferable shares; tagging.**

A. For each person permitted under the provisions of 4VAC20-252-130 to harvest striped bass commercially, a weight quota shall be issued to permitted fishermen in amounts equal to the percentage share of the Chesapeake Bay area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake Bay area harvest quota shall only be used for striped bass harvests in the Chesapeake Bay area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

B. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in Virginia waters, according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to set, place, or fish any gear that can harvest striped bass in the Chesapeake Bay area when in possession of coastal area striped bass tags issued by the Virginia Marine Resources Commission or striped bass tagged with coastal area tags.

2. It shall be unlawful for any person to possess Virginia coastal area striped bass tags in the Chesapeake Bay area or striped bass tagged with coastal area tags except when transiting the Chesapeake Bay area.

3. It shall be unlawful for any person to possess striped bass tags issued for previous years for the Chesapeake Bay area, coastal area, or any other jurisdiction.

4. It shall be unlawful for any person to possess Potomac River Fisheries Commission striped bass tags in Virginia

waters, except when transiting the Virginia tributaries of the Potomac River to land in Virginia and as provided by subsection C of this section.

5. It shall be unlawful for any person to possess any non-Virginia jurisdictional striped bass tags in Virginia waters or striped bass tagged with any non-Virginia jurisdictional striped bass tags, except as provided by subdivision 4 of this subsection and subsection C of this section.

6. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

C. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in the Great Wicomico-Tangier Striped Bass Management Area except current year striped bass tags issued by the jurisdictions of the Virginia Marine Resources Commission, State of Maryland, or Potomac River Fisheries Commission and according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to possess more than one jurisdiction's tags or more than one jurisdiction's tagged striped bass in the Great Wicomico-Tangier Striped Bass Management Area.

2. It shall be unlawful for any person onboard any vessel to place, set, or fish any gear that can harvest striped bass in the Great Wicomico-Tangier Striped Bass Management Area when in possession of any striped bass tags not issued by the Virginia Marine Resources Commission.

3. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

D. Shares of the commercial striped bass quota held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions:

1. Shares of commercial striped bass quota shall not be permanently transferred in any quantity less than 500 pounds, or 100% of unused permanent shares, in any year from February 1 through October 31. Permanent transfers of shares of commercial striped bass quota shall be prohibited from November 1 through January 31.

2. Shares of commercial striped bass quota shall not be temporarily transferred in any quantity less than 500 pounds from February 1 through October 31 or less than 200 pounds from November 1 through December 15. Temporary transfers of shares of commercial striped bass quota shall be prohibited from December 16 through January 31.

3. No licensed registered commercial fisherman shall hold more than 2.0% of the total annual Chesapeake Bay area commercial striped bass harvest quota or more than 11% of the total annual coastal area commercial striped bass harvest quota.

4. No transfer of striped bass commercial harvest quota shall be authorized by the commission unless transferor and transferee provide up-to-date records of all commercial landings of striped bass and striped bass tag use to the commission prior to such transfer.

5. No transfer of striped bass commercial harvest quota shall be authorized unless such transfer is documented on a form provided by the Virginia Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

E. Transfers of Chesapeake Bay area or coastal area striped bass commercial quota from one person to another may be permanent or temporary. Transferred quota from the Chesapeake Bay area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake Bay area, and transferred quota from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota shall grant to the transferee that transferred percentage of the quota for future years, and the transferor loses that same transferred percentage of the quota in future years. Temporary transfers of individual striped bass commercial harvest quota shall allow the transferee to harvest only that transferred percentage of the quota during the year in which the transfer is approved. Transferors are solely responsible for any overage of the transferred percentage of the quota by the transferee. Thereafter, any percentage of the transferred striped bass commercial quota, less any overage incurred by the transferee, reverts back to the transferor.

F. The commission will issue striped bass tags to permitted striped bass commercial fishermen as follows: those fishermen permitted only for Chesapeake Bay area or coastal area harvests of striped bass will receive their allotment of tags prior to the start of the fishing season. Any permitted fisherman, eligible for both Chesapeake Bay area and coastal area tags, shall receive only one type of area-specific tag allotment, of his choosing, prior to the start of the fishing season, and his other type of area-specific tags will be distributed when it has been determined from the commission's mandatory harvest reporting program that the fisherman has used all of his first allotment of tags and has not exceeded his individual harvest quota. The commissioner may authorize the distribution of the second allotment of area-specific tags to a fisherman eligible for both Chesapeake Bay area and Coastal area tags prior to that fisherman's complete use of his first allotment of tags, provided that

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fisherman surrenders any remaining tags of his first allotment of tags.

G. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

H. At the place of capture, and before leaving that place of capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

I. It shall be unlawful to bring to shore any commercially caught striped bass that has not been tagged at the place of capture by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession. If a permittee violates this section, the entire amount of untagged striped bass, as well as the number of tags equal to the amount of striped bass in his possession, shall be confiscated. Any confiscated striped bass shall be considered as a removal from that permittee's harvest quota. Any confiscated striped bass tags shall be impounded by the commission. Upon confiscation, the marine police officer shall inventory the confiscated striped bass and may redistribute the catch by one or a combination of the following methods:

1. The marine police officer shall secure a minimum of two bids for purchase of the confiscated striped bass from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited to the Commonwealth pending court resolution of the charge of violating the possession limits established in this chapter. All of the collected funds and confiscated tags will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilt.

2. The marine police officer shall provide the confiscated striped bass to commission staff for biological sampling of the catch. Upon receipt of confiscated striped bass, commission staff will secure a minimum of two estimates of value per pound for striped bass from approved and licensed seafood buyers. The confiscated tags and the estimated value of confiscated striped bass provided for biological sampling will be reimbursed to the accused upon a finding of innocence or retained by the commission upon a finding of guilt.

J. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

K. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the commission within 30 days of harvesting their individual harvest quota, or by the second Thursday in January, whichever comes first. Any unused tags that cannot be turned in to the commission shall be accounted for by the harvester submitting an affidavit to the commission that explains the disposition of the unused tags that are not able to be turned into the commission. Each ~~individual~~ person shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for any unused tags that are not turned in to the commission.

L. Any ~~individual~~ person with remaining unused striped bass commercial quota in the current year requesting additional commercial season striped bass tags shall provide up-to-date records of landings and account for all previously issued tags prior to receiving an additional allotment of tags. The harvester shall submit an affidavit to the commission that explains the disposition of the tags that are not accounted for and shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for such tags to the commission.

M. For the commercial fishing season, one type of tag shall be distributed to Chesapeake Bay area permittees and one type of tag shall be distributed to coastal area permittees. For the Chesapeake Bay area, the tag shall only be used on striped bass 18 inches or greater in total length. For the coastal area, the tag shall only be used on striped bass 28 inches or greater in total length. The possession of any improperly tagged striped bass by any permitted striped bass fisherman shall be a violation of this chapter.

#### **4VAC20-252-200. Inspection of facilities; diseased fish.**

A. Inspections. Agents of the commission and the Department of ~~Game and Inland Fisheries~~ Wildlife Resources are authorized to make periodic inspection of the facilities and the stock of each operation permitted under this section. Every person engaged in the business of striped bass aquaculture shall allow such inspection at any reasonable time.

B. Diseased fish. No person permitted under this chapter shall maintain in the permitted facility any fish which shows evidence of any contagious disease listed in the most current list by the United States Fish and Wildlife Service as "certifiable diseases," except for the period required for application of standard treatment procedures or for approved disposition.

C. Disposition. No person permitted under this chapter shall sell or otherwise transfer possession of any striped bass or hybrid striped bass which shows evidence of a "certifiable

disease" to any person, except that such transfer may be made to a fish pathologist for examination and diagnosis.

**4VAC20-252-210. Sale, records, importation, release.**

A. All striped bass or hybrid striped bass except fingerlings, fry, and eggs, which are the product of an aquaculture facility permitted under this section shall be packaged with a printed label bearing the name, address, and permit number of the aquaculture facility. When so packaged and labeled such fish may be transported and sold at retail or at wholesale for commercial distribution through normal channels of trade until reaching the ultimate consumer. Every such sale must be accompanied by a receipt showing the date of sale, the name, address and permit number of the aquaculture facility, the numbers and species of fish sold, and the name of the purchaser. Each subsequent resale must be accompanied by a receipt clearly identifying the seller by name and address, showing the number and species of the fish sold, the date sold, the permit number of the aquaculture facility and, if the sale is to other than the ultimate consumer, the name and address of the purchaser. The purchaser in possession of such fish must exhibit the receipt on demand of any law enforcement officer. A duplicate copy of each such receipt must be retained for one year by the seller as part of the records of each transaction.

