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Virginia Code Commission

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VIRGINIA REGISTER INFORMATION PAGE

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.

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.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:6	October 19, 2020 (Monday)	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 (Monday)	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 (Monday)	January 4, 2021
37:11	December 28, 2020 (Monday)	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.

PETITIONS FOR RULEMAKING

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: 24VAC35-60. Ignition Interlock Regulations.

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment to the specific verbiage within Virginia Administrative Code 24VAC35-60-70, F, 6: 'The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.' With the insertion of the word 'warn,' I request the statute be amended to read: 'The results of the test shall be noted through the use of green, yellow, and red signals, or similar pass/warn/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.' ASAPs can cite an offender with a violation if that offender fails to reach 'zero' BrAC within 15 minutes of a failed IID reading. The problem lies in the fact that, currently, the State and the Interlock companies operate on two separate standards of 'zero.' Most people assume a Virginia ignition interlock prevents a car from starting when alcohol is detected. This is not true. In the small window between .000 and .02, a green light comes on, the IID display reads 'Start Engine,' the car is permitted to start, and the printed datalog reads 'Standing Pass.' The problem is, that without a yellow caution light, <.02, when the green light is displayed and the car starts, the driver can only assume they've reached zero and cleared the violation. No one has any idea they need more blows to reach zero and avoid a violation. This is why the law says 'green, yellow and red,' because without the yellow, the disparity between the two standards of zero leaves open a small 'window of fraud.' This allows an ASAP to claim an accusation of 'At 2:13 p.m. a BAC reading of 0.035 was registered. It was not cleared to zero within 15 minutes.' When, really, at 2:13 p.m. a .035 reading was indeed registered, however at 2:18 p.m. a .016 pass is logged, and a subsequent .012 passing test is recorded before turning off the car. This client and the passenger never saw a yellow light on the Alcolock device. They had no idea they didn't reach zero, and this pending case wasn't filed until almost 6 months after the event. I also experienced yellow light fraud. While 2 months sober, on July 21, 2016, a failed rolling retest with a BrAC of 0.058, plummeted within nine minutes to a passing .019. This could not be ethanol, and is PASSING, yet it was

considered a violation. I coincidentally have a video of the entire event. The green light appearing, the 'Start Car' message, and my confusion as to what was occurring. The yellow caution light is shown and explained in the Alcolock LR Instruction Manual, and the Alcolock training video echoes the same device feature. Depending on your jurisdiction, if your breath sample contains an amount of alcohol over the warning threshold but not enough alcohol to fail a test, the handset will indicate 'Caution' and the indicator light will turn yellow. Please note that if you are aware your alcohol level is rising when you receive a 'Caution' do not start the vehicle engine since you are not likely to pass a retest and it may not be safe to drive. When you receive a 'Caution' message, you will have two options. You may wait 5 minutes and try the test again if you are certain there is no alcohol in your body, or you may press the bottom button to acknowledge that you intend to drive with alcohol in your system. If your breath sample contains an amount of alcohol above the fail level the handset will indicate a 'Lockout' message with a timer... Relying upon a non-ethanol-specific device, with its yellow caution light disabled, the ASAPs are able to cooperate with IID companies to violate totally compliant and unsuspecting citizens. Couple the absence of the yellow light, with automatically restarting 6 month IID time, and filing violations late, offenders are allowed to be suspended in a perpetual, indefensible loop, while their fees get divvied between the respective IID company, VASAP and ASAPs. It's an unsettling cooperation between the State and the contracted vendors, and perhaps amending the wording of law will prompt companies to comply with what's already mandated. The enigmatic yellow caution light."

Agency Decision: Request denied.

Statement of Reason for Decision: The Commission on the Virginia Alcohol Safety Program (VASAP) considered this petition at its September 11, 2020, meeting and decided to take no action. Virginia regulations do not require that ignition interlocks have a yellow warning light. A similar pass/fail indicator is sufficient, and all ignition interlock companies operating in Virginia are in compliance. Requiring a yellow warning light that functions in the manner requested by the petitioner would require some ignition interlock companies to produce new hardware and other companies to make software changes. This would be impractical and cost prohibitive.

Agency Contact: Richard Foy, Regulatory Coordinator, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

V.A.R. Doc. No. R20-27; Filed September 11, 2020, 1:31 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 1. ADMINISTRATION

TREASURY 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: **1VAC75-30, Regulations Governing Escheats**, and **1VAC75-40, Unclaimed Property Administrative Review Process**. 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 October 12, 2020, and ends November 2, 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: Vernita Boone, Treasury Board Secretary, Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-3187, or email vernita.boone@trs.virginia.gov.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-30, Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia**,

and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 30, 2020, to support this decision.

This regulation provides protection to the livestock and poultry population in Virginia, which are major components of the public food supply, from emerging and foreign animal disease. Since a safe food supply is imperative for the public health, safety, and welfare, it is necessary that this regulation stay in place for the continued protection of the public. The livestock and poultry industries are significant economic sectors in Virginia. The regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. There is a continued need for this regulation because it is important for the livestock and poultry industries. Many animal farms, as well as the processing plants that process the animals, are small businesses. Without the safeguards this regulation provides, these small businesses take on a great amount of risk.
2. The agency has not received any complaints or comments about this regulation.
3. This regulation not unnecessarily complex and is easily understood.
4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. There have not been significant changes in technology, economic conditions, or other factors since the regulation was last amended in 2015.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-40, Rules and Regulations Governing the Prevention, Control and Eradication of Bovine Tuberculosis in Virginia**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 30, 2020, to support this decision.

This regulation provides protection to the cattle population in Virginia, which is a major component of the public food supply. Since a safe food supply is imperative for the public

Periodic Reviews and Small Business Impact Reviews

health, safety, and welfare, it is necessary that this regulation stay in place for the continued protection of the public. The beef and dairy cattle industries are significant economic sectors in Virginia. This regulation is also important to protect the public against the possible spread of tuberculosis from cattle to humans in the event cattle in Virginia were to become infected with bovine tuberculosis. The regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. There is a continued need for this regulation because it is important for the beef and dairy cattle industries. Many beef and dairy farms and processing plants are small businesses. Without the safeguards this regulation provides, these small businesses take on a great amount of risk. If Virginia's "bovine tuberculosis free status" is compromised, other states and countries will not purchase Virginia cattle, thereby putting these small businesses at risk of going out of business. Without this regulation, the risk of that happening becomes significantly higher.
2. The agency has not received any comments or complaints about this regulation.
3. This regulation is not unnecessarily complex and is easily understood.
4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation
5. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments.

This regulation was promulgated with due concerns for beef and dairy cattle industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-90, Control and Eradication of Pullorum Disease and Fowl Typhoid in Poultry Flocks and Hatcheries and Products Thereof in Virginia**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 31, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides for the protection of the poultry population in Virginia, which is a major component of the food supply. Since a safe food supply is imperative for the public health, safety, and welfare, it is important that this regulation stay in place for the continued protection of the public. It is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. There is a continued need for this regulation to stay in effect in order to protect poultry species and public health. If the regulation is not retained, then the risk of pullorum disease and fowl typhoid could have a negative impact on small businesses and poultry producers who rely on poultry for the viability of their farms and businesses.
2. The agency has not received any complaints or comments about this regulation.
3. This regulation is not unnecessarily complex and is easily understood.
4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments to the regulation.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-141, Health Requirements Governing the Admission of Agricultural Animals, Pet Animals, and Other Animals or Birds into Virginia**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 31, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides for the protection of the animal population in Virginia, which is a major component of the public food supply. Since a safe food supply is imperative for the public health, safety, and welfare, it is important that this regulation stay in place for the

Periodic Reviews and Small Business Impact Reviews

continued protection of the public. It is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. There is a continued need for this regulation to stay in effect in order to protect livestock and pet species and public health. If the regulation is not maintained, the risk of disease could have a negative impact on small businesses and producers who rely on livestock for the viability of their farms and businesses.
2. There have been no comments or complaints from the public.
3. The regulation is not unnecessarily complex.
4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation is important for the livestock industry and is consistent with federal laws and regulations regarding interstate movement of animals.
5. This regulation was last amended in 2019, and since that time, there have not been any significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require further amendments.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-150, Rules and Regulations Governing the Transportation of Companion Animals**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 31, 2020, to support this decision.

This regulation meets the criteria set out in Executive Order 14 (2010). Regulations concerning the appropriate transportation of companion animals by dealers, animal control officers, and other commercial or public entities are in the best interest of public health and safety. The regulation is clearly written and easily understood.

The agency is recommending that this regulation stay in effect without change.

1. This regulation is important to the pet and shelter industry, and there is continued need to assure that companion animals are transported in an appropriate manner.

2. There have not been complaints or comments about this regulation.

3. The regulation is not complex.

4. This regulation complements federal regulations enacted pursuant to the federal Animal Welfare Act and does not overlap, duplicate, or conflict with federal or state law or regulation.

5. This regulation last underwent periodic review in 2014, and since that time, no significant technological or economic developments have impacted the transportation of companion animals.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-170, Rules and Regulations for the Registration of Poultry Dealers**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 31, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides protection to the poultry population in Virginia, which is an important component of Virginia's animal agriculture industry. Since a safe food supply and good poultry health is imperative for the public's health, it is important that this regulation be retained for the continued protection of the public and the poultry industry. The poultry industry is a significant economic sector in Virginia, with broilers being the number one agricultural commodity in the state. The regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. The regulation continues to be necessary because it is important for the viability of the poultry industry in Virginia. Many farms that have poultry are small businesses. Without the safeguards this regulation provides, these small businesses take on a great amount of risk.

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Without this regulation, the risk of disease spread becomes significantly higher and that risk may greatly decrease Virginia's poultry farms and the small businesses that rely on them.

2. There have been no comments or complaints from the public about this regulation.
3. The regulation is not unnecessarily complex and is easily understood.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-206, Regulation for Scrapie Eradication**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 31, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides protection to the sheep and goat population in Virginia, which is an important component of the livestock industry. Since a safe food supply and good livestock health is imperative for the public's health, it is important that this regulation stay in place for the continued protection of the public and the sheep and goat population. The sheep and goat industry is a significant economic sector in Virginia, especially in rural areas. The regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. This regulation continues to be needed because it is important for protection of the sheep and goat industry in Virginia. Many farms that have sheep and goats are small businesses. Without the safeguards this regulation provides, these small businesses take on a great amount of risk. If Virginia's "Scrapie-free status" is compromised, other states and countries will not purchase Virginia sheep and

goats, thereby affecting these small businesses. Without this regulation, the risk of that happening becomes significantly higher, and that risk may have a significant negative impact on Virginia's sheep and goat farms and the small businesses that rely on them.

2. There have been no comments or complaints from the public.
3. The regulation is not unnecessarily complex.
4. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-310, Rules and Regulations-Official Standards for Enforcement of the Virginia Apples: Grading, Packing, and Marking Law**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated May 20, 2020, to support this decision.

This regulation protects public health, safety, and welfare of citizens by ensuring that the apples sold to consumers comply with official grade standards and are packaged and marked accordingly. The regulation is clearly written and easily understandable by the regulated industry and consumers.

The agency recommends that this regulation stay in effect without change.

The agency has not received any complaints or comments regarding the regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The agency last conducted a periodic review of the regulation in 2014, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate amendments to the regulation. The agency continues to believe the current regulation is the least burdensome and intrusive alternative for the required regulation of the apple industry.

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Contact Information: Dennis P. Clary, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1933, FAX (804) 371-7785, TDD: (800) 828-1120, or email dennis.clary@vdacs.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-315, Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 24, 2020, to support this decision.

The regulation assists in reducing the impact of the imported fire ant on landowners, thereby protecting the public's health, safety, and welfare. This regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change, as this regulation is the only viable alternative to slow the artificial spread of the imported fire ant from infested areas to noninfested areas.

The agency has determined that the regulation is not unnecessarily burdensome or complex.

This regulation has an economic impact on businesses, including small businesses, that are located in the regulated area. These businesses are required to survey for imported fire ants and treat regulated articles in an effort to prevent the artificial spread of the imported fire ant. The agency was contacted by the Virginia Loggers Association (VLA) to discuss concerns about the regulation. The VLA requested clarification of the regulated articles, enforcement measures, and how loggers can comply with the quarantine while transporting their products out of the newly quarantined counties. Department staff provided guidance on fire ant treatment options, self-inspection through a department-supported compliance agreement, and other steps that the businesses can take to comply with the provisions of the quarantine.

Section 3.2-703 of the Code of Virginia provides the Commissioner of Agriculture and Consumer Services with the authority to expand or reduce the quarantine area. The regulation was originally promulgated in 2009. Since that time, the department has surveyed for the presence of fire ant populations outside of the regulated areas and when detected, treated isolated populations found in these areas. In 2019, survey data indicated that the fire ant had become established outside of the regulated area, and it was necessary to expand the regulated area to include additional localities. No significant changes to technology, economic conditions or

other factors have occurred that would necessitate amendments to this regulation.