B. Each permitted aquaculture facility operator shall maintain a chronological file of the receipts or copies thereof showing the dates and sources of acquisitions of striped bass or hybrid striped bass and quantities thereof, and a chronological file of copies of receipts of his sales required under subsection A of this section. Such records shall be segregated as to each permit year, shall be made available for inspection by any authorized agent of the commission or Department of ~~Game and Inland Fisheries~~ Wildlife Resources, and shall be retained for at least one year following the close of the permit year to which they pertain.

C. Striped bass or hybrid striped bass which are the product of an approved and state permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labeled in accordance with the provisions contained in subsection A of this section. Any sale of such fish also shall be accompanied by receipts as described in subsection A of this section.

D. Release of live fish. Under no circumstance shall striped bass which are the product of an aquaculture facility located within or outside the Commonwealth of Virginia be placed into the waters of the Commonwealth without first having notified the commission and having received written permission from the Commissioner of Marine Resources.

VA.R. Doc. No. R20-6468; Filed July 29, 2020, 2:41 p.m.

**Final Regulation**

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

**Title of Regulation:** **4VAC20-280. Pertaining to Speckled Trout and Red Drum (amending 4VAC20-280-20 through 4VAC20-280-55).**

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

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

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

**Summary:**

*The amendments (i) require seafood buyers to report purchases of speckled trout on the day of purchase during the period of August 1 through November 30 of each year, (ii) remove an obsolete provision applicable only in 2014, and (iii) make technical changes.*

**4VAC20-280-20. Definitions.**

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

"Red drum" means ~~red drum or channel bass~~ and is any fish of the species *Sciaenops ocellatus*.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Speckled trout" means ~~speckled trout or spotted seatrout~~ and is any fish of the species *Cynoscion nebulosus*.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

**4VAC20-280-30. Size limits.**

A. It shall be unlawful for any person to take, catch, or possess any speckled trout less than 14 inches in total length, provided however the catch of speckled trout by pound net or haul seine may consist of up to 5.0%, by weight, of speckled trout less than 14 inches in total length.

B. It shall be unlawful for any person fishing commercially with commercial ~~hook and line~~ hook-and-line gear, or fishing recreationally with any gear type to possess more than one speckled trout 24 inches or greater in any one day from

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January 1 through December 31, except as described in 4VAC20-280-40 B.

C. It shall be unlawful for any person fishing recreationally with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 26 inches in total length.

D. It shall be unlawful for any person fishing commercially with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 25 inches in total length.

#### 4VAC20-280-40. Possession limits.

A. It shall be unlawful for any person fishing commercially with commercial ~~hook and line~~ hook-and-line gear or recreationally with any gear type to possess more than five speckled trout in any one day from January 1 through December 31, ~~except as described in subsection B of this section.~~

~~B. It shall be unlawful for any person fishing commercially with commercial hook and line gear or recreationally with any gear type to take, harvest, or possess any speckled trout from March 1 through July 31, 2014.~~

~~C. B.~~ It shall be unlawful for any person fishing recreationally with any gear type to possess more than three red drum.

~~D. C.~~ It shall be unlawful for any person fishing commercially with any gear type to possess more than five red drum.

#### 4VAC20-280-50. Commercial landings quota and daily bycatch limit.

A. For each 12-month period of September 1 through August 31, the commercial landings of speckled trout shall be limited to 51,104 pounds.

B. When it is projected and announced that 80% of the commercial landings quota has been taken, it shall be unlawful for any commercial fisherman registration licensee to take, harvest, land, or possess a daily bycatch limit of greater than 100 pounds of speckled trout, and that daily bycatch landing limit of speckled trout shall consist of at least an equal amount of other fish species.

C. When it is projected that the commercial landings quota will be met by a certain date within the above period, the Marine Resources Commission will provide notice of the closing date for commercial harvest and landing of speckled trout during that period, and it shall be unlawful for any person to harvest or land speckled trout for commercial purposes after such closing date for the remainder of that period.

#### 4VAC20-280-55. Seafood buyer reporting requirements.

~~On each Monday, from August 1 through November 30, of an open commercial season for speckled trout, any Any licensed seafood buyer who ~~purchased~~ purchases speckled trout ~~during the previous seven days from August 1 through November 30~~ shall ~~contact~~ report daily purchases in pounds using the commission's interactive voice recording system ~~and report any purchases of speckled trout, in pounds, during the previous seven days on the day of purchase.~~~~

VA.R. Doc. No. R20-6466; Filed July 28, 2020, 5:30 p.m.

#### Emergency Regulation

Title of Regulation: **4VAC20-540. Pertaining to Spanish and King Mackerel (amending 4VAC20-540-30, 4VAC20-540-40, 4VAC20-540-50).**

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

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

#### Preamble:

*The emergency action establishes a 500-pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with any federal waters closure announced by the National Marine Fisheries Service.*

#### 4VAC20-540-30. ~~Possession~~ Recreational possession limits established.

A. It shall be unlawful for any person fishing with ~~hook and line~~ hook-and-line, hand line, rod and reel, spear ~~or~~ gig, or other recreational gear to possess more than 15 Spanish mackerel or more than three king mackerel.

B. When fishing from a boat or vessel, where the entire catch is held in a common hold or container, the possession limits shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 15 for Spanish mackerel or multiplied by three for king mackerel. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~C. The possession limit provisions established in this section shall not apply to persons harvesting Spanish mackerel or king mackerel with licensed commercial gear.~~

#### 4VAC20-540-40. Minimum size limits established.

A. Minimum size limit for Spanish mackerel is established at 14 inches in total length.

B. Minimum size limit for king mackerel is established at 27 inches in total length.

**Final Regulation**

C. It shall be unlawful for any person to take, catch, or possess any Spanish mackerel less than 14 inches in total length.

D. Except as provided in subsection E of this section it shall be unlawful for any person to take, catch, or possess any king mackerel less than 27 inches in total length.

E. Nothing in this section shall prohibit the taking, catching, or possession of any king mackerel; less than 27 inches in total length; by a licensed pound net.

**4VAC20-540-50. Trip Commercial trip limit established.**

A. It shall be unlawful for any person to possess or land in Virginia any amount of Spanish mackerel in excess of 3,500 pounds from any vessel in any one day, except as specified in subsection B of this section.

B. When a commercial closure in federal waters for the Northern Zone Atlantic Migratory Group Spanish Mackerel is announced by the National Marine Fisheries Service, it shall be unlawful for any person to possess or land in Virginia any amount of Spanish mackerel in excess of 500 pounds from any vessel in any one day. This federal closure and state water per trip possession limit will be posted on the Marine Resources Commission website.

VA.R. Doc. No. R20-6467; Filed July 29, 2020, 12:29 p.m.

**4VAC20-1090-30. License fees.**

The following listing of license fees applies to any person who purchases a license for the ~~purpose~~ purpose of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year. The fees listed below include a \$1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00

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

**Title of Regulation: 4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

**Effective Date:** January 1, 2021.

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

**Summary:**

*The amendment adds the annual license fee for electrofishing of catfish.*

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2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	\$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	\$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	\$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	\$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	\$2,000.00
On any business shucking or packing more than 25,000 gallons of oysters	\$4,000.00
On any oyster buyer using a single truck or location	\$100.00
On any oyster buyer using multiple trucks or locations	\$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	\$50.00
3. OYSTER HARVESTING, SHUCKING, RELAY, AND BUYERS LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	\$50.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	\$100.00
For each person taking oysters by hand, or with ordinary tongs	\$10.00
For each single-rigged patent tong boat taking oysters	\$35.00
For each double-rigged patent tong boat taking oysters	\$70.00
Oyster Dredge Public Ground	\$50.00
Oyster Hand Scrape	\$50.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00
One-day permit to relay condemned shellfish from a general oyster planting ground	\$150.00

<b>4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES</b>	
For each person taking or catching crabs by dip nets	\$13.00
For ordinary trotlines	\$13.00
For patent trotlines	\$51.00
For each single-rigged crab-scrape boat	\$26.00
For each double-rigged crab-scrape boat	\$53.00
For up to 210 peeler pots	\$36.00
For up to 20 tanks and floats for shedding crabs	\$9.00
For more than 20 tanks or floats for shedding crabs	\$19.00
For each crab trap or crab pound	\$8.00
<b>5. CRAB POT LICENSES</b>	
For up to 85 crab pots	\$48.00
For over 85 but not more than 127 crab pots	\$79.00
For over 127 but not more than 170 crab pots	\$79.00
For over 170 but not more than 255 crab pots	\$79.00
For over 255 but not more than 425 crab pots	\$127.00
<b>6. HORSESHOE CRAB AND LOBSTER LICENSES</b>	
For each person harvesting horseshoe crabs by hand	\$16.00
For each boat engaged in fishing for or landing of lobster using less than 200 pots	\$41.00
For each boat engaged in fishing for or landing of lobster using 200 pots or more	\$166.00
<b>7. CLAM HARVESTING LICENSES</b>	
For each person taking or harvesting clams by hand, rake, or with ordinary tongs	\$24.00
For each single-rigged patent tong boat taking clams	\$58.00
For each double-rigged patent tong boat taking clams	\$84.00
For each boat using clam dredge (hand)	\$19.00
For each boat using clam dredge (power)	\$44.00
For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For each person taking surf clams	\$124.00
Water Rake Permit	\$24.00
<b>8. CONCH (WHELK) HARVESTING LICENSES</b>	
For each boat using a conch dredge	\$58.00
For each person taking channeled whelk by conch pot	\$51.00
<b>9. FINFISH HARVESTING LICENSES</b>	
Each pound net	\$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00

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All other gill nets up to 600 feet	\$16.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00
Each person using a cast net or throw net or similar device	\$13.00
Each fyke net head, weir, or similar device	\$13.00
For fish trotlines	\$19.00
Each person using or operating a fish dip net	\$9.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00
For each person using commercial hook and line	\$31.00
For each person using commercial hook and line for catching striped bass only	\$31.00
For up to 100 fish pots	\$19.00
For over 100 but not more than 300 fish pots	\$24.00
For over 300 fish pots	\$62.00
For up to 100 eel pots	\$19.00
For over 100 but not more than 300 eel pots	\$24.00
For over 300 eel pots	\$62.00
<u>For each person electrofishing catfish</u>	<u>\$100.00</u>
<b>10. MENHADEN HARVESTING LICENSES</b> Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	\$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	\$996.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	\$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	\$996.00
<b>11. COMMERCIAL GEAR FOR RECREATIONAL USE</b>	
Up to five crab pots with a terrapin excluder device	\$36.00
Up to five crab pots without a terrapin excluder device	\$46.00
Crab trotline (300 feet maximum)	\$10.00
One crab trap or crab pound	\$6.00
One gill net up to 300 feet in length	\$9.00
Fish dip net	\$7.00
Fish cast net	\$10.00
Up to two eel pots	\$10.00

<b>12. SALTWATER RECREATIONAL FISHING LICENSE</b>	
Individual, resident	\$17.50
Individual, nonresident	\$25.00
Temporary 10-Day, resident	\$10.00
Temporary 10-Day, nonresident	\$10.00
Recreational boat, resident	\$48.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	\$76.00
Head Boat/Charter Boat, resident, six or less passengers	\$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	\$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person, over six persons	\$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person, over six persons	\$380.00
Rental Boat, resident, per boat, with maximum fee of \$703	\$14.00
Rental Boat, nonresident, per boat, with maximum fee of \$1270	\$18.00
Commercial Fishing Pier (Optional)	\$632.00
Disabled Resident Lifetime Saltwater License	\$10.00
Disabled Nonresident Lifetime Saltwater License	\$10.00
Reissuance of Saltwater Recreational Boat License	\$5.00
<b>13. COMBINED SPORTFISHING LICENSE</b>	
This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
Residents	\$39.50
Nonresidents	\$71.00
<b>14. COMBINED SPORTFISHING TRIP LICENSE</b>	
This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
Residents	\$24.00
Nonresidents	\$31.00
<b>15. TIDAL BOAT SPORTFISHING LICENSE</b>	
Residents	\$126.00
Nonresidents	\$201.00
<b>16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES</b>	
Individual Resident Lifetime License	\$276.00
Individual Nonresident Lifetime License	\$500.00
Individual Resident Lifetime License age 45 - 50	\$132.00

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Individual Nonresident Lifetime License age 45 - 50	\$240.00
Individual Resident Lifetime License age 51 - 55	\$99.00
Individual Nonresident Lifetime License 51 - 55	\$180.00
Individual Resident Lifetime License age 56 - 60	\$66.00
Individual Nonresident Lifetime License age 56 - 60	\$120.00
Individual Resident Lifetime License age 61 - 64	\$35.00
Individual Nonresident Lifetime License age 61 - 64	\$60.00
Individual Resident Lifetime License age 65 and older	\$5.00

VA.R. Doc. No. R20-6465; Filed July 28, 2020, 1:19 p.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### 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 Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-335, 12VAC30-50-345).

**Statutory Authority:** § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

**Effective Date:** September 16, 2020.

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

**Summary:**

*The amendments conform the Programs of All-Inclusive Care for the Elderly (PACE) regulations to federal regulations, including (i) changing the description of the required "quality management and performance" program to be a "quality improvement" program; (ii) allowing either the Medicaid capitation rate or the Medicaid payment rate methodology to be included in program*

*agreement between the Department of Medical Assistance Services and the Centers for Medicare and Medicaid Services (CMS); (iii) requiring PACE providers to retain business and professional records for at least 10 years; (iv) requiring PACE providers planning a change of ownership to notify CMS and the department in writing at least 60 days before the anticipated effective date of the change; and (v) allowing the participant to disenroll from the PACE program at any time and have such disenrollment be effective on the first day of the month following the date the provider organization receives the participant's notice of voluntary disenrollment.*

#### 12VAC30-50-335. General PACE plan requirements.

A. DMAS, the state agency responsible for administering Virginia's Medicaid program, shall only enter into PACE plan contracts with approved PACE plan providers. The PACE provider must have an agreement with CMS and DMAS for the operation of a PACE program. The agreement must include:

1. Designation of the program's service area;
2. The program's commitment to meet all applicable federal, state, and local requirements;
3. The effective date and term of the agreement;
4. The description of the organizational structure;
5. Participant bill of rights;
6. Description of grievance and appeals processes;
7. Policies on eligibility, enrollment, and disenrollment;
8. Description of services available;
9. Description of the organization's quality management and performance improvement program;
10. A statement of levels of performance required on standard quality measures;
11. CMS and DMAS data requirements;

12. The Medicaid capitation rate or Medicaid payment rate methodology and the methodology used to calculate the Medicare capitation rate;

13. Procedures for program termination; and

14. A statement to hold harmless CMS, the state, and PACE participants if the PACE organization does not pay for services performed by the provider in accordance with the contract.

B. A PACE plan feasibility study shall be performed before DMAS enters into any PACE plan contract. DMAS shall contract only with those entities it determines to have the ability and resources to effectively operate a PACE plan. A feasibility plan shall only be submitted in response to a Request for Applications published by DMAS.

C. PACE plans shall offer a voluntary comprehensive alternative to enrollees who would otherwise be placed in a nursing facility. PACE plan services shall be comprehensive and offered as an alternative to nursing facility admission.

D. All Medicaid-enrolled PACE participants shall continue to meet the nonfinancial and financial Medicaid eligibility criteria established by federal law and ~~these regulations~~ this chapter. This requirement shall not apply to Medicare only or private pay PACE participants.

E. Each PACE provider shall operate a PACE site that is in continuous compliance with all state licensure requirements for that site.

F. Each PACE provider shall ensure that services are provided by health care providers and institutions that are in continuous compliance with state licensure and certification requirements.

G. Each PACE plan shall meet the requirements of §§ 32.1-330.2 and 32.1-330.3 of the Code of Virginia and 42 CFR Part 460.

H. All PACE providers must meet the general requirements and conditions for participation pursuant to the required contracts by DMAS and CMS. All providers must sign the appropriate participation agreement. All providers must adhere to the conditions of participation outlined in the participation agreement and application to provide PACE services, DMAS regulations, policies and procedures, and CMS requirements pursuant to 42 CFR Part 460.

I. Requests for participation as a PACE provider will be screened by DMAS to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, the following activities:

1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the ~~service or~~ services required and participating in the Medicaid Program at the time the ~~service or~~ services are performed.

3. Assure the individual's freedom to refuse medical care, treatment, and services.

4. Accept referrals for services only when qualified staff is available to initiate and perform such services on an ongoing basis.

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, sexual orientation, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as is provided to the general public.

7. Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms.

8. Not perform any type of direct marketing activities to Medicaid individuals.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for at least ~~six~~ 10 years from the last date of ~~service~~ services or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. However, records for Medicare Part D shall be maintained for 10 years in accordance with 42 CFR 423.505(d).

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures

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for obtaining records for review. The location, agent, or trustee shall be within the Commonwealth.

10. Furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement.

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals of Medicaid.

12. Pursuant to 42 CFR 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in ~~his~~ the provider's possession only when the information is used in conjunction with a claim for health benefits, or the data are necessary for the functioning of DMAS in conjunction with the cited laws.