The imported fire ant is a federally regulated pest. Currently, the regulated areas under the federal imported fire ant quarantine mirror the regulated areas included in Virginia's quarantine. However, without Virginia's regulation in place, U.S. Department of Agriculture Animal and Plant Health Inspection Service could elect to issue a federal quarantine that would encompass all of Virginia and would place restrictions on businesses in noninfested areas of Virginia that are not currently subject to the provisions of this regulation. As such, the agency recommends that the regulation stay in effect without change.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-317, Regulations for Enforcement of the Noxious Weeds Law**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 24, 2020, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare as it provides for the suppression, eradication, and prevention of the spread of noxious weeds in the Commonwealth. The spread of noxious weeds to Virginia's natural and agricultural resources may lead to significant economic loss. The regulation also protects citizens by providing a framework for eradicating those listed noxious weeds that may be hazardous to human health. The regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change. The regulation was recently amended effective July 21, 2020, and requires no further amendments.

The agency has determined that this regulation continues to be necessary to protect the Commonwealth's agricultural and natural resources from the impacts of noxious weeds. The agency has determined that this regulation is not unnecessarily complex and will not have a significant impact on small businesses.

The agency has not received any complaints or comments from the public concerning this regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency has determined that the recently amended version of this regulation is consistent with

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current industry practices and that there have been no changes in technology, economic conditions, or other factors that necessitate further amendments.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-440, Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 23, 2020, to support this decision.

The regulation assists in the prevention of the re-infestation of the cotton boll weevil in Virginia, thereby protecting the public's health, safety, and welfare. The eradication and exclusion of the cotton boll weevil enhances the quality of the environment by reducing the need for pesticide applications on cotton, which would otherwise be applied to combat the cotton boll weevil. Reduced pesticide applications will also result in decreased production costs for Virginia's cotton growers.

The regulation is clearly written and easily understood.

The agency recommends that this regulation stay in effect without change.

The agency has determined that this regulation continues to be necessary in order to prevent the reintroduction of the cotton boll weevil into Virginia and ensure the continued export of Virginia cotton. Virginia cotton growers, many of whom are small business owners, planted approximately 100,700 acres of cotton in 2019. A cotton boll weevil infestation would have a significant negative economic impact on these small business owners. Virginia cotton growers are assessed a per-acre fee to cover the cost of the cotton boll weevil survey. The fee is determined each year by the Commissioner of Agriculture and Consumer Services in consultation with the Board of Directors of the Virginia Boll Weevil Eradication Foundation Inc. All voting members of this board are Virginia cotton growers.

The agency has not received any complaints or comments concerning the regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The regulation was most recently reviewed nine years ago, and there have been no changes in technology, economic

conditions, or other factors that require the amendment of the regulation.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-490, Regulations Governing Grade "A" Milk**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 23, 2020, to support this decision.

This regulation is necessary to ensure the safety and wholesomeness of milk and milk products for human consumption, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change as it was amended in 2020. The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe production of milk and milk products.

1. There is a continued need for this regulation in order to ensure that Virginia milk producers and shippers comply with federal milk standards and with the standards established by the National Conference on Interstate Milk Shippers.
2. The agency has not received any comments or complaints about the regulations from the public.
3. The regulations are not unnecessarily complex and allow for the safe manufacture of various forms of milk and milk products.
4. This regulation is adopted from The Grade "A" Pasteurized Milk Ordinance, which is a federal model regulation for the production of Grade "A" milk and milk products. Those regulations were developed by the U.S. Food and Drug Administration for the states to adopt. The regulation does not conflict, duplicate, or overlap with any state or federal regulation.
5. The regulation was last amended in March 2020. The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the manufactured milk industry. Although certain portions of the industry have evolved, the regulation, as

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amended, is current, relevant, and helps to ensure the safe production of manufactured milk products.

Many dairy farms and processors are small businesses, and compliance with this regulation is required in order for the agency to permit dairy farmers to sell milk to intrastate and interstate markets and dairy processors to sell finished product Grade "A" fluid milk and dairy products into intrastate and interstate commerce. If this regulation were not in place, it would have a negative impact on these small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 14, 2020, to support this decision.

This regulation is necessary to ensure the safety and wholesomeness of milk and milk products for human consumption, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

The agency recommends that this regulation be retained without changes.

1. The regulation, continues to be needed because it provides important safeguards to ensure the safe manufacture and distribution of milk and milk products in the Commonwealth.
2. The agency has not received any comments or complaints about the regulations from the public.
3. The regulations are clearly written and not unnecessarily complex and allow for the safe manufacture of various forms of milk and milk products
4. There is minimal overlap with existing related state regulations and statutes. The minimal overlap occurs because the regulations and statutes all address various types of dairy products (i.e., many manufactured milk products addressed in 2VAC5-531 and Grade "A" milk, which is addressed in 2VAC5-490, are both required to be sampled and transported by a hauler or sampler who has been issued a permit through the department). However, the regulation is necessary to appropriately ensure the safety of milk and milk products. There is no significant

duplication or overlap relative to existing federal statutes and regulations, as the regulation is based heavily on The Grade "A" Pasteurized Milk Ordinance.

5. The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the dairy industry. Although certain portions of the industry have evolved, the regulations are still current and relevant, and help to ensure the safe production of milk and milk products.

Since the agency is electing to retain its current regulation, there will be no impact on small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-510, Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 27, 2020, to support this decision.

The regulation is necessary to ensure the safe production and distribution of ice cream, frozen desserts, and similar products, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change. The regulation is consistent with the stated objectives of the Code of Virginia. The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe production of ice cream and frozen desserts.

1. There is a continued need for the current regulation as it provides necessary safeguards to ensure the safe manufacture and distribution of ice cream and frozen desserts in the Commonwealth.
2. The agency has not received any comments or complaints about the regulations from the public.
3. The regulations are clearly written and not unnecessarily complex and allow for the safe manufacture of various forms of ice cream and frozen desserts.
4. This regulation does not conflict or overlap with federal or state regulations. Section 3.2-5201 of the Code of Virginia requires that regulations adopted pertaining to

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milk or frozen desserts be in conformity with the U.S. Department of Health and Human Services and U.S. Department of Agriculture (USDA). The current frozen desserts regulations are in conformance with the USDA model regulations.

5. This regulation last underwent periodic review in 2015. Although certain portions of the industry have evolved, the regulations are still relevant and help to ensure the safe production of ice cream and frozen desserts.

Since the agency is electing to retain its current regulation, there will be no impact on small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-531, Regulations Governing Milk for Manufacturing Purposes**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 27, 2020, to support this decision.

The regulation is necessary to ensure the regulation of the safe manufacture and distribution of milk products, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change. The regulation is consistent with the stated objectives of the Code of Virginia. The regulation is not overly burdensome to the industry, is clear and concise, and is necessary to ensure the safe sale of milk for manufacturing purposes and the safe manufacture and distribution of milk products.

1. There is a continued need for the current regulation as it provides sufficient safeguards to ensure the safe manufacture and distribution of manufactured grade milk products in the Commonwealth. Without the regulation in place, the safety of manufactured milk products would be compromised.
2. The agency has not received any comments or complaints about the regulations from the public.
3. The regulations are clearly written and not unnecessarily complex and allow for the safe manufacture of various forms of manufactured grade milk products.
4. There is minimal overlap with existing related state regulations and statutes. The minimal overlap occurs because existing regulations and statutes all address

multiple types of dairy products (i.e., many manufactured milk products and Grade "A" milk, which is addressed in 2VAC5-490, are required to be pasteurized). However, the regulation is necessary to appropriately ensure the safety of manufactured milk products. There is no significant duplication or overlap relative to existing federal statutes and regulations.

5. The regulation was last amended in 2015. The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the manufactured milk industry. Although certain portions of the industry have evolved, the regulations are still current and relevant and help to ensure the safe production of manufactured milk products.

Because the agency is recommending the retention of the existing regulation, there is minimal impact on small businesses, as provisions are currently provided within the regulation to create exemptions from certain requirements for small-scale manufacturers.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-590, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated August 3, 2020, to support this decision.

This regulation is necessary to protect the public's health, safety, and welfare as it pertains to ground beef, including its labeling and fat declaration requirements. This regulation ensures that consumers purchasing a ground beef product are offered a product that contains no more than the maximum allowable fat content and ensures that the ground beef products are accurately represented to the consumer. The regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. This regulation is still needed because it is still necessary to ensure that ground beef products are produced according to and meet minimum acceptable standards relative to product formulation and saturated fat content. It also ensures that consumers are duly informed via product labeling and placard displays regarding the fat content of ground beef products and allows consumers to make

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optimal health choices regarding the level of saturated fat consumed when ground beef products are purchased. Without this regulation, it will be difficult to find other means by which to ensure that ground beef products meet acceptable standards.

2. There have been no complaints or comments received regarding this regulation.
3. The regulation is written in a form that is not overly complex and is easily understandable by regulators as well as the regulated industry.
4. There are federal regulations that also mandate a maximum fat content of 30% in ground beef products. However, these regulations are primarily enforced and policed at meat processing facilities. This regulation typically applies to ground beef products formulated or sold at retail food stores and creates specific production standards applicable to retail environments.
5. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-610, Rules Governing the Solicitation of Contributions**, 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 provides specific registration and reporting requirements that clarify the general requirements prescribed in the Virginia Solicitation of Contributions Law (VSOC) and provides for uniform reporting, which protects public safety and economic welfare by improving charitable donation decision making by the public. The regulation is clearly written and easily understandable.

The agency recommends that the regulation stay in effect without change as it provides clarifications to the general requirements prescribed in VSOC, provides an important means to ensure uniform reporting for charitable organizations that are soliciting contributions from the public,

and improves the information that is available to the public to inform their charitable donation decisions. There have been no changes in the industry that necessitate amendments to the current regulation.

The agency has determined that this regulation continues to be necessary. The requirements established in the regulation are not unnecessarily burdensome. The regulation provides protection to the welfare of Virginia citizens by assisting the department in providing the public with information that enables them to make educated financial decisions regarding their charitable contributions. There have been no complaints or comments received from the public regarding this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation will not have an economic impact on small businesses.

The regulation does not appear to overlap, duplicate, or conflict with any federal or state law or regulation. The regulation was last amended in November 2015. The agency has determined that no change in the affected industry has occurred since the regulation was last amended that would necessitate amending or repealing this regulation.

Contact Information: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, TDD (800) 828-1120, or email michael.menefee@vdacs.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-620, Requirements Pertaining to the Establishment of the Dangerous Dog Registry**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated August 4, 2020, to support this decision.

The regulation is necessary for the protection of public safety and welfare because it assists the agency in providing information to protect citizens and animals in Virginia from dogs that have been deemed dangerous through the adjudication process. This regulation is clearly written and easy to understand.

The agency is recommending that this regulation stay in effect without change.

1. The agency has determined that there is a continued need for this regulation to stay in effect in order to protect citizens, pets, and other animals in the Commonwealth. This regulation does not place any regulatory burden on small businesses, but assists the agency in providing information to the public that enables small businesses to

have knowledge of dangerous dogs in their area and take necessary precautions to protect their businesses and customers.

2. The comments the agency has received regarding this regulation largely pertain to expanding the Dangerous Dog Law. Any such change must be enacted by the legislature. Other comments indicated the regulations are satisfactory as they are.

3. The regulation is clear and is not complex.

4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

5. This regulation was amended in 2020, and there have been no significant changes in technology, economic conditions, or other factors that would require further amendments at this time. This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information:Carolynn 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.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-670, Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 26, 2020, to support this decision.

The regulation assists in ensuring that only pesticide products that are registered with the U.S. Environmental Protection Agency (EPA) and the department are used in Virginia and, as such, is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understood by the regulated industry.

The agency recommends that the regulation stay in effect without change. The regulation was revised in 2017 to align it with current federal pesticide laws, agency policies and procedures, and industry standards and to facilitate compliance. Given the risks associated with the use of pesticides, it is imperative that the requirements for pesticide registration, distribution, sale, storage, and use are clear and unambiguous.

The provisions of this regulation continue to be necessary in order to ensure that only pesticide products that are registered with EPA and the department are used in Virginia. Given the

inherent safety consideration associated with pesticides, it is imperative that the requirements for pesticide businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides are clear and unambiguous. The comment addressed notwithstanding, the department has received no complaints or comments regarding this regulation. The agency has determined that the regulation is not unnecessarily complex and is easily understood by the regulated industry. The current regulations, which were amended in 2017, are aligned with current federal pesticide laws, agency policies and procedures, and industry standards. The regulation does not add requirements more restrictive than federal requirements to individuals or businesses seeking pesticide product registration. The agency has determined that this regulation is the least burdensome alternative for effectively regulating participants in this industry, including small businesses.

Contact Information: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-675, Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 26, 2020, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation establishes fees to obtain (i) a pesticide product registration, (ii) a commercial applicator or registered technician certification, and (iii) a pesticide business license. In order for the agency to continue to fund the operation of the Commonwealth's pesticide programs, it is necessary to collect such fees. These programs are necessary to fulfill the licensure, registration, and certification requirements of the Virginia Pesticide Control Act, which assist in ensuring the proper labeling of pesticide products and the proper training of individuals applying or recommending the use of pesticide products. This regulation is clearly written and easily understandable.