13. CMS and DMAS shall be notified in writing of any change in the organizational structure of a PACE provider organization at least 14 calendar days before the change takes effect. When planning a change of ownership, CMS and DMAS shall be notified in writing at least 60 calendar days before the anticipated effective date of the change.

14. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both.

15. Minimum qualifications of staff.

a. All employees must have a satisfactory work record as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of vulnerable adults and children. Prior to the beginning of employment, a criminal record check shall be conducted for the provider and each employee and made available for review by DMAS staff. Providers are responsible for complying with the Code of Virginia and state regulations regarding criminal record checks and barrier crimes as they pertain to the licensure and program requirements of their employees' particular practice areas.

b. Staff must meet any certifications, licensure, registration, etc., as required by applicable federal and state law. Staff qualifications must be documented and maintained for review by DMAS or its authorized contractors.

16. At the time of their admission to services, all providers participating in the Medicare and Medicaid programs must provide adult individuals with written information regarding each individual's right to make medical care decisions, including the right to accept or refuse medical treatment and the right to formulate advance directives.

J. Provider's conviction of a felony. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

K. Ongoing quality management review. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide PACE services.

L. Reporting suspected abuse or neglect. Pursuant to §§ 63.2-1508 through 63.2-1513 and 63.2-1606 of the Code of Virginia, if a participating provider entity suspects that a child or vulnerable adult is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to DSS and to DMAS. In addition, as mandated reporters for vulnerable adults, participating providers must inform their staff that they are mandated reporters and provide education regarding how to report suspected adult abuse, neglect, or exploitation pursuant to § 63.2-1606 F of the Code of Virginia.

M. Documentation requirements. The provider must maintain all records of each individual receiving services. All documentation in the individual's record must be completely signed and dated with name of the person providing the service, title, and complete date with month, day, and year. This documentation shall contain, up to and including the last date of service, all of the following:

1. The most recently updated Virginia Uniform Assessment Instrument (UAI), all other assessments and reassessments, plans of care, supporting documentation, and documentation of any inpatient hospital admissions;

2. All correspondence and related communication with the individual and, as appropriate, consultants, providers, DMAS, DSS, or other related parties; and
3. Documentation of the date services were rendered and the amount and type of services rendered.

**12VAC30-50-345. PACE enrollee rights.**

A. PACE providers shall ensure that enrollees are fully informed of their rights and responsibilities in accordance with all state and federal requirements. These rights and responsibilities shall include, ~~but not be limited to:~~

1. The right to be fully informed at the time of enrollment that PACE plan enrollment can only be guaranteed for a 30-day period pursuant to § 32.1-330.3 F of the Code of Virginia;
2. The right to receive PACE plan services directly from the provider or under arrangements made by the provider; and
3. The right to be fully informed in writing of any action to be taken affecting the receipt of PACE plan services.

B. PACE providers shall notify enrollees of the full scope of services available under a PACE plan, as described in 42 CFR 460.92. The services shall include, ~~but not be limited to:~~

1. Medical services, including the services of a PCP and other specialists;
2. Transportation services;
3. Outpatient rehabilitation services, including physical, occupational, and speech therapy services;
4. Hospital (acute care) services;
5. Nursing facility (long-term care) services;
6. Prescription drugs;
7. Home health services;
8. Laboratory services;
9. Radiology services;
10. Ambulatory surgery services;
11. Respite care services;
12. Personal care services;
13. Dental services;
14. Adult day health care services, to include social work services;
15. Interdisciplinary case management services;
16. Outpatient mental health and ~~mental-retardation~~ intellectual disability services;

17. Outpatient psychological services;
18. Prosthetics; and
19. Durable medical equipment and other medical supplies.

C. Services available under a PACE plan shall not include any of the following:

1. Any service not authorized by the interdisciplinary team unless such service is an emergency service (i.e., a service provided in the event of a situation of a serious or urgent nature that endangers the health, safety, or welfare of an individual and demands immediate action);
2. In an inpatient facility, private room and private duty nursing services unless medically necessary, and nonmedical items for personal convenience such as telephones charges and radio or television rental, unless specifically authorized by the interdisciplinary team as part of the participant's plan of care;
3. Cosmetic surgery except as described in agency guidance documents;
4. Any experimental medical, surgical, or other health procedure; and
5. Any other service excluded under 42 CFR 460.96.

D. PACE providers shall ensure that PACE plan services are at least as accessible to enrollees as they are to other Medicaid-eligible individuals residing in the applicable catchment area.

E. PACE providers shall provide enrollees with access to services authorized by the interdisciplinary team 24 hours per day every day of the year.

F. PACE providers shall provide enrollees with all information necessary to facilitate easy access to services.

G. PACE providers shall provide enrollees with identification documents approved by DMAS. PACE plan identification documents shall give notice to others of enrollees' coverage under PACE plans.

H. PACE providers shall clearly and fully inform ~~enrollees~~ each enrollee of their that enrollee's right to disenroll at will upon giving 30 days' notice any time and have such disenrollment be effective the first day of the month following the date the PACE organization receives the enrollee's notice of voluntary disenrollment.

I. PACE providers shall make available to enrollees a mechanism whereby disputes relating to enrollment and services can be considered. This mechanism shall be one that is approved by DMAS.

J. PACE providers shall fully inform enrollees of the individual provider's policies regarding accessing care generally and, in particular, accessing urgent or emergency care both within and without the catchment area.

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K. PACE providers shall maintain the confidentiality of enrollees and the services provided to them.

VA.R. Doc. No. R20-6290; Filed July 16, 2020, 10:56 a.m.

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## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Housing and Community Development is claiming an exemption from Article 2 of the Administrative Process Act pursuant to § 2.2-4006 A 12 of the Code of Virginia, which excludes regulations adopted by the Board of Housing and Community Development pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq.), the Industrialized Building Safety Law (§ 36-70 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and § 36-98.3 of the Code of Virginia, provided the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (iii) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. The Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-540).

**Statutory Authority:** § 36-98 of the Code of Virginia.

**Effective Date:** September 17, 2020.

**Agency Contact:** Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

**Summary:**

*The amendment lowers the required cooling temperature as provided in the USBC to 77° Fahrenheit, making permanent an emergency regulation currently in effect.*

**13VAC5-63-540. Chapter 6 Mechanical and electrical requirements.**

A. Delete the following sections from Chapter 6 of the IPMC:

1. Section 601.2 Responsibility.

2. Section 603.6 Energy conservation devices.

3. Section 604.2 Service.

4. Section 604.3.2 Abatement of electrical hazards associated with fire exposure.

B. Change the following sections in Chapter 6 of the IPMC to read:

1. Section 601.1 General. The provisions of this chapter shall govern the maintenance of mechanical and electrical facilities and equipment.

2. Section 602 Heating and cooling facilities.

3. Section 602.2 Heat supply. Every owner and operator of a Group R-2 apartment building or other residential building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory, or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 15 to May 1 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the IPC.

4. Section 602.3 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 15 to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage, and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

5. Section 602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases, or lets one or more dwelling units, rooming units, or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than ~~80°F (27°C)~~ 77°F

(25°C) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.

6. Section 603.1 Mechanical equipment and appliances. Required or provided mechanical equipment, appliances, fireplaces, solid fuel-burning appliances, cooking appliances, chimneys, vents, and water heating appliances shall be maintained in compliance with the code under which the appliances, system, or equipment was installed, kept in safe working condition, and capable of performing the intended function.

7. Section 603.2 Removal of combustion products. Where required by the code under which installed, fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

8. Section 603.5 Combustion air. Where required by the code under which installed, a supply of air for complete combustion of the fuel shall be provided for the fuel-burning equipment.

9. Section 604.1 Electrical system. Required or provided electrical systems and facilities shall be maintained in accordance with the applicable building code.

10. Section 604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

11. Section 604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low-voltage fuses, luminaires, ballasts, motors, and electronic control, signaling, and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the VCC.

Exception: The following equipment shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer, an approved representative of the equipment manufacturer, a third party licensed or certified

electrician, or an electrical engineer indicates that the exposed equipment has not sustained damage that requires replacement:

1. Enclosed switches, rated 600 volts or less;
2. Busway, rated 600 volts or less;
3. Panelboards, rated 600 volts or less;
4. Switchboards, rated 600 volts or less;
5. Fire pump controllers, rated 600 volts or less;
6. Manual and magnetic motor controllers;
7. Motor control centers;
8. Alternating current high-voltage circuit breakers;
9. Low-voltage power circuit breakers;
10. Protective relays, meters, and current transformers;
11. Low-voltage and medium-voltage switchgear;
12. Liquid-filled transformers;
13. Cast-resin transformers;
14. Wire or cable that is suitable for wet locations and whose ends have not been exposed to water;
15. Wire or cable, not containing fillers, that is suitable for wet locations and whose ends have not been exposed to water;
16. Luminaires that are listed as submersible;
17. Motors; or
18. Electronic control, signaling, and communication equipment.

12. 604.3.2.1 Electrical equipment. Electrical switches, receptacles and fixtures, including furnace, water heating, security system and power distribution circuits, that have been exposed to fire shall be replaced in accordance with the provisions of the Virginia Construction Code.

Exception: Electrical switches, receptacles and fixtures that shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer or an approved representative of the equipment manufacturer, a third party licensed or certified electrician, or an electrical engineer indicates that the equipment has not sustained damage that requires replacement.

13. Section 605.1 Electrical components. Electrical equipment, wiring, and appliances shall be maintained in accordance with the applicable building code.

14. Section 605.2 Power distribution and receptacles. Required or provided power circuits and receptacles shall be maintained in accordance with the applicable building code, and ground fault and arc-fault circuit interrupter

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protection shall be provided where required by the applicable building code. All receptacle outlets shall have the appropriate faceplate cover for the location when required by the applicable building code.

15. Section 605.3 Lighting distribution and luminaires. Required or provided lighting circuits and luminaires shall be maintained in accordance with the applicable building code.

16. Section 605.4 Flexible cords. Flexible cords shall not be run through doors, windows, or cabinets or concealed within walls, floors, or ceilings.

17. Section 606.1 General. Elevators, dumbwaiters, and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator, or be posted in a publicly conspicuous location approved by the code official. Where not displayed in the elevator or attached on the escalator or dumbwaiter, there shall be a notice of where the certificate of inspection is available for inspection. An annual periodic inspection and test is required of elevators and escalators. A locality shall be permitted to require a six-month periodic inspection and test. All periodic inspections shall be performed in accordance with Section 8.11 of ASME A17.1. The code official may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership, or corporation who has met the certification requirements established by the VCS.

C. Add the following sections to Chapter 6 of the IPCM:

1. Section 602.2.1 Prohibited use. In dwelling units subject to Section 602.2, one or more unvented room heaters shall not be used as the sole source of comfort heat in a dwelling unit.

2. Section 607.2 Clothes dryer exhaust duct. Required or provided clothes dryer exhaust systems shall be maintained in accordance with the applicable building code.

VA.R. Doc. No. R20-6189; Filed July 15, 2020, 3:57 p.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Emergency Regulation

**Title of Regulation: 16VAC25-220. Emergency Temporary Standard - Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19 (adding 16VAC25-220-10 through 16VAC25-220-90).**

**Statutory Authority:** §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

**Effective Date:** July 27, 2020.

**Agency Contact:** Princy Doss, Director of Policy, Planning, and Public Information, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, or email [princy.doss@doli.virginia.gov](mailto:princy.doss@doli.virginia.gov).

**Preamble:**

*Pursuant to subdivision (6a) of § 40.1-22 of the Code of Virginia, the Safety and Health Codes Board may adopt an emergency temporary standard to take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia, if the board determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from such danger.*

*On July 15, 2020, the Safety and Health Codes Board adopted an Emergency Temporary Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (16VAC25-220) pursuant to Executive Order 63, Order of Public Health Emergency Five, Requirement to Wear Face Covering While Inside Buildings. The emergency temporary standard is effective July 27, 2020, upon publication in the Richmond Times Dispatch. The emergency temporary standard establishes requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, thereby protecting employees and the general public. SARS-CoV-2 is the virus that causes coronavirus disease 2019 (COVID-19).*

**CHAPTER 220**  
**EMERGENCY TEMPORARY STANDARD -**  
**INFECTIOUS DISEASE PREVENTION, SARS-COV-2**  
**VIRUS THAT CAUSES COVID-19**

**16VAC25-220-10. Purpose, scope, and applicability.**

**A. This emergency temporary standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.**

**B. This standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and 16VAC25-60-170.**

**C. This standard is adopted in accordance with subdivision 6 a of § 40.1-22 of the Code of Virginia and shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the**

VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

D. This standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous chemicals in laboratories, hazard communication, § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding 8 hours per day); and

b. The type of hazards encountered, including potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances and exits to the facility; shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

F. This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency.

G. 1. To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

2. A public or private institution of higher education that has received certification from the State Council of Higher Education for Virginia that the institution's re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard. A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

## **16VAC25-220-20. Effective and expiration dates.**

This emergency temporary standard shall take immediate effect July 27, 2020, upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia.

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With the exception of 16VAC25-220-80 B 10 regarding training required on infectious disease preparedness and response plans, the training requirements in 16VAC25-220-80 shall take effect on August 26, 2020. The training requirements under 16VAC25-220-80 B 10 shall take effect on September 25, 2020.

The requirements for 16VAC25-220-70 shall take effect on September 25, 2020.

This emergency temporary standard shall expire (i) within six months of its effective date, upon expiration of the Governor's State of Emergency, or when superseded by a permanent standard, whichever occurs first or (ii) when repealed by the Virginia Safety and Health Codes Board.

## **16VAC25-220-30. Definitions.**

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

"Administrative control" means any procedure that significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

"Airborne infection isolation room" or "AIIR" formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide (i) negative pressure in the room so that air flows under the door gap into the room, (ii) an air flow rate of 6-12 air changes per hour (ACH) (6 ACH for existing structures, 12 ACH for new construction or renovation), and (iii) direct exhaust of air from the room to the outside of the building or recirculation of air through a High Efficiency Particulate Air (HEPA) filter before returning to circulation.

"Asymptomatic" means a person who does not have symptoms.

"Building or facility owner" means the legal entity, including a lessee, that exercises control over management and record keeping functions relating to a building or facility in which activities covered by this standard take place.

"CDC" means Centers for Disease Control and Prevention.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore any risk of spreading infection.

"Community transmission," also called "community spread," means people have been infected with SARS-CoV-2 in an area, including some who are not sure how or where they became infected. The level of community transmission is classified by the CDC as:

1. "No to minimal" where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facilities, schools, mass gatherings, etc.);

2. "Moderate" where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases;

3. "Substantial, controlled" where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.); or

4. "Substantial, uncontrolled" where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

"COVID-19" means Coronavirus Disease 2019, which is primarily a respiratory disease, caused by the SARS-CoV-2 virus.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard. The cost of corrective measures to be taken will not usually be considered as a

factor in determining whether a violation of this standard has occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not be accepted.

"Elimination" means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Exposure risk level" means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location. Hazards and job tasks have been divided into four risk exposure levels: very high, high, medium, and lower:

"Very high" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or persons known or suspected to be infected with the SARS-CoV-2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a patient or person known or suspected to be infected with the SARS-CoV-2 virus;
2. Collecting or handling specimens from a patient or person known or suspected to be infected with the SARS-CoV-2 virus (e.g., manipulating cultures from patients known or suspected to be infected with the SARS-CoV-2 virus); and
3. Performing an autopsy that involves aerosol-generating procedures on the body of a person known or suspected to

be infected with the SARS-CoV-2 virus at the time of their death.

"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or with persons known or suspected to be infected with the SARS-CoV-2 virus that are not otherwise classified as very high exposure risk, including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a patient known or suspected to be infected with the SARS-CoV-2 virus, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, contact tracer services, and chiropractic services;
3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus;
4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV-2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.); and
5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to be infected with the SARS-CoV-2 virus. Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings;

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restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming, salon, and spa settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, and medical outreach services; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders services provided by police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls, such as, but not limited to

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);

2. Telecommuting;

3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;

4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and

5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. However, when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.

"Face covering" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth). A face covering is not intended to protect the wearer, but it may reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

"Face shield" means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of the face from droplets or splashes.

"Feasible" as used in this standard includes both technical and economic feasibility.

"Filtering facepiece respirator" means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

"Hand sanitizer" means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard.

"HIPAA" means Health Insurance Portability and Accountability Act.

"Known to be infected with the SARS-CoV-2 virus" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.

"May be infected with SARS-CoV-2 virus" means any person not currently a person known or suspected to be infected with SARS-CoV-2 virus and not currently vaccinated against the SARS-CoV-2 virus.

"Occupational exposure" means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.

"Physical distancing" also called "social distancing" means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.

"Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tight-fitting, which means either a half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

1. Air-purifying, which remove contaminants from the air; and
2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this standard or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means a betacoronavirus, like MERS-CoV and SARS-CoV. Coronaviruses are named for the crown-like spikes on their surfaces. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).