The agency recommends that this regulation stay in effect without change. The regulation was amended in 2019 to ensure that the prescribed fees provide adequate funding for pesticide-related services.

The agency has determined that this regulation continues to be necessary as the fees established in the regulation are a

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significant source of the funds that support the Commonwealth's pesticide programs. The fees established in this regulation were last increased in 2019 in consultation with a stakeholder advisory committee, and the agency has not received any complaints or comments regarding the regulation.

The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last amended in 2019, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate further amendments at this time.

Contact Information: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 25, 2020, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. Pesticides are used for the control of pests that adversely affect crops, structures, human health, and domestic animals. Given the risk associated with the application of pesticides to both human health and the environment, the use of pesticides is highly regulated at the federal and state level. The department's pesticide programs protect human health and the environment by ensuring the proper use of pesticides. These programs include the certification of pesticide applicators, the licensing of pesticide businesses, the registration of pesticide products, and inspections and investigations to ensure compliance with all applicable laws and regulations. This regulation sets forth the minimum requirements that must be met by businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides and is clearly written and easily understood.

The agency recommends that this regulation stay in effect without change. The regulation was revised in 2017 to align the regulations with current federal pesticide laws, agency policies and procedures, industry standards, and to facilitate compliance.

The agency has determined that this regulation continues to be necessary as it sets forth minimum requirements for pesticide businesses. There have been no complaints from the public or industry regarding this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last amended in 2017, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate further amendments. The regulation poses no known disadvantages to the public, small businesses, or the Commonwealth.

Contact Information: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a periodic review and small business impact review of **2VAC5-685, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 26, 2020, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. Pesticides are used for the control of pests that adversely affect crops, structures, human health, and domestic animals. Given the risk associated with the application of pesticides to both human health and the environment, the use of pesticides is highly regulated at the federal and state level. The department's pesticide programs protect human health and the environment through programs that certify pesticide applicators, license pesticide businesses, register pesticide products, and inspections and investigations to ensure compliance with all applicable laws and regulations. This regulation sets forth the minimum requirements for individuals who apply pesticides and is clearly written and easily understood.

The agency recommends this regulation stay in effect without change. The regulation was revised in 2016 to align the regulations with current agency policies and procedures and industry standards and to facilitate compliance. The agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate amending the regulation at this time.

Periodic Reviews and Small Business Impact Reviews

The agency recommends continuation of the regulation as it ensures the ability of pesticide applicators to properly apply pesticides, thereby reducing the chance for misapplication and potential threats to the environment and to the health, safety, and welfare of citizens. There have been no complaints from the public or industry regarding this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. The regulation does not overlap, duplicate, or conflict with federal or state laws or regulations. The regulation does not add requirements more restrictive than federal requirements. The regulation was last amended in 2016, and the agency has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate further amendments at this time. There are no known disadvantages to the public, small businesses, or the Commonwealth.

Contact Information: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

STATE MILK COMMISSION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Milk Commission conducted a periodic review and small business impact review of **2VAC15-12, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated August 27, 2020, to support this decision.

This regulation is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the Milk Commission will advise the public of the Milk Commission's regulatory actions. Notice of the agency's regulatory actions assists in protecting the public's welfare. The regulation is clearly written and easily understandable.

The agency recommends that the regulation stay in effect without change because it is required by § 2.2-4007.02 of the Code of Virginia and assists in notifying the public of the agency's regulatory actions.

The agency determined this regulation continues to be necessary as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. The agency has not received any comments or complaints regarding this regulation. The regulation is not complex and is easily understood. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The regulation was promulgated in 2008 using the model public participation guidelines issued by the Department of Planning and Budget and last underwent periodic review in 2015. No factors have changed since 2015 that necessitate amending this regulation. This regulation places no economic burden on any small business.

Contact Information: Crafton Wilkes, Administrator, Oliver Hill Building, State Milk Commission, 102 Governor Street, Room 206, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 371-8700, or email crafton.wilkes@vdacs.virginia.gov.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and small business impact review of **9VAC5-80, Permits for Stationary Sources**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 11, 2020, to support this decision.

This regulation enhances the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code through the issuance and enforcement of federal and state operating permits to construct and operate a new or modified facility. The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health or welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To enhance the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code through the issuance and enforcement of federal (Title V) operating permits.
3. To identify and clarify for the department and source owner exactly which air quality program requirements are applicable to the permitted source through the issuance and enforcement of federal (Title V) operating permits.
4. To provide an administrative mechanism to impose source-specific regulatory requirements with the flexibility to address the individual needs of sources through the issuance and enforcement of state operating permits.
5. To provide a mechanism to administer certain air quality control program requirements without the need for federal

Periodic Reviews and Small Business Impact Reviews

oversight through the issuance and enforcement of state operating permits.

6. To prevent the construction, modification, or operation of facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard through the issuance and enforcement of new source review permits.

7. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard through the issuance and enforcement of new source review permits.

8. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements through the issuance and enforcement of new source review permits.

9. To prevent the construction, modification, or operation of major facilities that will not use maximum achievable control technology to limit emissions of hazardous air pollutants through the issuance and enforcement of new source review permits.

10. To ensure that there is no significant deterioration of air quality throughout the Commonwealth through the issuance and enforcement of new source review permits for new major facilities or major expansions locating in prevention of significant deterioration (PSD) areas.

11. To ensure that emission increases from new major facilities or major expansions to existing facilities are offset by emission reductions from existing facilities by an equal or greater amount through the issuance and enforcement of new source review permits for new major facilities or major expansions locating in nonattainment areas.

12. Where possible, to provide an alternative to more stringent new source review requirements applicable to major stationary sources locating in PSD areas and nonattainment areas through federally enforceable permit emission limits; and

13. To fully fund the Title V permit program through Title V permit program fees as required by state and federal law.

This regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

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

This regulation continues to be needed. It provides the necessary requirements for conformity to ensure that federal projects have the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

No comments were received that indicate a need to repeal or revise the regulation.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. Part I and Part II, Articles 4, 5, and 6 were last reviewed in May 2018. Part II, Article 3 was last reviewed in January 2013. Part II, Article 8 was last reviewed in January 2001. Part II, Article 1 was last amended in November 2016, Part II, Articles 2, 10, and 11 were last amended in January 2018. Part II, Article 7 was last amended in December 2008.

Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and small business impact review of **9VAC5-230, Variance for International Paper Franklin Paper Mill**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 10, 2020, to support this decision.

This regulation enhances the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code.

Periodic Reviews and Small Business Impact Reviews

The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To allow the International Paper Franklin Paper Mill to use compliance with a Federally Enforceable State Operating Permit containing site-wide emission limits as an alternate demonstration of compliance with the provisions of the regulations of the State Air Pollution Control Board. The alternate regulatory system addresses only the pollutants identified in the permit and is protective of the national ambient air quality standards.

The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

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

This regulation continues to be needed. It provides an alternate means of fulfilling ongoing state and federal requirements that protect air quality.

No comments were received during the public comment period.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This chapter became effective in 2005 and has not been amended.

Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

This variance is specific to the International Paper Franklin Plant. The department does not believe that International Paper meets the definition of a "small business" as defined by

§ 2.2-4007.1 of the Code of Virginia; therefore, the regulation does not impact small businesses.

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

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Charitable Gaming Board conducted a periodic review and small business impact review of **11VAC15-13, Public Participation Guidelines**, 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 required by § 2.2-4007.02 of the Code of Virginia and assists in promoting public participation in the development, amendment, or repeal of the Charitable Gaming Regulations (11VAC15-40). The regulation ensures the integrity of charitable gaming in Virginia, thereby protecting the public safety and economic welfare of Virginians, including the organizations that conduct charitable gaming. This regulation is clearly written and easily understandable.

The agency recommends that the regulation stay in effect without change as it provides an important means of promoting public participation in the development, amendment, or repeal of the Charitable Gaming Regulations (11VAC15-40). There have been no changes in the charitable gaming industry that necessitate amendments to the current regulation.

The agency determined that requirements established in the Public Participation Guidelines continue to be necessary and are not unnecessarily burdensome. The agency has received no complaints or comments concerning this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses.

The regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. The regulation was last amended in November 2008, and it last underwent periodic review in 2015. The agency has determined that no change in the affected industry has occurred since the regulation was last amended that would necessitate the amendment or repeal of this regulation.

Periodic Reviews and Small Business Impact Reviews

Contact Information: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.



TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE 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 regulations are undergoing a periodic review and a small business impact review: **22VAC30-50, Policies and Procedures for Administering Commonwealth Neurotrauma Initiative Trust Fund**, and **22VAC30-70, The Virginia Public Guardian and Conservator Program**. 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 October 12, 2020, and ends November 2, 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: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TDD (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-196, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less**. This general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters in order to maintain surface water quality. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on March 1, 2023. Some issues that may need consideration are effluent limits, including making chlorine non-detectable limit compatible with U.S. Environmental Protection Agency reporting requirements; clarifying definitions; and reviewing water quality standards.

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

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

Public Comment Deadline: November 12, 2020.

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

VA.R. Doc. No. R21-6527; Filed September 22, 2020, 7:02 a.m.

REGULATIONS

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

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.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services 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 of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (amending 2VAC5-405-100).**

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Effective Date: November 11, 2020.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Summary:

Pursuant to Chapter 413 of the 2020 Acts of Assembly, the amendment updates the total annual number of acres of nonagricultural lands to which contractor-applicators and licensees must apply lawn fertilizer and lawn maintenance fertilizers to be required to submit an annual report.

2VAC5-405-100. Recordkeeping requirements and reporting for the application of fertilizer.

A. Licensees, contractor-applicators, and state agencies, localities, or other governmental entities subject to this regulation shall maintain records of each application of fertilizer to nonagricultural land for at least three years following the application. These records shall be available for inspection by the commissioner. Each record shall contain the:

1. Name, mailing address, and telephone number of customer, as well as address of application site if different from customer's mailing address;

2. Name of the person making or supervising the application;
3. Day, month, and year of application;
4. Weather conditions at the start of the application;
5. Acreage, area, square footage, or plants treated;
6. Analysis of fertilizer applied;
7. Amount of fertilizer used, by weight or volume; and
8. Type of application equipment used.

B. Contractor-applicators and licensees who apply lawn fertilizer and lawn maintenance fertilizer to more than a total of ~~400~~ 50 acres of nonagricultural lands annually, and state agencies, localities, or other governmental entities that apply lawn fertilizer and lawn maintenance fertilizer to nonagricultural lands under their control, shall submit an annual report on or before February 1 indicating the total acreage or square footage by zip code of the land receiving lawn fertilizer and lawn maintenance fertilizer in the preceding calendar year. The report shall be submitted on a form prescribed by the commissioner.

VA.R. Doc. No. R21-6415; Filed September 21, 2020, 10:32 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendment updates the List of Native and Naturalized Fauna of Virginia to the 2020 version.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal."

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2018~~ 2020 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's ~~2018~~ 2020 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

- Domestic dog (*Canis familiaris*), including wolf hybrids.
- Domestic cat (*Felis catus*), including hybrids with wild felines.
- Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.
- Domestic ass, burro, and donkey (*Equus asinus*).
- Domestic cattle (*Bos taurus* and *Bos indicus*).
- Domestic sheep (*Ovis aries*) including hybrids with wild sheep.
- Domestic goat (*Capra hircus*).
- Domestic swine (*Sus scrofa*), including pot-bellied pig and excluding any swine that are wild or for which no claim of ownership can be made.
- Llama (*Lama glama*).
- Alpaca (*Lama pacos*).
- Camels (*Camelus bactrianus* and *Camelus dromedarius*).

- Domesticated races of hamsters (*Mesocricetus* spp.).
 - Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.
 - Domesticated races of guinea pigs (*Cavia porcellus*).
 - Domesticated races of gerbils (*Meriones unguiculatus*).
 - Domesticated races of chinchillas (*Chinchilla laniger*).
 - Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).
 - Domesticated races of mice (*Mus musculus*).
 - Domesticated breeds of European rabbit (*Oryctolagus cuniculus*) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.
 - Domesticated races of chickens (*Gallus*).
 - Domesticated races of turkeys (*Meleagris gallopavo*).
 - Domesticated races of ducks and geese distinguishable morphologically from wild birds.
 - Feral pigeons (*Columba domestica* and *Columba livia*) and domesticated races of pigeons.
 - Domesticated races of guinea fowl (*Numida meleagris*).
 - Domesticated races of peafowl (*Pavo cristatus*).
- "Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.
- B. Exception for red foxes and European rabbits. Domesticated red foxes (*Vulpes vulpes*) having coat colors distinguishable from wild red foxes and wild European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

Regulations

DOCUMENTS INCORPORATED BY REFERENCE
(4VAC15-20)

~~List of Native and Naturalized Fauna of Virginia, April 2018, Virginia Department of Game and Inland Fisheries~~

[List of Native and Naturalized Fauna of Virginia, October 2020, Virginia Department of Wildlife Resources](#)

[Federal Endangered and Threatened Animal Species as of May 7, 2019](#)

VA.R. Doc. No. R21-5905; Filed September 22, 2020, 3:43 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-66).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments extend the daily or annual fee provision for use of certain department-owned or department-managed facilities to include all department-managed lands and boat launch sites. This fee shall not apply to any person who is a passenger of but not the owner or operator of a paddlecraft or registered vessel.