"Signs of COVID-19" include trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake, bluish lips or face, etc.

"Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion.

A surgical/medical procedure mask protects others from the wearer's respiratory emissions. A surgical/medical procedure mask has a loose fitting face seal. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).

"Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

"Symptomatic" means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in two to 14 days after exposure to the virus.

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more requirements in this standard with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's industry, allegations of technical infeasibility will not be accepted.

"VOSH" means Virginia Occupational Safety and Health.

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

## **16VAC25-220-40. Mandatory requirements for all employers.**

A. Employers in all exposure risk levels shall ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease.

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall

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classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs of an oncoming illness.

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. Serological testing has not been determined if persons who have the antibodies are immune from infection.

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

4. Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as "suspected to be infected with SARS-CoV-2 virus."

5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section). Nothing in this standard shall prohibit an employer from permitting an employee known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

7. Employers shall discuss with subcontractors and companies that provide contract or temporary employees about the importance of employees or other persons who are known or suspected to be infected with the SARS-

CoV-2 virus of staying home. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their known or suspected to be infected with the SARS-CoV-2 virus employees to report to or be allowed to remain at work or on a job site until cleared for return to work.

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test, and the employer shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure, while keeping confidential the identity of the known to be infected with SARS-CoV-2 virus person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

b. In the same manner as subdivision 8 a of this subsection, other employers whose employees were present at the work site during the same time period; and

c. In the same manner as subdivision 8 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, the building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

d. The Virginia Department of Health within 24 hours of the discovery of a positive case; and

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

9. Employers shall ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance

with the standard applicable to its industry. Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees access to the employees' own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

## C. Return to work.

1. The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work using either a symptom-based or test-based strategy, depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in subdivision 1 a of this subsection will constitute compliance with the requirements of this subsection.

a. For known or suspected to be infected with the SARS-CoV-2 virus employees the symptom-based strategy excludes an employee from returning to work until (i) at least three days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath) and (ii) at least 10 days have passed since symptoms first appeared.

b. The test-based strategy excludes an employee from returning to work until (i) resolution of fever without the use of fever-reducing medications, (ii) improvement in respiratory symptoms (e.g., cough, shortness of breath), and (iii) negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).

i. If a known or suspected to be infected with the SARS-CoV-2 virus employee refuses to be tested, the employer compliance with subdivision 1 a of this subsection, symptom-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known or suspected to be infected with the SARS-CoV-2 virus employee to be tested in accordance with subdivision 1 b of this subsection.

ii. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

2. The employer shall develop and implement policies and procedures for known to be infected with SARS-CoV-2

asymptomatic employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time based strategy requirements in subdivision 2 a of this subsection will constitute compliance with the requirements of this subsection.

a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of the employee's first positive COVID-19 diagnostic test assuming the employee has not subsequently developed symptoms since the employee's positive test. If the employee develops symptoms, then the symptom-based or test-based strategy shall be used.

b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).

i. If a known to be infected with SARS-CoV-2 asymptomatic employee refuses to be tested, employer compliance with subdivision 2 a of this subsection, time-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known to be infected with SARS-CoV-2 asymptomatic employee to be tested in accordance with subdivision 2 b of this subsection.

ii. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return to work determinations.

D. Unless otherwise provided in this standard, employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures that:

1. Use verbal announcements, signage, or visual cues to promote physical distancing.

2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.

3. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements in this subsection.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.

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1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc., with controlled access, provided the following conditions are met:

a. At the entrance of the designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and requirements for physical distancing, hand washing and hand sanitizing, and cleaning and disinfecting of shared surfaces.

b. The employer shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit.

c. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or the employer may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.

F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

G. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

H. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.

I. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition; however, nothing in this standard shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.

J. Requests to the Department for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department consultation with the Office of the Attorney General.

## K. Sanitation and disinfecting.

1. In addition to the requirements contained in this standard, employers shall comply with the VOSH sanitation standard applicable to its industry.

2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

3. In addition to the requirements contained in this standard, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers.

4. Areas in the place of employment where known or suspected to be infected with the SARS-CoV-2 virus employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

6. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2.

7. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).

8. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside six feet with other persons shall be provided with hand sanitizer where feasible at the employees work

station. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

9. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, the employer shall ensure that protective measures are put in place to prevent cross-contamination.

L. Unless otherwise provided in this standard, when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

**16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk.**

A. The requirements in this section for employers with hazards or job tasks classified as very high or high exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

B. Engineering controls.

1. Employers shall ensure that appropriate air-handling systems:

a. Are installed and maintained in accordance with manufacturer's instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus; and

b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.

2. For employers not covered by subdivision 1 of this subsection, ensure that air-handling systems where

installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

a. Are maintained in accordance with the manufacturer's instructions; and

b. Comply with subdivision 1 b of this subsection.

3. Hospitalized patients with known or suspected to be infected with the SARS-CoV-2 virus, where feasible and available, shall be placed in an airborne infection isolation room (AIIR).

4. Employers shall use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.

5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected to be infected with the SARS-CoV-2 virus persons at the time of their death.

6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 "Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from known or suspected to be infected with the SARS-CoV-2 virus patients or persons.

7. To the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.

C. Administrative and work practice controls.

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

2. In healthcare facilities, an employer shall follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.

3. An employer shall limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

4. An employer shall post signs requesting patients and family members to immediately report symptoms of

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respiratory illness on arrival at the healthcare facility and use disposable face coverings.

5. An employer shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

6. An employer shall provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine and refresher training in accordance with 16VAC25-220-80.

7. To the extent feasible, an employer shall ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.

8. In health care settings, an employer shall provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol to employees at fixed work sites and to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.

9. Provide face coverings to suspected to be infected with SARS-CoV-2 virus non-employees to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

10. Where feasible, employers shall:

a. Implement flexible worksites (e.g., telework).

b. Implement flexible work hours (e.g., staggered shifts).

c. Increase physical distancing between employees at the worksite to six feet.

d. Increase physical distancing between employees and other persons to six feet.

e. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.).

f. Deliver services remotely (e.g. phone, video, internet, etc.).

g. Deliver products through curbside pick-up.

## D. Personal protective equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease hazard assessment and personal protective equipment selection:

a. The employer shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). The employer shall provide for employee and

employee representative involvement in the assessment process.

b. If such hazards or job tasks are present or likely to be present, the employer shall:

(1) Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

(2) Communicate selection decisions to each affected employee; and

(3) Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. The employer shall implement a respiratory protection program in accordance with 16VAC25-90-1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), that covers each employee required to use a respirator.

5. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of patients or other persons known to be or suspected of being infected with SARS-CoV-2. Where indicated by the hazard assessment and equipment selection requirements in subsection D of this section, such employees shall also be provided with and wear a surgical/medical procedure mask. Gowns shall be large enough to cover the areas requiring protection.

E. Employee training shall be provided in accordance with the requirements of 16VAC25-220-80 of this standard.

## **16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk.**

A. The requirements in this section for employers with hazards or job tasks classified as medium exposure risk apply

in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

## B. Engineering controls.

1. Employers shall ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace and:

- a. Are maintained in accordance with the manufacturer's instructions; and
- b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.

## C. Administrative and work practice controls.

1. To the extent feasible, employers shall implement the following administrative and work practice controls:

- a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.
- b. Provide face coverings to suspected to be infected with SARS-CoV-2 non-employees to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).
- c. Implement flexible worksites (e.g., telework).
- d. Implement flexible work hours (e.g., staggered shifts).
- e. Increase physical distancing between employees at the worksite to six feet.
- f. Increase physical distancing between employees and other persons, including customers to six feet (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.
- g. To the extent feasible, install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.
- h. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in

person meetings; postponing non-essential travel or events; etc.).

i. Deliver services remotely (e.g. phone, video, internet, etc.).

j. Deliver products through curbside pick-up or delivery.

k. Require employers to provide and employees to wear face coverings who, because of job tasks cannot feasibly practice physical distancing from another employee or other person if the hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.

l. Require employers to provide and employees in customer facing jobs to wear face coverings.

## D. Personal protective equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910) shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment and personal protective equipment selection:

a. The employer shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). The employer shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, the employer shall:

i. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

ii. Communicate selection decisions to each affected employee; and

iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or

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16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

## **16VAC25-220-70. Infectious disease preparedness and response plan.**

A. Employers with hazards or job tasks classified as:

1. Very high and high shall develop and implement a written Infectious Disease Preparedness and Response Plan;

2. Medium with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

B. The plan and training requirements tied to the plan shall only apply to those employees classified as very high, high, and medium covered by this section.