4VAC15-20-66. Admittance, parking, or other use fee at certain department-owned and department-managed facilities.

A. Pursuant to the authority of the board under § 29.1-103 (14) of the Code of Virginia and in accordance with § 29.1-113 of the Code of Virginia, a daily fee of \$3.00 or an annual fee equal to the price of an annual basic state resident fishing or hunting license is established for admittance, parking, or other use at department-owned ~~wildlife management areas or~~ department-managed lands, boat launch sites, and public fishing lakes. Such fee shall not apply to (i) any person holding a valid hunting, trapping, or fishing license, or a

current certificate of boat registration issued by the department; (ii) persons 16 years of age or younger; or (iii) ~~the use of department owned boat ramps.~~ any person who is a passenger in but not the owner or operator of a paddlecraft or registered vessel.

B. Any person violating this section may, ~~in lieu of any criminal penalty,~~ be assessed a civil penalty of \$50 in lieu of any criminal penalty.

C. The director may waive fees for any person, group, or organization whenever such action is deemed to be in the department's interest. Any or all facilities may be closed by the director without notice due to an emergency or natural disaster. Full refunds or credits may be issued whenever the closure prevents any use of the facility during the term of the permit. Partial refunds of fees may be made in the interest of providing better customer service.

D. The director may allow deviations from established fees in the form of discounts or special promotions for the purpose of stimulating visitation and use of departmental facilities.

VA.R. Doc. No. R21-5914; Filed September 22, 2020, 5:51 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (adding 4VAC15-20-155).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed regulation authorizes dispersed primitive camping on Wildlife Management Areas and other department-owned or department-controlled lands. The regulation additionally establishes and defines terms and conditions for camping.

4VAC15-20-155. Camping on Wildlife Management Areas and other department-owned or department-managed lands.

A. Temporary dispersed camping, with no amenities provided, may only be performed on Wildlife Management Areas (WMAs) and other department-owned or managed lands when occupants are engaged in authorized activities and in strict compliance with established terms and conditions, including those listed in this section. Camping may be prohibited on certain portions or entire parcels of department-owned or managed lands, including certain WMAs.

B. Authorization. It shall be unlawful to camp without written authorization from the department. Written authorization to camp is required in addition to any and all other licenses, permits or authorizations that may otherwise be required. Written authorization is obtained by completing and submitting a Camping Authorization Form. Only an individual 18 years of age or older who is a member of and accepts responsibility for the camp and camping group may be issued a camping authorization.

C. Camping periods. Unless otherwise posted or authorized, it shall be unlawful to camp for more than 14 consecutive nights, or more than 14 nights in a 28-day period on department-owned or controlled lands. At the end of the authorized camping period, all personal property and any refuse must be removed.

D. Prohibited locations. Camping is allowed only at previously cleared and established sites. No vegetation may be cut, damaged, or removed to establish a camp site. It shall be unlawful to camp within 300 feet of any department-owned lake, boat ramp or other facility. It shall be unlawful to camp at other specific locations as posted. This section shall not prohibit active angling at night along shorelines where permitted.

E. Removal of personal property and refuse. Any person who establishes or occupies a camp shall be responsible for the complete removal of all personal property and refuse when the camping authorization has expired. Any personal property or refuse that remains after the camping authorization has expired shall be considered litter and punishable pursuant to § 33.2-802 of the Code of Virginia.

F. It shall be unlawful when camping on department-owned or managed lands to store or leave unattended any food (including food for pets and livestock), refuse, bear attractant, or other wildlife attractant unless it is (i) in a bear-resistant container; (ii) in a trunk of a vehicle or in a closed, locked, hard-sided motor vehicle with a solid top; (iii) in a closed, locked, hard-body trailer; or (iv) suspended at least 10 feet clear of the ground at all points and at least four feet horizontally from the supporting tree or pole and any other tree or pole. It shall be unlawful to discard, bury, or abandon any food, refuse, bear attractant, or other wildlife attractant

unless it is disposed of by placing it inside an animal-resistant trash receptacle provided by the department.

G. Any violation of this section or other posted rules shall be punishable as a Class III misdemeanor, and the camping permit shall become null and void. The permittee shall be required to immediately vacate the property upon summons or notification. A second or subsequent offense may result in the loss of camping privileges on department-owned or managed properties.

VA.R. Doc. No. R21-5916; Filed September 22, 2020, 6:03 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, etc., of Animals (amending 4VAC15-30-40).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments clarify the exception for grass carp and add an exception relating to the possession and transport of Alabama bass.

4VAC15-30-40. Importation requirements, possession, and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia.

Regulations

AMPHIBIANS

Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochirus merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	All species	All mole salamanders

BIRDS

Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan

FISH

Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Catostomus microps	Modoc sucker
		Catostomus santaanae	Santa Ana sucker
		Catostomus warnerensis	Warner sucker
		Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cobitidae	Misgurnus anguillicaudatus	Oriental weatherfish
	Cyprinidae	Aristichthys nobilis	Bighead carp*
		Chrosomus saylori	Laurel dace
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella caerulea	Blue shiner
		Cyprinella formosa	Beautiful shiner
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodon piceus	Black carp*
		Notropis albizonatus	Palezone shiner
		Notropis cahabae	Cahaba shiner
	Notropis girardi	Arkansas River shiner	

		Notropis mekistocholas	Cape Fear shiner
		Notropis simus pecosensis	Pecos bluntnose shiner
		Notropis topeka (= tristis)	Topeka shiner
		Phoxinus cumberlandensis	Blackside dace
		Rhinichthys osculus lethoporus	Independence Valley speckled dace
		Rhinichthys osculus nevadensis	Ash Meadows speckled dace
		Rhinichthys osculus oligoporus	Clover Valley speckled dace
		Rhinichthys osculus ssp.	Foskett speckled dace
		Rhinichthys osculus thermalis	Kendall Warm Springs dace
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Cyprinodontiformes	Poeciliidae	Gambusia gaigei	Big Bend gambusia
		Gambusia georgei	San Marcos gambusia
		Gambusia heterochir	Clear Creek gambusia
		Gambusia nobilis	Pecos gambusia
		Peociliopsis occidentalis	Gila topminnow
Gasterosteiformes	Gasterosteidae	Gasterosteus aculeatus williamsoni	Unarmored threespine stickleback
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tube-nose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
	Elassomatidae	Elassoma alabamae	Spring pygmy sunfish
	Percidae	Crystallaria cincotta	Diamond darter
		Etheostoma chermocki	Vermilion darter
		Etheostoma boschungii	Slackwater darter
		Etheostoma chienense	Relict darter
		Etheostoma etowahae	Etowah darter
		Etheostoma fonticola	Fountain darter
		Etheostoma moorei	Yellowcheek darter
Etheostoma nianguae		Niangua darter	
Etheostoma nuchale	Watercress darter		

Regulations

		Etheostoma okaloosae	Okaloosa darter
		Etheostoma phytophilum	Rush darter
		Etheostoma rubrum	Bayou darter
		Etheostoma scotti	Cherokee darter
		Etheostoma sp.	Bluemask (= jewel) darter
		Etheostoma susanae	Cumberland darter
		Etheostoma wapiti	Boulder darter
		Percina antesella	Amber darter
		Percina aurolineata	Goldline darter
		Percina jenkinsi	Conasauga logperch
		Percina pantherina	Leopard darter
		Percina tanasi	Snail darter
Scorpaeniformes	Cottidae	Cottus sp.	Grotto sculpin
		Cottus paulus (= pygmaeus)	Pygmy sculpin
Siluriformes	Clariidae	All species	Air-breathing catfish
	Ictaluridae	Noturus baileyi	Smoky madtom
		Noturus crypticus	Chucky madtom
		Noturus placidus	Neosho madtom
		Noturus stanauli	Pygmy madtom
Noturus trautmani	Scioto madtom		
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters
			Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
Hyaenidae	All Species	Hyenas and Aardwolves*	
Felidae	All Species	Cats*	

Chiroptera		All Species	Bats*	
Lagomorpha	Leporidae	Brachylagus idahoensis	Pygmy rabbit	
		Lepus europeaeus	European hare	
		Oryctolagus cuniculus	European rabbit	
		Sylvilagus bachmani riparius	Riparian brush rabbit	
		Sylvilagus palustris hefneri	Lower Keys marsh rabbit	
Rodentia		All species native to Africa	All species native to Africa	
	Dipodidae	Zapus hudsonius preblei	Preble's meadow jumping mouse	
	Muridae	Microtus californicus scirpensis	Amargosa vole	
		Microtus mexicanus hualpaiensis	Hualapai Mexican vole	
		Microtus pennsylvanicus dukecampbelli	Florida salt marsh vole	
		Neotoma floridana smalli	Key Largo woodrat	
		Neotoma fuscipes riparia	Riparian (= San Joaquin Valley) woodrat	
		Oryzomys palustris natator	Rice rat	
		Peromyscus gossypinus allapaticola	Key Largo cotton mouse	
		Peromyscus polionotus allophrys	Choctawhatchee beach mouse	
		Peromyscus polionotus ammobates	Alabama beach mouse	
		Peromyscus polionotus niveiventris	Southeastern beach mouse	
		Peromyscus polionotus peninsularis	St. Andrew beach mouse	
		Peromyscus polionotus phasma	Anastasia Island beach mouse	
		Peromyscus polionotus trissyllepsis	Perdido Key beach mouse	
		Reithrodontomys raviventris	Salt marsh harvest mouse	
		Heteromyidae	Dipodomys heermanni morroensis	Morro Bay kangaroo rat
			Dipodomys ingens	Giant kangaroo rat
	Dipodomys merriami parvus		San Bernadino Merriam's kangaroo rat	
	Dipodomys nitratoides exilis		Fresno kangaroo rat	
	Dipodomys nitratoides nitratoides		Tipton kangaroo rat	

Regulations

		Dipodomys stephensi (including D. cascus)	Stephens' kangaroo rat
		Perognathus longimembris pacificus	Pacific pocket mouse
	Sciuridae	Cynomys spp.	Prairie dogs
		Spermophilus brunneus brunneus	Northern Idaho ground squirrel
		Tamiasciurus hudsonicus grahamensis	Mount Graham red squirrel
Soricomorpha	Soricidae	Sorex ornatus relictus	Buena Vista Lake ornate shrew
MOLLUSKS			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES			
Order	Family	Genus/Species	Common Name
Crocodilia	Alligatoridae	All species	Alligators, caimans*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
Squamata	Colubridae	Boiga irregularis	Brown tree snake*
CRUSTACEANS			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Cambarus aculabrum	Cave crayfish
		Cambarus zophonastes	Cave crayfish
		Orconectes rusticus	Rusty crayfish
		Orconectes shoupi	Nashville crayfish
		Pacifastacus fortis	Shasta crayfish
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A of this section, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A of this section, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be

renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A of this section that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business, or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

F. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidae, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

G. Exception for feral hogs. Anyone may legally trap feral hogs with written permission of the landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately.

H. Exception for grass carp. Anglers may legally harvest grass carp of the family Cyprinidae only from public waters of the Commonwealth, except from department-owned or department-controlled lakes, provided that anglers. It is unlawful to harvest grass carp from any public inland lake or reservoir. Anglers taking grass carp must ensure that harvested grass carp are dead.

I. Exception for Alabama bass. Anglers may possess live Alabama bass of the family Centrarchidae only on the body of water from which the fish were captured, provided that the angler does not live transport these fish outside of the body of water from which the fish were captured. Anglers may only release live Alabama bass back into the body of water from which the fish were captured. Anglers may legally harvest Alabama bass provided that the anglers ensure all harvested Alabama bass are dead.

J. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R21-5906; Filed September 22, 2020, 3:48 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25, 4VAC15-320-60, 4VAC15-320-100).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) adjust creel and length limits for largemouth bass, smallmouth bass, spotted bass, Alabama bass, white bass, saugeye, yellow perch, and blue catfish; (ii) prohibit the stocking of spotted bass in private waters; (iii) remove the prohibition of mechanical paddle wheel boats on department-owned or department-controlled waters; and (iv) require a boat ramp special use permit and immediate live release of fish taken at the capture site following certification during a fishing tournament.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Regulations

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate (combined) No statewide length limits	Lakes	
			Briery Creek Lake	No bass 16 to 24 inches; only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No smallmouth bass less than 14 inches; 15 spotted bass per day
			Flannagan Reservoir	No <u>smallmouth bass less than 15 inches</u> No <u>largemouth bass less than 12 inches</u>
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mountain Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell Counties	No bass less than 20 inches; only 1 bass per day longer than 20 inches
			Levisa Fork River – within the boundaries Buchanan County	No bass less than 20 inches; only 1 bass per day longer than 20 inches

Regulations

			Dan River and tributaries downstream from the Union Street Dam, Danville	Only 2 of 5 bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches; only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA - WV state line and its tributaries Little River downstream from Little River Dam in Montgomery County, Big Walker Creek from the Norfolk Southern Railroad Bridge downstream to the New River, and Wolf Creek from the Narrows Dam downstream to the New River in Giles County (This does not include Claytor Lake, which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 22 inches; only 1 per day longer than 22 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA - TN state line	No bass less than 20 inches; only 1 per day longer than 20 inches
			North Fork Shenandoah River – Rt. 42 bridge, Rockingham County downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches

Regulations

		Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
		Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte County	Only 2 of 5 bass less than 14 inches
		Shenandoah River	
		Confluence of South Fork and North Fork Rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
		Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches; only 1 per day longer than 20 inches
		Rt. 17/50 bridge downstream to VA-WV state line	No bass 11 to 14 inches
		South Fork Shenandoah River	
		Shenandoah River, South Fork Shenandoah River, North Fork Shenandoah River Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
		Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches; only 1 per day longer than 20 inches
		Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches

Regulations

			Staunton River -	
			Leesville Dam (Campbell County) downstream to the mouth of Difficult Creek, Charlotte County	No smallmouth bass less than 20 inches; only 1 per day longer than 20 inches
<u>Alabama bass, spotted bass</u>		<u>No statewide daily limit</u> <u>No statewide length limit</u>		
striped bass	landlocked striped bass and landlocked striped bass - white bass hybrids	4 per day in the aggregate No fish less than 20 inches	Buggs Island (Kerr) Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; no striped bass or hybrid striped bass less than 20 inches June 1 - September 30: 4 per day in the aggregate; no length limit
			Claytor Lake and its tributaries	September 16 – June 30: 2 per day in the aggregate; no striped bass or hybrid bass less than 20 inches July 1 – September 15: 4 per day in the aggregate; no length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate November 1 - May 31: No striped bass 30 to 40 inches June 1 - October 31: No length limit

Regulations

			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day No striped bass less than 18 inches		
white bass		5 per day No statewide length limits	Buggs Island (Kerr) Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	10 per day; no white bass less than 14 inches
			<u>Lake Gaston</u>	<u>10 per day; no white bass less than 14 inches</u>

Regulations

walleye, saugeye		5 per day in the aggregate No walleye or saugeye less than 18 inches	New River upstream of Buck Dam in Carroll County	No walleye less than 20 inches
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	February 1 - May 31: 2 walleye per day; no walleye 19 to 28 inches June 1 - January 31: 5 walleye per day; no walleye less than 20 inches
sauger		2 per day No statewide length limits		
yellow perch		No statewide daily limit No statewide length limits	Lake Moomaw	10 per day
			<u>Below the fall line in all coastal rivers of the Chesapeake Bay</u>	<u>No yellow perch less than 9 inches; no daily limit</u>
chain pickerel		5 per day No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs	No daily limit
northern pike		2 per day No pike less than 20 inches		
muskellunge		2 per day No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to Claytor Dam, including Claytor Lake	1 per day; no muskellunge less than 42 inches
			New River - Claytor Dam downstream to the VA - WV state line	1 per day June 1 - last day of February: No muskellunge 40 to 48 inches March 1 - May 31: No muskellunge less than 48 inches

Regulations

bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate No statewide length limits	Lake Gaston and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Buggs Island (Kerr) Reservoir	No crappie less than 9 inches
			Briery Creek and Sandy River Reservoirs	No crappie less than 9 inches
			Flannagan and South Holston Reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; in the aggregate with Roanoke bass No statewide length limits	Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Nottoway, Meherrin, Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with Roanoke bass; no rock bass less than 8 inches
Roanoke bass		25 per day in the aggregate with rock bass No statewide length limits	Nottoway, Meherrin, Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with rock bass; no Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit

Regulations

	blue catfish	20 per day; No statewide length limits	Lake Gaston	No daily limit, except only 1 blue catfish per day longer than 32 inches
			Kerr Reservoir	20 per day, except only 1 blue catfish per day longer than 32 inches
			James River and its tributaries below the fall line, <u>Rappahannock River and its tributaries below the fall line,</u> and York River and its tributaries (including the Pamunkey River and Mattaponi River) below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
			All rivers below the fall line other than the James River and its tributaries, <u>Rappahannock River and its tributaries,</u> and the York River and its tributaries	No daily limit
	yellow, brown, and black bullheads	No daily limit; No length limits		
hickory shad	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission in tidal rivers		
	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	10 per day No length limits		
American shad		No possession		

Regulations

anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest Rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day No drum less than 18 inches or greater than 27 inches		
spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and North Landing River and its tributaries	1 per day No grey trout less than 12 inches		
southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day No flounder less than 15 inches		

northern snakehead		Anglers may possess snakeheads taken from Virginia waters if they immediately kill the fish and notify the headquarters or a regional office of the department; notification may be made by telephoning (804) 367-2925 No statewide daily limit No statewide length limits		
longnose gar		5 per day No statewide length limits		
bowfin		5 per day No statewide length limits		
American eel		25 per day No eel less than 9 inches	Back Bay and North Landing River	No possession limit for those individuals possessing a permit obtained under 4VAC15-340-80
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

4VAC15-320-60. Approval required to stock fish into inland waters.

It shall be unlawful to stock any species of fish into any inland waters of the Commonwealth, without first obtaining written approval to do so from the department. Nothing in this section shall be construed as restricting the use of native and naturalized species of fish in privately-owned ponds and lakes, except spotted bass, blue catfish, and their hybrids may not be stocked.

4VAC15-320-100. Department-owned or department-controlled lakes, ponds, streams, boat access sites, or hatcheries.

A. Motors and boats. Unless otherwise posted at each recognized entrance to any department-owned or department-controlled lake, pond, or stream, the use of boats propelled by a gasoline motor, motor or sail or mechanically operated recreational paddle wheel is prohibited. Department employees and other government agency officials may use gasoline motors in the performance of official duties.

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B. Method of fishing. Taking any fish at any department-owned or department-controlled lake, pond, or stream by any means other than by use of one or more attended poles with hook and line attached is prohibited unless otherwise posted in which case cast nets (subject to 4VAC15-360-10 B) may be used for collecting nongame fish for use as bait.

C. Hours for fishing. Fishing is permitted 24 hours a day unless otherwise posted at each recognized entrance to any department-owned or department-controlled lake, pond, stream, or boat access site.

D. Seasons; hours and methods of fishing; size and creel limits; hunting and trapping. The open seasons for (i) fishing, as well as fishing hours, methods of taking fish, and the size, possession, and creel limits; and (ii) hunting and trapping for department-owned or department-controlled lakes, ponds, streams or boat access sites shall conform to the regulations of the board unless otherwise excepted by posted rules by the director or his designee. Such posted rules shall be displayed at each lake, pond, stream, or boat access site, in which case the posted rules shall be in effect. Failure to comply with posted rules concerning seasons, hours, methods of taking, bag limits, and size, possession, and creel limits shall constitute a violation of this regulation.

E. Other uses. Camping overnight or building fires (except in developed and designated areas), swimming, or wading in department-owned or department-controlled lakes, ponds, or streams (except by anglers, hunters and trappers actively engaged in fishing, hunting, or trapping), is prohibited. All other uses shall conform to the regulations of the board unless excepted by posted rules.

F. Fishing tournaments, etc. ~~It shall be unlawful~~ A boat ramp special use permit is required to organize, conduct, supervise, or solicit entries for fishing tournaments, rodeos, or other fishing events on lakes, ponds, or streams owned by the department, for which prizes are offered, awarded, or accepted based on size or numbers of fish caught, either in money or other valuable considerations. ~~This chapter will not prohibit events approved by the department that are intended to promote youth fishing or provide instruction, provided no prizes, as defined above, are awarded and no participation fees are charged. Any fish captured and entered for scoring or consideration during a permitted fishing tournament, rodeo, or other fishing event on lakes, ponds, or streams owned by the department must be immediately released at the capture site. A boat ramp special use permit is not required for tournaments, rodeos, or other fishing events that occur on a statewide or nationwide basis and that do not have a designated meeting or gathering location.~~

VA.R. Doc. No. R21-5909; Filed September 22, 2020, 4:07 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-330. **Fish: Trout Fishing (amending 4VAC15-330-150, 4VAC15-330-160; repealing 4VAC15-330-110).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) repeal the special provisions applicable to certain portions of Green Cove Creek, Smith Creek, Snake Creek, and Whitetop Laurel Creek regarding the taking of trout; (ii) add portions of Green Cove Creek in Washington County, Whitetop Laurel Creek in Washington County, Smith Creek in Alleghany County, and Snake Creek and Little Snake Creek in Carroll County to the special provision for artificial lure, single hook-only trout fishing; and (iii) remove portions of the Hardware River in Fluvanna County and Peak Creek in Pulaski County and add portions of the Hardy Creek in Lee County and the Piney River in Nelson County to the special provision for artificial lure only and no live possession of bait or trout for trout fishing.

4VAC15-330-110. Special provisions applicable to certain portions of Green Cove Creek, Smith Creek, Snake Creek and Whitetop Laurel Creek. (Repealed.)

~~It shall be lawful to fish using only artificial lures with single hooks in that portion of Green Cove Creek in Washington County from Route 859 downstream to its mouth, in that portion of Smith Creek in Alleghany County from the Clifton Forge Reservoir Dam downstream to a sign at the Forest Service boundary above the C + O Dam, on Snake Creek in Carroll County upstream from its mouth to Hall's Fork on Big Snake Fork and to the junction of Routes 922 and 674 on Little Snake Fork, in Whitetop Laurel Creek in Washington County upstream from the mouth of Straight Branch to a sign at the Forest Service boundary just downstream of Taylor Valley, and in Whitetop Laurel Creek~~

~~in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction. All trout caught in these waters under 12 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 12 inches in length in these areas.~~

4VAC15-330-150. Special provision applicable to trout fishing using artificial lures with single hook.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within:

1. The Stewarts Creek Trout Management Area in Carroll County.
2. The Rapidan and Staunton Rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County.
3. The Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County.
4. The East Fork of Chestnut Creek (Farmers Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties.
5. Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County.
6. That section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County.
7. North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County.
8. Spring Run from its confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County.
9. Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County.
10. Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County.
11. Stony Creek (Mountain Fork) and its tributaries within the Jefferson National Forest in Wise and Scott Counties from the outlet of High Knob Lake downstream to the confluence of Chimney Rock Fork and Stony Creek.
12. Little Stony Creek and its tributaries within the Jefferson National Forest in Scott County from the Falls of

Little Stony Creek downstream to a posted sign at the Hanging Rock Recreation Area.

13. Little Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth and Tazewell Counties downstream to the concrete bridge.

14. Big Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth County from a sign starting at the foot of the mountain and extending upstream seasonally from October 1 until five days prior to the first Saturday in April.

15. South River in the City of Waynesboro from the Wayne Avenue Bridge downstream 2.2 miles to the Second Street Bridge.

16. Wolf Creek and its tributaries within the Abingdon Muster Grounds in the Town of Abingdon from Colonial Road downstream to Stone Mill Road.

17. Beaver Creek and its tributaries within the boundaries of Sugar Hollow Park in the City of Bristol.

18. Green Cove Creek in Washington County from Route 859 downstream to its mouth.

19. Whitetop Laurel Creek in Washington County upstream from the mouth of Straight Branch to a sign posted at the Forest Service boundary just downstream of Taylor Valley, and in Whitetop Laurel Creek in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction.

20. Smith Creek in Alleghany County from the Clifton Forge Dam downstream to a sign at the Forest Service boundary above the C & O Dam.

21. Snake Creek in Carroll County below Hall Ford and that portion of Little Snake Creek below the junction of Routes 922 and 674, downstream to Route 58

All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Big Moccasin Creek, Chestnut Creek, ~~Hardware River~~ Hardy Creek, Holliday Creek, Holmes Run, Indian Creek, North River, Passage Creek, ~~Peak Creek~~, Pedlar River, Piney River, North Fork of Pound and Pound rivers, Middle Fork of Powell River, and Roanoke River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from King Arthur Road downstream 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the

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Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Big Moccasin Creek (Scott County) from the Virginia Department of Transportation foot bridge downstream approximately 1.9 miles to the Wadlow Gap Bridge, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in the ~~Hardware River (Fluvanna County)~~ from the Route 646 bridge upstream 3.0 miles to Muleshoe Bend as posted Hardy Creek (Lee County) from the Virginia Department of Transportation swinging bridge just upstream of the Route 658 ford downstream to the Route 661 bridge, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in Indian Creek within the boundaries of Wilderness Road State Park (Lee County), in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in ~~Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge~~, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in the Piney River (Nelson County) in that portion of stream from the Piney River Trailhead (Route 151) to the Rose Mill Trailhead (Route 674) adjacent to the Blue Ridge Railway Trail, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Middle Fork of Powell River (Wise County) from the old train trestle at the downstream boundary of Appalachia extending approximately 1.9 miles downstream to the trestle just upstream of the Town of Big Stone Gap, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), and in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

VA.R. Doc. No. R21-5910; Filed September 22, 2020, 5:03 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-10, 4VAC15-340-30, 4VAC15-340-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) prohibit American shad from being taken using haul seines or gill nets in the City of Virginia Beach on Back Bay and its natural tributaries and (ii) prohibit the use of seines, nets, or traps in streams and their associated tributaries that flow into Hungry Mother Lake in Smyth County.

4VAC15-340-10. Haul seines to take fish for sale.

A. Authorization to take fish for sale. A haul seine permit shall authorize the person to whom issued to take fish for sale as specified with a haul seine from the waters designated in this section.

B. Permit holder to be present when seine operated. The holder of a haul seine permit must be present with the seine at all times when it is being operated. The holder, however, may have others to assist him, and such persons assisting are not required to have a permit.

C. Length and size of nets. The length of haul seine nets shall not be more than 500 yards. The size of mesh shall be 1-1/2 inch bar mesh.

D. Season and fish to be taken in Virginia Beach City. In Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake), North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River), the open season to take all fish, except game fish, American shad, alewife, and blueback herring, with a haul seine shall be from November 1 through March 31, both dates inclusive. The harvest limit for anadromous

~~American and~~ hickory shad shall be 10 per day, ~~in the aggregate.~~

E. Labeling packages containing fish taken with haul seine. It shall be unlawful for any person to ship or otherwise transport any package, box, or other receptacle containing fish taken under a haul seine permit unless the same bears a label showing the name and address of the owner of the seine and a statement of the kind of fish contained in it.

F. Reporting. The holder of a permit to take fish for sale by means of haul seines shall keep a record of the pounds of fish taken by species and location (name and county of water body), and the pounds of each species sold.

4VAC15-340-30. Gill nets.

A. Authorization to take fish. A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than one-inch bar or square mesh (three-inch stretch mesh). Applicants must annually purchase tags for each net the applicant intends to operate and attach a department tag to each net prior to use. A single permit will be issued to the permittee and shall list each tag number the permittee has been issued. All nets must be checked daily and all game fish returned to the wild.

B. Permit holder to be present when gill net is being set and checked for fish. The holder of a gill net permit must be present with the net at all times when it is being set and checked for fish. The holder may have others to assist him, and such persons assisting are not required to have a permit. However, those assisting the permittee must meet the fishing license requirements of the Commonwealth.

C. Times and places permitted in Virginia Beach City; fish which may be taken. Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) for the taking of nongame fish, except American shad, alewife, and blueback herring, for table use and also for sale from November 1 through March 31, both dates inclusive. The harvest limit for anadromous ~~American and~~ hickory shad shall be 10 per day, ~~in the aggregate.~~ Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such nets must be marked at both ends and at least every 100 feet along the length of the net with a five-inch by 12-inch minimum dimensions float.

4VAC15-340-60. Seines, traps, and nets prohibited in certain areas.

A. It shall be unlawful to use seines and nets of any kind for the taking of fish from the public waters of the Roanoke (Staunton) and Dan Rivers in Campbell, Charlotte, Halifax, and Pittsylvania Counties and in the City of Danville; provided, however, this section shall not be construed to

prohibit the use of hand-landing nets for the landing of fish legally hooked or the taking of fish from these waters pursuant to the provisions of 4VAC15-360. In addition, this section shall not be construed to prohibit the use of cast nets, also known as throw nets, for the taking of bait fish.

B. In Lick Creek and tributaries in Smyth and Bland Counties, in Bear Creek and ~~Hungry Mother Creek above in streams and their associated tributaries that flow into~~ Hungry Mother Lake in Smyth County, in Laurel Creek and tributaries upstream of Highway 16 bridge in Tazewell and Bland Counties, in Susong Branch and Mumpower Creek in Washington County and the City of Bristol, and in Timbertree Branch in Scott County, it shall be unlawful to use seines, nets, or traps; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked.

V.A.R. Doc. No. R21-5911; Filed September 22, 2020, 5:18 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, etc. (amending 4VAC15-350-20, 4VAC15-350-70).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) define a fishing spear and allow the taking of nongame fish by gig or fishing spear from a position above the surface of the water on those portions below the fall line of the Rappahannock River and its tributaries and the Potomac River and its tributaries and (ii) change the lawful taking of certain fish with a bow and arrow or crossbow from public inland waters to public rivers and streams as well as changing the exception from department-owned or department-controlled lakes to public inland lakes and reservoirs.

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4VAC15-350-20. Gigs, grab hooks, etc.; certain counties east of the Blue Ridge Mountains.

A. It shall be lawful to take nongame fish ~~(daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25)~~ at any time by snagging, grabbing, snaring, giggering, and with a striking iron in all waters ~~of the following counties~~, except (i) public impoundments, (ii) the Roanoke (Staunton) ~~and River~~, (iii) the Dan ~~rivers~~ River, (iv) the James River in Goochland County, and (v) those waters stocked by the department, of the following counties: Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Goochland, Greenville, Halifax, Louisa, Lunenburg, Mecklenburg, Nottoway, Pittsylvania, and Prince Edward.

B. It shall be lawful to take nongame fish by gig or fishing spear from a position above the surface of the water on those portions below the fall line of the Rappahannock River and its tributaries and the Potomac River and its tributaries. For the purpose of this section, a fishing spear is defined as an implement with a shaft and sharp point or tines designed to be thrust or thrown by hand.

C. Daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25.

4VAC15-350-70. Taking of fish with bow and arrow or crossbow.

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, goldfish, and gar from the public inland waters of the Commonwealth, grass carp from public ~~inland waters rivers and streams~~ of the Commonwealth except ~~department-owned or department-controlled lakes~~ public inland lakes and reservoirs, and bowfin and catfish from below the fall line in tidal rivers of the Chesapeake Bay, except waters stocked with trout, by means of bow and arrow or crossbow.

B. Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, grass carp, northern snakehead, bowfin, catfish, goldfish, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner described in this section shall be required to have a regular fishing license.

D. Creel limits. The creel limits for common carp, grass carp, northern snakehead, goldfish, and catfish shall be unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions and provided that any angler taking grass carp ensure that harvested fish are dead. The creel limit for bowfin and longnose gar shall be five fish per day.

V.A.R. Doc. No. R21-5912; Filed September 22, 2020, 5:33 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-360. **Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: October 22, 2020.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

This proposed amendments (i) limit the harvest of grass carp to only public inland rivers and streams and prohibit their harvest from any public inland lake or reservoir and (ii) remove the provision for take of candy darter as previously allowed under this section.

4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed ~~below~~ in this subsection:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, goldfish, and Asian clams. Grass carp may only be harvested in unlimited numbers from public inland ~~waters~~ rivers and streams of the

Commonwealth ~~other than department owned or department controlled lakes. It is unlawful to harvest grass carp from any public inland lake and reservoir.~~ Anglers taking grass carp must ensure that all harvested grass carp are dead.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders (each under six inches in total length), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be five. Snapping turtles shall only be taken from June 1 to September 30. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken in any number for private use: ~~eandy darter~~, eastern hellbender, diamondback terrapin, and spotted turtle.

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

- a. Period of captivity does not exceed 30 days;
- b. Animals must be liberated at the site of capture;
- c. Animals must have been housed separately from other wild-caught and domestic animals; and
- d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A of this section. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A of this section may only be taken (i) by hand, hook and line; (ii) with a seine not exceeding four feet in depth by 10 feet in length; (iii) with an umbrella type net not exceeding five by five feet square; (iv) by small minnow traps with throat openings no larger

than one inch in diameter; (v) with cast nets; and (vi) with hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take the spiny riversnail (*Io fluvialis*) in the Tennessee drainage in Virginia (Clinch, Powell, and the North, South, and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels from any inland waters of the Commonwealth.

D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth, and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

V.A.R. Doc. No. R21-5913; Filed September 22, 2020, 5:44 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

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 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 Department of Mines, Minerals and Energy will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4VAC25-40. Safety and Health Regulations for Mineral Mining (adding 4VAC25-40-115, 4VAC25-40-116).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

Effective Date: November 12, 2020.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402,

Regulations

telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

Pursuant to Chapter 804 of the 2020 Acts of Assembly, the amendments conform regulations to the federal Fair Labor Standards Act (29 USC § 212) and federal regulations by allowing that persons between 16 and 18 years of age may work around a mine, while persons younger than 18 may not work in a mine.

4VAC25-40-115. Persons younger than 18 years of age working in a mine.

Operators shall ensure no person younger than 18 years of age works in any mine.

4VAC25-40-116. Persons younger than 18 years of age working around a mine.

Operators shall comply with 29 CFR 570.60 regarding persons between 16 and 18 years of age working around any mine.

VA.R. Doc. No. R21-6511; Filed September 14, 2020, 10:27 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

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 State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (amending 9VAC5-40-5970).

9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-400, 9VAC5-50-410).

9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90).

Statutory Authority:

§ 10.1-1308 of the Code of Virginia; §§ 108, 109, 110, and 182 of the Clean Air Act; 40 CFR Parts 50, 53, and 58 (9VAC5-20-21).

§ 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60 (9VAC5-40-5970, 9VAC5-50-400, 9VAC5-50-410, 9VAC5-60-60, 9VAC5-60-90).

Effective Date: November 11, 2020.

Agency Contact: Karen G. Sabasteanski, 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 karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments (i) update references to certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2020; (ii) add two new source performance standards, Subpart XXX (Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014) and Subpart OOOOa (Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015) of 40 CFR Part 60; (iii) remove an outdated reference to a specific version of a federal code citation relating to Article 43.1 (9VAC5-40-5925 et seq.) of 9VAC5-40; and (iv) update and correct an internal reference to a federal standard affecting a specific stationary source (landfills).

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2016)~~ (2020) in effect July 1, ~~2016~~ 2020. ~~For the purposes of Article 43.1 (9VAC5-40-5925 et seq.) of~~

~~9VAC5-40 (Existing Stationary Sources), EPA regulations promulgated at Subpart Cf (40 CFR 60.30f et seq., Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) of 40 CFR Part 60, as published in the Federal Register of August 29, 2016 (81 FR 59276) and effective on October 28, 2016, is the version incorporated by reference into this article and Article 43.1. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.~~

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

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(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations, except for §§ 55.5, 55.11, and 55.12.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

(10) 40 CFR Part 72 -- Permits Regulation.

(11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75 -- Continuous Emission Monitoring.

(14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.

(15) 40 CFR Part 77 -- Excess Emissions.

(16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.

(17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.

(18) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this section, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this section, may be obtained from U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this section may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this section are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.

3. United States government.

a. The following document from the United States government is incorporated herein by reference: Standard

Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; telephone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005; telephone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold

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Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, OH 45240; telephone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; telephone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016; telephone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from American Hospital Association, One North Franklin, Chicago, IL 60606; telephone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, telephone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, telephone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, telephone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; telephone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. American Architectural Manufacturers Association (AAMA).

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; telephone (847) 303-5774.

9VAC5-40-5970. Reporting and recordkeeping.

A. With regard to the emissions standards in 9VAC5-40-5940 and 9VAC5-40-5945, the provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

B. With regard to the emission limits in 9VAC5-40-5935 and 9VAC5-40-5955, the following provisions apply:

1. 9VAC5-40-50 F and H;

2. 40 CFR 60.7; and

3. 40 CFR 60.38f(a) through ~~(m)~~ (n) except as provided in 40 CFR 60.24 and 40 CFR 60.38f(d)(2), and 40 CFR 60.39f(a) through (j).

Regulations

Article 5

Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated in this regulation by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2019)~~ (2020) in effect July 1, ~~2019~~ 2020. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil Fuel-Fired Steam Generators.

40 CFR 60.40 through 40 CFR 60.46

(fossil fuel-fired steam generating units of more than 250 million Btu per hour heat input rate and fossil fuel-fired and wood residue-fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units.

40 CFR 60.40Da through 40 CFR 60.52Da

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel), and for which construction, reconstruction, or modification is commenced after September 18, 1978)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994.

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996.

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996.

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.66

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart Ga - Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.

40 CFR 60.70a through 40 CFR 60.77a

(nitric acid production units producing weak nitric acid by either the pressure or atmospheric pressure process)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart Ja - Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007.

40 CFR 60.100a through 40 CFR 60.109a

(fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, including flares and process heaters, and sulfur recovery plants)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

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Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.205

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.215

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.225

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.235

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.245

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation and Processing Plants.

40 CFR 60.250 through 40 CFR 60.258

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart BBa - Kraft Pulp Mill Affected Sources for which Construction, Reconstruction, or Modification Commenced after May 23, 2013.

40 CFR 60.280a through 40 CFR 60.288a

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers, and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - Reserved.

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - Reserved.

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than four tons per hour: dryers, calciners, grinders, and ground rock handling and storage

facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - Reserved.