C. Employers shall designate a person to be responsible for implementing their plan. The plan shall:

1. Identify the name or title of the person responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as the principles and practices apply to the facility, service, or operation.

2. Provide for employee involvement in development and implementation of the plan.

3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, and job tasks employees perform at those sites. Such considerations shall include:

a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

i. The general public, customers, other employees, patients, and other persons;

ii. Known or suspected to be infected with the SARS-CoV-2 virus persons or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission and healthcare employees who have had unprotected exposures to known or suspected to be infected with SARS-CoV-2 virus persons); and

iii. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a very high, high, or medium level of exposure risk.

b. To the extent permitted by law, including HIPAA, employees' individual risk factors. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index or BMI of 40 or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; or type 2 diabetes mellitus. Also, for example, people with one or more of the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); cerebrovascular disease (affects blood vessels and blood supply to the brain); cystic fibrosis; hypertension or high blood pressure; immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissues); smoking; thalassemia (a type of blood disorder); type 1 diabetes mellitus; etc.

c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.

4. Consider contingency plans for situations that may arise as a result of outbreaks, such as:

a. Increased rates of employee absenteeism;

b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment, e.g., respirators, surgical/medical procedure masks, etc.

c. Options for conducting essential operations with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and

d. Interrupted supply chains or delayed deliveries.

5. Identify basic infection prevention measures to be implemented:

a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of

employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

c. Establish policies and procedures for managing and educating visitors to the place of employment.

6. Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors who enter the place of employment, businesses that provide or contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this standard and the employer's plan.

8. Identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard, as provided for in 16VAC25-220-10 G 1 and G 2.

9. Ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease.

## **16VAC25-220-80. Training.**

A. Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to all employees working at the place of employment regardless of employee risk classification. The training program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and signs and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.

B. The training required under subsection A shall include:

1. The requirements of this standard;

2. The mandatory and non-mandatory recommendations in any CDC guidelines or State of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard as provided for in section 16VAC25-220-10 G 1 and G 2;

3. The characteristics and methods of transmission of the SARS-CoV-2 virus;

4. The signs and symptoms of the COVID-19 disease;

5. Risk factors of severe COVID-19 illness with underlying health conditions;

6. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;

7. Safe and healthy work practices, including but not limited to, physical distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;

8. PPE:

a. When PPE is required;

b. What PPE is required;

c. How to properly don, doff, adjust, and wear PPE;

d. The limitations of PPE;

e. The proper care, maintenance, useful life, and disposal of PPE; and

f. Heat-related illness prevention including the signs and symptoms of heat-related illness;

9. The anti-discrimination provisions in 16VAC25-220-90; and

10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels. The written certification record shall contain the name or other unique identifier of the employee trained, the trained employee's physical or electronic signature, the date of the training, and the name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials. If the employer relies on training conducted by another employer or completed prior to the effective date of this standard, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training

D. The latest training certification shall be maintained.

E. When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by 16VAC25-220-80 A, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

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1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;

2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or

3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

F. Employers with hazards or job tasks classified at lower risk shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in subsection G, which an employer may utilize to comply with this subsection.

G. The information required under subsection F shall include at a minimum:

1. The requirements of this standard;

2. The characteristics and methods of transmission of the SARS-CoV-2 virus;

3. The symptoms of the COVID-19 disease;

4. The ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;

5. Safe and healthy work practices and control measures, including but not limited to, physical distancing, sanitation and disinfection practices; and

6. The anti-discrimination provisions of this standard in 16VAC25-220-90.

**16VAC25-220-90. Discrimination against an employee for exercising rights under this standard is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including but not limited to a respirator, face shield, or gloves, or face covering if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent,

other employees, a government agency, or to the public such as through print, online, social, or any other media.

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location that the employee feels is unsafe. 16VAC25-60-110 contains the requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.

DOCUMENTS INCORPORATED BY REFERENCE  
(16VAC25-220)

[List N Products with Emerging Viral Pathogens and Human Coronavirus claims for use against SARS-CoV-2, U.S. Environmental Protection Agency, Date Accessed July 20, 2020](#)

[Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, HHS Publication No. \(CDC\) 21-112, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health Revised December 2009](#)

VA.R. Doc. No. R20-6457; Filed July 24, 2020, 2:04 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board for Contractors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board for Contractors will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-260).

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

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

**Agency Contact:** Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

**Summary:**

*As mandated in Chapter 685 of the 2020 Acts of Assembly, the amendment requires a licensed contractor to*

*appropriately classify a worker as an employee or as an independent contractor and makes failure to do so a violation of the regulation.*

## **18VAC50-22-260. Filing of charges; prohibited acts.**

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
5. Negligence or incompetence in the practice of contracting or residential building energy analyses.
6. Misconduct in the practice of contracting or residential building energy analyses.
7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.
8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.
9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a

written contract that contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating timeframes for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
  - h. Contractor's name, address, license number, class of license, and classifications or specialty services;
  - i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and
  - j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.
10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.
11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including the contract and any addenda or change orders.
12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

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13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a

Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.

35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, Virginia Department of Health, or Virginia Department of Forensic Science.

37. Failure of a contractor to appropriately classify all workers as employees or as independent contractors as provided by law.

VA.R. Doc. No. R20-6446; Filed July 20, 2020, 10:30 a.m.

**REAL ESTATE BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Real Estate Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-180).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: October 1, 2020.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov).

Summary:

*Pursuant to Chapter 1014 of the 2020 Acts of Assembly, the amendments conform the regulation to statute by requiring that rent or escrow fund advances for lease transactions must be placed in an escrow account by the end of the fifth business banking day following receipt, regardless of when they are received.*

**18VAC135-20-180. Maintenance and management of escrow accounts.**

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55.1-1200 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by the broker or his associates on behalf of his client or any other person shall be deposited

unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks, and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

4. Lease transactions: application deposits. Any application deposit as defined by § 55.1-1200 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or his associates shall be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in

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## Regulations

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escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed upon principal as provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section; or (iv) the broker releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the earnest money deposit. At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (i) hand delivery; (ii) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies with this section shall be immune from liability to any of the parties to the contract.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia and otherwise comply with the provisions of § 54.1-2108.1 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase

contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from or notice to the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: ~~prepaid~~ rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all ~~prepaid~~ rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, regardless of when received, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except ~~the~~ prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a

licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If there is in effect at the date of the foreclosure sale a written property management agreement between the licensee and the landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing as principal broker to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

VA.R. Doc. No. R20-6458; Filed July 22, 2020, 3:17 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER SIXTY-EIGHT (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY EIGHT

### **Additional Restrictions on the Eastern Region Due to Novel Coronavirus (COVID-19)**

#### Importance of the Issue

On June 30, 2020, Executive Order 67 and Order of Public Health Emergency Seven implemented Phase Three in the Commonwealth of Virginia. The Order continued to ease business, gathering, and traveling restrictions originally imposed by Executive Order 53 and Executive Order 55 issued in March of 2020. For many weeks, Virginia made progress in key measures of disease trends and healthcare capacity. In recent weeks, Virginia has experienced slight increases in case counts, percent test positivity, and hospitalizations. While, generally, our testing has increased, our supply of personal protective equipment is steady, and our hospital bed capacity remains stable, statewide hospitalizations and positive tests have slightly increased.

The slight increase in the statewide trends in percent test positivity and other health indicators is likely heavily driven by the significant recent positive case count increases in the Eastern Region. As of data available on July 27, 2020, test positivity rates in the Cities of Virginia Beach, Chesapeake, Norfolk, Suffolk, Portsmouth, and Hampton range from 9.9% to 18.6%. The Cities of Williamsburg, Newport News, Poquoson, James City County, and York County are experiencing increased test positivity of 8.7% compared to approximately 3.4% one month ago. The test positivity rate for the remainder of Virginia is trending at 6%.

Case counts in these jurisdictions are also steadily increasing. For example, between July 15, 2020, and July 25, 2020, the City of Virginia Beach reported an average of 103 new cases per day. On July 25, 2020, the City of Virginia Beach reported 329 new cases, more than triple the number reported the previous day. On July 25, 2020, the City of Chesapeake reported 126 new cases, the largest number it has ever reported for a single day. Since July 15, 2020, the City of Norfolk reported 919 new cases, averaging 90 cases per day. The Cities of Hampton and Portsmouth also show trends of increasing cases, with the City of Portsmouth reporting 60 new cases on July 25, 2020, its largest daily total to date.