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after January 5, 1981, and on or before November 7, 2006.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

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Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after November 7, 2006.

40 CFR 60.480a through 40 CFR 60.489a

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - Reserved.

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - Reserved.

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if

dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - Reserved.

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after January 4, 1983, and on or before November 7, 2006.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after November 7, 2006.

40 CFR 60.590a through 40 CFR 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater

than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Sulfur Dioxide Emissions from Onshore Natural Gas Processing for which Construction, Reconstruction, or Modification Commenced after January 20, 1984, and on or before August 23, 2011.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - Reserved.

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and Resource Conservation and Recovery Act (RCRA) Subtitle D wastes)

Subpart XXX - Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014

40 CFR 60.760 through 40 CFR 60.769

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

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Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators.

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for which Construction is Commenced after December 9, 2004, or for which Modification or Reconstruction is Commenced on or after June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart JJJJ - Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Subpart LLLL - Sewage Sludge Incineration Units.

40 CFR 60.4760 through 40 CFR 60.4925

(an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter, including the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, and bottom ash system; and all ash handling systems connected with the bottom ash handling system)

Subpart MMMM - Reserved.

Subpart NNNN - Reserved.

Subpart OOOO - Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification, or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015.

40 CFR 60.5360 through 40 CFR 60.5499

(facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, and storage vessels)

Subpart OOOOa - Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015.

40 CFR 60.5360a through 40 CFR 60.5499a

~~(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for~~

~~Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80. (facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and pumps, storage vessels, and sweetening units)~~

Subpart PPPP - Reserved.

Subpart QQQQ - New Residential Hydronic Heaters and Forced-Air Furnaces

40 CFR 60.5472 through 40 CFR 60.5483

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and the standard is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart RRRR - Reserved.

Subpart SSSS - Reserved.

Subpart TTTT - Reserved.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - Reserved.

Appendix F - Quality Assurance Procedures.

Appendix G - Not applicable.

Appendix H - Reserved.

Appendix I - Removable label and owner's manual.

Part II
Emission Standards

Article 1

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated in this regulation by reference is

contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2019)~~ (2020) in effect July 1, ~~2019~~ 2020. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated in this regulation by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2019)~~ (2020) in effect July 1, ~~2019~~ 2020. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

VA.R. Doc. No. R21-6452; Filed September 23, 2020, 5:09 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control 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 State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 9VAC5-80. Permits for Stationary Sources (Rev. E20) (amending 9VAC5-80-1110, 9VAC5-80-1170, 9VAC5-80-1410, 9VAC5-80-1460, 9VAC5-80-1775, 9VAC5-80-2070).

9VAC5-170. Regulation for General Administration (Rev. E20) (amending 9VAC5-170-140).

Regulations

Statutory Authority:

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V); 40 CFR Parts 51, 61, 63, 70, and 72 (9VAC5-80-1110, 9VAC5-80-1170, 9VAC5-80-1410, 9VAC5-80-1460, 9VAC5-80-1775, 9VAC5-80-2070).

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§ 110); 40 CFR Part 51 (9VAC5-170-140).

Effective Date: November 11, 2020.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, or email karen.sabasteanski@deq.virginia.gov.

Summary:

In accordance with Chapter 1110 of the 2020 Acts of Assembly, the amendments add new public participation requirements for permits and variances for certain facility types with the potential to have an impact on a locality particularly affected. A "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

9VAC5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined ~~herein~~ in subsection C of this section shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.
2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this article (~~including, including~~ requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance ~~dates~~) dates:

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable federal requirements.
3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation, or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.
4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act; and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.
8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act; unless the administrator has determined that such requirements need not be contained in a federal operating permit.
12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

13. Any standard or other requirement under § 126 (a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, ~~but is not limited to,~~ installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities ~~which~~ that mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes ~~but is not limited to~~ (i) byproducts of harvesting activities conducted for forest management or commercial logging; or (ii) mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. ~~It~~ "Clean wood" does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun; or caused to begin; a continuous program of actual on-site construction of the unit, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, ~~but are not limited to,~~ lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty

containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, ~~but are not limited to,~~ stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid;
2. On-site disaster or equipment failure;
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions; or
4. An ISO-declared emergency, where an ISO emergency is:
 - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property;
 - b. Capacity deficiency or capacity excess conditions;
 - c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel;
 - d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state; or
 - e. An abnormal event external to the ISO service territory that may require ISO action.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the board that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a

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source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

"Emissions unit" means any part of a stationary source ~~which that~~ emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emissions limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;
2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the implementation plan;
4. Are technically accurate and quantifiable;
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, ~~but not be limited to,~~ the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new stationary source.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of the construction, reconstruction, or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.
2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.
3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other

statutes administered by the administrator. Federally enforceable limitations and conditions include, ~~but are not limited to,~~ the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions (~~unless, unless~~ expressly designated as state-only ~~enforceable~~) enforceable, in a federal operating permit, including any provisions that limit a source's potential to emit.
4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.
5. Limitations and conditions (~~unless, unless~~ expressly designated as state-only ~~enforceable~~) enforceable, that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.
6. Limitations and conditions (~~unless, unless~~ expressly designated as state-only ~~enforceable~~) enforceable, that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:
 - a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.
 - b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not federally enforceable by EPA.
 - c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise federally enforceable.

d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

7. Limitations and conditions in a regulation of the board or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board in subdivision 1 of 9VAC5-60-92.

"Independent system operator" or "ISO" means a person that may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Major modification" means any project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source that emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program; (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations; and (iii) codified in this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the unit or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted. The following shall not be considered physical changes or changes in the method of operation under this definition:

1. Maintenance, repair, and replacement of components that the board determines to be routine for a source type and which does not fall within the definition of "replacement";
2. An increase in the throughput or production rate of a unit (~~unless, unless~~ previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this ~~chapter~~ chapter, if that increase does not exceed the operating design capacity of that unit;
3. An increase in the hours of operation (~~unless, unless~~ previously limited by any state enforceable and federally

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enforceable permit conditions established pursuant to this ~~chapter~~ chapter;

4. Use of an alternative fuel or raw material (~~unless, unless~~ previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this ~~chapter~~ chapter, if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;

6. The addition, replacement, or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws, permit conditions, or regulations is replaced by a system or device ~~which that~~ the board considers to be less efficient in the control of air pollution emissions;

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions, or regulations or (ii) used to avoid any applicable new source review program requirement; or

8. A change in ownership at a stationary source.

"Necessary preconstruction approvals or permits" means those permits or approvals required under the NSR program that is part of the implementation plan.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (~~such, such~~ as garden tractors, off-highway mobile cranes and ~~bulldozers~~ bulldozers;

2. In or on a piece of equipment that is intended to be propelled while performing its function (~~such, such~~ as lawnmowers and string ~~trimmers~~ trimmers; or

3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, ~~but are not limited to~~, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or (ii) the engine otherwise included in subdivision 3 of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility, or installation. Any engine or engines that replace an engine at a location and that are intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months or more each year. This subdivision does not apply to an engine after the engine is removed from the location.

"Plantwide applicability ~~limitation (PAL)~~ limitation" or "PAL" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, ~~but are not limited to~~, wheels, skids, carrying handles, dolly, trailer, or platform.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

1. Volatile organic compounds and nitrogen oxides are precursors to ozone.
2. Sulfur dioxide is a precursor to PM_{2.5}.
3. Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5}, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.
4. Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5}, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

"Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, including any storage or handling of materials or products before, during, or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (~~exclusive, exclusive~~ information) information, for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and
4. Any economic or technical limitations on compliance with applicable standards of performance that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant (~~including, including~~ including any associated precursor ~~pollutant~~ pollutant, for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under 40 CFR Part 60.
4. Any pollutant subject to a standard promulgated under or other requirements established under 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63.
5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions ~~which that~~ which occur or would occur as a result of the construction or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source that causes the secondary emissions. Secondary emissions include emissions from any off site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

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"Significant" means:

1. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Particulate Matter (PM _{2.5})	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy

b. In all other areas:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Particulate Matter (PM _{2.5})	10 tpy
Volatile organic compounds	40 tpy
Lead	0.6 tpy

2. In reference to an emissions increase for a regulated air pollutant not listed in subdivision 1 of this definition, there is no emissions rate that shall be considered significant.

3. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the board and the emissions increase is determined to be significant using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source or

emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

"Site" means one or more contiguous or adjacent properties under the control of the same person ~~(or~~ or of persons under common ~~control~~ control.

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person ~~(or~~ or of persons under common ~~control~~ control except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same

industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the "Standard Industrial Classification Manual" (see 9VAC5-20-21).

"Synthetic minor source" means a stationary source that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but is subject to restrictions such that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at subdivision 1 of 9VAC5-60-92, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application

is deemed complete, or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 B, the applicant for a minor NSR permit for a new major stationary source shall notify the public of the proposed major stationary source in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, ~~but not be limited to,~~ the following:

1. The source name, location, and type;
2. The pollutants and the total quantity of each ~~which that~~ the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice; and
4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that ~~it~~ an alternative plan will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-

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60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Applications for new major stationary sources and major modifications.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4. Applications for new stationary sources or projects that have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following nonexclusive criteria:

- a. Whether the new stationary source or project is opposed by any person;
- b. Whether the new stationary source or project has resulted in adverse media;
- c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
- d. Whether the new stationary source or project has generated adverse comment by a local official, governing body, or advisory board.

5. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition and required by 9VAC5-50-20 H 3 shall be included in the application.

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 of the Code of Virginia, written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the minor NSR permit application (~~exclusive~~, ~~exclusive~~ of confidential information under ~~9VAC5-170-60~~) 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator, ~~U.S. Environmental Protection Agency~~.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.
2. The names and addresses of all persons for whom the requester is acting as a representative (~~for~~, for the purposes of this requirement, an unincorporated association is a ~~person~~) person.
3. The reason why direct consideration by the board is requested.
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

G. The board will review any request made under subsection F of this section, and will take final action on the request as provided in 9VAC5-80-1160 D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the minor NSR permit application using public participation procedures meeting the requirements of

this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

I. If the board finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

9VAC5-80-1410. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this section, all terms not defined ~~here~~ in subsection C of this section shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source ~~which~~ that is regulated by a MACT standard.

"Affected states" are all states:

1. Whose air quality may be affected and that are contiguous to the Commonwealth; or
2. Whose air quality may be affected and that are within 50 miles of the major source for which a case-by-case MACT determination is made in accordance with this article.

"Available information" means, for purposes of identifying control technology options for the stationary source, information contained in the following information sources as of the date of approval of the permit:

1. A relevant proposed regulation, including all supporting information.
2. Background information documents for a draft or proposed regulation.
3. Data and information available from the Control Technology Center developed pursuant to § 113 of the federal Clean Air Act.
4. Data and information contained in the Aerometric Information Retrieval System including information in the MACT database.
5. Any additional information that can be expeditiously provided by the administrator.
6. For the purpose of determinations by the board, any additional information provided by the applicant or others, and any additional information considered available by the board.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, ~~but is not limited to,~~ installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Begin actual reconstruction" means initiation of permanent physical on-site reconstruction of an emissions unit. This includes, ~~but is not limited to,~~ installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Best controlled similar source" means a stationary source that (i) has comparable emissions and is structurally similar in design and capacity to other stationary sources such that the stationary sources could be controlled using the same control technology; and (ii) uses a control technology that achieves the lowest emission rate among all other similar sources in the United States.

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"Case-by-case MACT determination" means a determination by the board, pursuant to the requirements of this article, ~~which that~~ establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for a stationary source subject to this article.

"Commenced" means, with respect to construction or reconstruction of a stationary source, that the owner has undertaken a continuous program of construction or reconstruction or that an owner has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construct a major source" means:

1. To fabricate, erect, or install a major source at any undeveloped site; or
2. To fabricate, erect, or install a major process or production unit at any site.

"Construction" means:

1. The fabrication, erection, or installation of a major source at any undeveloped site; or
2. The fabrication, erection, or installation of a major process or production unit at any site.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, ~~but not limited to,~~ measures that:

1. Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards ~~(including, including~~ requirements for operator training or ~~certification)~~ certification; or
5. Are a combination of subdivisions 1 through 4 of this definition.

"Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution

system for sale shall be considered an electric utility steam generating unit.

"Emergency" means, in the context of 9VAC5-80-1580 C, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods, or similar occurrences.

"Emissions unit" means any part of a stationary source ~~which that~~ emits or would have the potential to emit any hazardous air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent.
2. Contain a legal obligation for the owner to adhere to the terms and conditions.
3. Do not allow a relaxation of a requirement of the state implementation plan.
4. Are technically accurate and quantifiable.
5. Include averaging times or other provisions that allow at least monthly ~~(or, or~~ a shorter period if necessary to be consistent with the emission ~~standard)~~ standard, checks on compliance. This may include, ~~but not be limited to,~~ the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9VAC5-80-1490 and other regulations of the board.
6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

"EPA" means the ~~United States~~ U.S. Environmental Protection Agency.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

"Federally enforceable" means all limitations and conditions ~~which that~~ are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include ~~but are not limited to~~ the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

7. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components of an existing source.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act as amended by 40 CFR 63.60.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"MACT standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique ~~(including, including prohibition of emissions)~~ emissions, that the administrator establishes for new or existing sources to

which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are referenced in that standard.