In addition to test positivity and increasing case counts, hospitalizations in these jurisdictions have been steadily increasing for several weeks, including the number of confirmed intensive care unit hospitalizations. Similarly, the number of visits to emergency rooms for COVID-like illness in these jurisdictions has increased steadily for several weeks, a marker of increased disease activity and individuals seeking care.

Moreover, reports from health directors in these jurisdictions show disturbing trends in connection with the increasing number of cases. There is a significant shift to a younger demographic with a marked increase in 20-29-year olds testing positive for COVID-19. Case investigations of positive individuals in those jurisdictions consistently show a pattern of increased socialization with extended (non-household) family and friends, such as birthdays, backyard barbeques and other celebrations, and gatherings amongst friends. Some of these jurisdictions have also noted businesses hosting crowds around bar areas. All case investigations of positive individuals in those jurisdictions involved a lack of social distancing or wearing facial coverings.

Considering this data and the related trends, additional measures are necessary in the affected jurisdictions to protect public health and to reduce the transmission of COVID-19.

#### Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered in the Cities of Virginia Beach, Chesapeake, Norfolk, Suffolk, Portsmouth, Hampton, Williamsburg, Newport News, Poquoson, James City County, and York County (Eastern Region):

1. Additional Restrictions on Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms
  - a. No alcoholic beverage shall be sold, consumed, or possessed on premises after 10 p.m. in any restaurant, dining establishment, food court, brewery, microbrewery, distillery, winery, or tasting room. Alcoholic beverages may be sold via delivery or take-out after 10 p.m., as permitted by existing regulations promulgated by the Virginia Alcoholic Beverage Control Authority and consistent with subparagraph b below.
  - b. All restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms must close no later than 12 a.m.
  - c. Indoor dining in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may not exceed 50% of the lowest occupancy load on the certificate of occupancy.
  - d. All parties, whether seated together or across multiple tables, must be limited to 50 patrons or less.

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms

must otherwise comply with the requirements in Executive Order 67 and Order of Public Health Emergency Seven.

## 2. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 50 individuals are prohibited. A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors. The presence of more than 50 individuals performing functions of their employment is not a "gathering."

This restriction does not apply to the gathering of family members living in the same residence. "Family members" include blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household or visiting such household pursuant to a child custody arrangement or order. Family members are not required to maintain physical distancing while in their homes.

Nothing in this Order is intended to place further restrictions on religious services. As permitted in Executive Order 67 and Order of Public Health Emergency Seven, individuals may continue to attend religious services subject to the following requirements:

- a. Individuals attending religious services must be at least six feet apart when seated and must practice proper physical distancing at all times. Family members may be seated together.
- b. Mark seating and common areas where attendees may congregate in six-foot increments to maintain physical distancing between persons who are not Family members.
- c. Any items used to distribute food or beverages must be disposable, used only once and discarded.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted prior to and following any religious service.
- e. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted to participate in the religious service.
- f. Post signage to provide public health reminders regarding physical distancing, gatherings, options for high risk individuals, and staying home if sick.
- g. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction of 50 individuals or less.

## 3. Enforcement

- a. The Virginia Alcoholic Beverage Control Authority and Virginia Department of Health shall have authority to

enforce paragraph 1 of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia.

- b. Any agency with regulatory authority over a business listed in paragraph 1 may enforce this Order as to that business to the extent permitted by law.

- c. Violations of paragraph 2 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

## 4. Exceptions

Nothing in the Order shall limit: (i) the provision of health care or medical services; (ii) access to essential services for low-income residents, such as food banks; (iii) the operations of the media; (iv) law enforcement agencies; or (v) the operation of government.

## 5. Executive Order 67 and Order of Public Health Emergency Seven

Executive Order 67 and Order of Public Health Emergency Seven is still effective in the Eastern Region to the extent its provisions do not conflict with the provisions in this Order. Where any such conflict exists, this Order controls.

### Effective Date of the Executive Order

This Order shall be effective 12 a.m., July 31, 2020. This Executive Order shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 28th day of July, 2020.

/s/ Ralph S. Northam  
Governor

### EXECUTIVE ORDER NUMBER SIXTY-NINE (2020)

#### **Declaration of a State of Emergency Due to Hurricane Isaias**

### Importance of the Issue

On this date, July 31, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to Hurricane Isaias. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the

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# Governor

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Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

E. Activation of the Virginia National Guard to State Active Duty.

F. Authorization of a maximum of \$1,000,000.00 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$500,000.00 for the Department of Military Affairs, if it is called to State Active Duty.

## Effective Date of this Executive Order

This Executive Order shall be effective July 31, 2020, and shall remain in full force and in effect for thirty days, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 31st day of July, 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.

### BOARD FOR BARBERS AND COSMETOLOGY

Titles of Documents:

[Definition of Clock Hours.](#)

[Non-Traditional or Online Instruction.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

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

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: [Funeral Inspection Report.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

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

### DEPARTMENT OF MOTOR VEHICLES

Titles of Documents:

[Military Guide.](#)

[Virginia Motor Carrier Manual.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 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).

### BOARD OF OPTOMETRY

Title of Document: [Guidance for Telepractice.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

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

### SAFETY AND HEALTH CODES BOARD

Title of Document: [Virginia Occupational Safety and Health Field Operations Manual, Version 3.4.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

Agency Contact: Holly Trice, Attorney, 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).

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Document: [Guidance Document on the Design and Use of Devices to Lower the Reservoir Water Level.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

Agency Contact: Christine Watlington, Policy and Regulatory Coordinator, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, or email [christine.watlington@dcr.virginia.gov](mailto:christine.watlington@dcr.virginia.gov).

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# Guidance Documents

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## BOARD OF VETERINARY MEDICINE

Titles of Documents:

[Frequently Asked Questions - Prescription Monitoring Program.](#)

[Guidance for Telehealth in the Practice of Veterinary Medicine.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: September 17, 2020.

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

## VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: [Managing Leachate in Compliance with the Virginia Solid Waste Management Regulations.](#)

Public Comment Deadline: September 16, 2020.

Effective Date: October 1, 2020.

Agency Contact: Kathryn Perszyk, Solid Waste Permitting Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (703) 583-3856, or email [kathryn.perszyk@deq.virginia.gov](mailto:kathryn.perszyk@deq.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Sycamore Solar I LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) - Pittsylvania County

Sycamore Solar I LLC has withdrawn the notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) pursuant to 9VAC15-60. The original notice of intent was published in the Virginia Register on August 21, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order for Aryan King Inc.

The State Water Control Board proposes to issue a consent special order to Aryan King Inc. for alleged violation of the State Water Control Law at 6021 West Belmont Road, Richmond, VA 23234. 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). Aree Reinhardt will accept comments by email at [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov), or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from August 17, 2020, to September 18, 2020.

### Proposed Consent Order for GET Captive LLC

An enforcement action has been proposed for GET Captive LLC for violations of the State Water Control Law and regulations at the GET Captive LLC, Zion Crossroads Sewage Treatment Plant located in Gordonsville, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the plant. 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 August 18, 2020, through September 17, 2020.

### Proposed Enforcement Action for John C. Holland Enterprises Inc.

Enforcement actions have been proposed for John C. Holland Enterprises Inc. for violations of the State Water Control Law in Suffolk, Virginia. Descriptions of the proposed actions are available at the Department of Environmental Quality office

listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Russell Deppe will accept comments by email at [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from August 17, 2020, to September 15, 2020.

### Proposed Consent Order for the County of Northumberland

The State Water Control Board has proposed enforcement actions for the County of Northumberland for violations at the Reedville Sanitary District and Callao Wastewater Treatment Plants. The board proposes to issue consent orders to address noncompliance with State Water Control Law and regulations. A description of the proposed actions are available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, from August 17, 2020, to September 17, 2020.

### Proposed Enforcement Action for Super Concrete Co. Inc.

An enforcement action has been proposed for Super Concrete Co. Inc. for violations of the State Water Control Law at the Super Concrete facility located in the City of Manassas Park, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <http://www.deq.virginia.gov/Programs/Enforcement/PublicNotices>. Jim Datko will accept comments by email at [james.datko@deq.virginia.gov](mailto:james.datko@deq.virginia.gov), or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 18, 2020, through September 17, 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

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## General Notices/Errata

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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

#### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk.**

Publication: 36:24 VA.R. 2530-2548 July 20, 2020.

Correction to Fast-Track Regulation:

Page 2534, 2VAC5-501-5, subsection B, line 8, after "2VAC5-501-10," change "2VAC5-510-10" to "2VAC5-501-10"

Page 2534, 2VAC5-501-5, subsection C, beginning of line 4, change "2VAC5-510-10" to "2VAC5-501-10"

VA.R. Doc. No. R20-5956; Filed July 30, 2020, 3:09 p.m.