"Major process or production unit" means any process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the board establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.

"Maximum achievable control technology (MACT) emission limitation" means the emission limitation ~~which that~~ is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and ~~which that~~ reflects the maximum degree of reduction in emissions that the board, taking into consideration the cost of achieving such emission reduction and any nonair quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit" means a document issued pursuant to this article containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed; shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

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"Presumptive MACT" means a preliminary MACT determination made by EPA, in consultation with states and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before the MACT standard has been promulgated.

"Process or production unit" means any collection of structures or equipment or both, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (~~exclusive, exclusive~~ of confidential information) information, the preliminary review and analysis, and the preliminary decision of the board regarding the permit application.

"Reconstruct a major source" means to replace components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technically and economically feasible for the reconstructed major source to meet the applicable standard for new sources established in a permit.

"Reconstruction" means the replacement of components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technologically and economically feasible for the reconstructed process or production unit to meet the applicable standard for new sources established in a permit.

"Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

"Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

"Source category list" means the list and schedule issued pursuant to § 112(c) and (e) for promulgating MACT

standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"State enforceable" means all limitations and conditions ~~which that~~ are enforceable as a practical matter, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility, or installation ~~which that~~ emits or may emit any air pollutant.

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

9VAC5-80-1460. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1450 A, the applicant for a permit for a major source of hazardous air pollutants shall notify the public of the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, ~~but not be limited to,~~ the following:

1. The source name, location, and type;
2. The applicable pollutants and the total quantity of each ~~which that~~ the applicant estimates will be emitted; and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice;
4. The date, time, and place of the informational briefing; and
5. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide

information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the board that ~~it~~ an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications shall be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing will be held with notice in accordance with subsection F of this section.

F. The board shall notify the public by advertisement in at least one newspaper of general circulation in the area affected of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the permit application (~~exclusive,~~ exclusive of confidential information under ~~9VAC5-170-60~~ 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected area.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.

2. The names and addresses of all persons for whom the requester is acting as a representative (~~for;~~ for the purposes of this requirement, an unincorporated association is a ~~person~~) person.

3. The reason why direct consideration by the board is requested.

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

H. The board will review any request made under subsection G of this section, and will take final action on the request as provided in 9VAC5-80-1450 D.

I. In order to facilitate the efficient issuance of permits under Articles 1 and 3 of this chapter, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification will be followed.

K. If the board finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60

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days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

9VAC5-80-1775. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-1773 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, ~~but not be limited to,~~ (i) the name, location, and type of the source, and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific

pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board will attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the board that ~~it~~ an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. The board will provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

F. The board will notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each that may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. All materials the applicant submitted ~~(exclusive,~~ exclusive of confidential information under ~~9VAC5-170-60),~~ 9VAC5-170-60; a copy of the preliminary determination; and a copy or summary of other materials, if any, considered in making the preliminary determination will be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice will be sent to the applicant, the administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: (i) local air pollution control agencies, (ii) the chief elected official and chief administrative officer of the city and county where the source or modification would be located and of any other locality particularly affected, (iii) the planning district commission, and (iv) any state, federal land manager, or

Indian governing body whose lands may be affected by emissions from the source or modification.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.
2. The names and addresses of all persons for whom the requester is acting as a representative ~~(for;~~ for the purposes of this requirement, an unincorporated association is a ~~person)~~ person.
3. The reason why direct consideration by the board is requested.
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

H. The board will review any request made under subsection G of this section and will take final action on the request as provided in 9VAC5-80-1773 D.

I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the board may hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board will notify the public of the time and place of the briefing by advertisement in a newspaper of

general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.

K. If the board finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit, unless the board votes to shorten the period.

9VAC5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-2060 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed

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source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, ~~but not be limited to,~~ (i) the name, location, and type of the source; and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board will attend and provide information and answer questions on the permit application review process.

D. Upon determination by the board that ~~it~~ an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. The board will notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the permit application (~~exclusive;~~ exclusive of confidential information under ~~9VAC5-170-60~~) 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.

2. The names and addresses of all persons for whom the requester is acting as a representative (~~for,~~ for the purposes of this requirement, an unincorporated association is a ~~person~~) person.

3. The reason why direct consideration by the board is requested.

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

H. The board will review any request made under subsection G of this section, and will take final action on the request as provided in 9VAC5-80-2060 C.

I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public

comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

K. If the board finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit, unless the board votes to shorten the period.

Part VI
Board Actions

9VAC5-170-140. Variances.

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the board may in its discretion grant local variances to a provision of the regulations of the board after

an investigation and public hearing. If a local variance is appropriate, the board shall issue an order to this effect. The order shall be subject to amendment or revocation at any time.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

D. Notwithstanding the requirements of subsection B of this section, if the board finds that there is a locality particularly affected by a variance involving (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

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3. Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit, unless the board votes to shorten the period.

VA.R. Doc. No. R21-6451; Filed September 23, 2020, 5:03 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management 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 Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-40).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Effective Date: November 11, 2020.

Agency Contact: Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

Summary:

Chapter 621 of the 2020 Acts of Assembly prohibits the disposal of solid waste in an unpermitted facility and provides that the presences of unpermitted solid waste on a person's property is prima facie evidence that the person allowed solid waste to be disposed of on his property without a permit. This regulatory action aligns the regulation with Chapter 621.

9VAC20-81-40. Prohibitions.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.

B. No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter.

C. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

D. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

E. Management of lead acid batteries.

1. No person shall place a used lead acid battery in mixed municipal solid waste or discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

2. No battery retailer shall dispose of a used lead acid battery except by delivery to:

a. The agent of a battery wholesaler or a secondary lead smelter;

b. A battery manufacturer for delivery to a secondary smelter; or

c. A collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

3. No person selling new lead acid batteries at wholesale shall refuse to accept from customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers.

4. The provisions of subdivisions 1 through 3 of this subsection shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and reclaiming such batteries.

F. Any locality may, by ordinance, prohibit the disposal of cathode ray tubes (CRTs) in any waste to energy or solid waste disposal facility within its jurisdiction if it has implemented a CRT recycling program that meets the requirements of § 10.1-1425.26 of the Code of Virginia.

G. No person shall dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the director has not issued a permit and that is not otherwise exempt from permitting requirements.

VA.R. Doc. No. R21-6486; Filed September 23, 2020, 8:15 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency

of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 10VAC5-60. **Consumer Finance Companies (amending 10VAC5-60-20, 10VAC5-60-30, 10VAC5-60-60; adding 10VAC5-60-5, 10VAC5-60-15, 10VAC5-60-25, 10VAC5-60-35, 10VAC5-60-45, 10VAC5-60-55, 10VAC5-60-65, 10VAC5-60-70; repealing 10VAC5-60-40, 10VAC5-60-50).**

Statutory Authority: §§ 6.2-1535 and 12.1-13 of the Code of Virginia.

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

Public Comment Deadline: October 23, 2020.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

Summary:

The proposed amendments implement Chapters 1215 and 1258 of the 2020 Acts of Assembly, which will become effective on January 1, 2021. Additionally, the proposed amendments update the regulation and incorporate an assortment of provisions from existing regulations governing other types of nondepository institutions also licensed and regulated under Title 6.2 of the Code of Virginia.

AT RICHMOND, SEPTEMBER 18, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2020-00055

Ex Parte: In the matter of Adopting Revisions to the Regulations Governing Consumer Finance Companies

ORDER TO TAKE NOTICE

Section 6.2-1535 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 15 (§ 6.2-1500 *et seq.*) of Title 6.2 of the Code ("Chapter 15"). The Commission's regulations governing consumer finance companies are set forth in Chapter 60 of Title 10 of the Virginia Administrative Code ("Chapter 60").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 60. The proposed amendments are prompted by Chapters 1215 and 1258 of the 2020 Virginia Acts of

Assembly, which make extensive changes to Chapter 15 that will become effective on January 1, 2021. In this regard, the Bureau's proposed revisions are primarily designed to implement and clarify certain aspects of the legislation. Additionally, the Bureau is seeking to generally update Chapter 60 in various respects as well as augment it by incorporating an assortment of provisions from the Commission's existing regulations governing one or more other types of non-depository institutions that are also licensed and regulated under Title 6.2 of the Code.

Definitions.

Proposed section 10 VAC 5-60-5 is new, and it defines several terms that are used in Chapter 60, including "advertisement," "consumer finance loan," and "liquid assets."

Surety bond; other requirements for licensees; acquisitions.

Proposed section 10 VAC 5-60-15 is also new, and it: (i) provides that all licensees need to maintain a surety bond of at least \$25,000 notwithstanding the occurrence of certain events; (ii) specifies that the unencumbered liquid asset requirement is for each place of business; (iii) clarifies the provisions governing the relocation of approved offices; and (iv) prescribes the amount of the application fee for proposed acquisitions under § 6.2-1510 of the Code. The proposal also clarifies that licensees must continuously maintain the requirements and standards for licensure prescribed in § 6.2-1507 of the Code.

Additional business requirements and restrictions.

The proposed amendments to section 10 VAC 5-60-20 prohibit a licensee from: (i) requiring a borrower to use a particular provider or list of providers for property insurance on a motor vehicle being used as security for a loan; (ii) charging a borrower a fee for cashing a loan proceeds check; (iii) selling or assigning a loan to any other person who is not also licensed under Chapter 15; and (iv) providing false, misleading, or deceptive information to borrowers or prospective borrowers. Other proposed changes to this section clarify: (i) the requirements for receipts given to borrowers for cash payments; (ii) that a person remains subject to the provisions in Chapter 15 and Chapter 60 that are applicable to licensees in connection with all consumer finance loans that the person made while licensed notwithstanding the occurrence of certain events; and (iii) that loans made prior to January 1, 2021, that remain outstanding on or after January 1, 2021, may be collected in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made. The proposed revisions also modify the time period within which a licensee must accomplish the acts required by § 6.2-1524 G of the Code.

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Access partners.

Proposed section 10 VAC 5-60-25 is new, and it clarifies various provisions in § 6.2-1523.1 of the Code pertaining to access partners and prescribes the information relating to licensees' access partners that licensees will be required to periodically furnish to the Commissioner of Financial Institutions ("Commissioner").

Repayment of loans through payroll deductions.

The proposed amendments to section 10 VAC 5-60-30 update the existing protections governing the repayment of loans through allotments so that they are applicable in all cases whereby a licensee offers a borrower the option of making payments on a consumer finance loan through deductions from the borrower's payroll. The proposal also clarifies that automatic payroll deductions that are established and administered in accordance with 10 VAC 5-60-30 are not subject to § 6.2-1526 of the Code.

Advertising.

Proposed section 10 VAC 5-60-35 is new, and it requires a licensee to conspicuously disclose certain information in its advertisements, such as the licensee's name and license number. Furthermore, the proposal clarifies that licensees' advertisements must comply with the disclosure requirements for advertisements contained in Regulation Z (12 C.F.R. Part 1026), and it specifies the record retention requirements for advertisements.

Conducting other business.

Proposed section 10 VAC 5-60-45 is also new, and it addresses the conduct of any business other than consumer finance lending from a location where a licensee conducts business under Chapter 15. This section elaborates upon the procedural requirements that are established by § 6.2-1518 of the Code, particularly as they relate to notices that may be filed with the Commissioner on or after January 1, 2021. In addition, the proposal clarifies and prescribes the conditions that are applicable to a variety of other businesses that may be conducted in licensees' consumer finance offices. The conditions largely mirror those found in the Commission's existing regulations governing the conduct of other business in payday lending offices (10 VAC 5-200-100) and motor vehicle title lending offices (10 VAC 5-210-70). Furthermore, the proposal addresses the collection of outstanding payday loans and motor vehicle title loans from consumer finance offices beginning on January 1, 2021, and clarifies that in certain circumstances, the sale of insurance or enrolling of borrowers under a group insurance policy does not constitute other business for purposes of § 6.2-1518 of the Code.

Since proposed section 10 VAC 5-60-45 incorporates the Commission's existing regulations governing the conduct of open-end credit business and real estate mortgage business in consumer finance offices, the Bureau is proposing to repeal

section 10 VAC 5-60-40 ("Rules governing open-end credit business in licensed consumer finance offices") and section 10 VAC 5-60-50 ("Rules governing real estate mortgage business in licensed consumer finance offices").

Books, accounts, and records; responding to requests from the Bureau; providing false, misleading, or deceptive information.

Section 10 VAC 5-60-55 is new, and it clarifies the record retention requirements for licensees, authorizes records to be retained electronically, and addresses the time period within which licensees need to respond to the Bureau's requests for written responses, books, records, documentation, or other information. Additionally, this proposed section furnishes licensees with guidance concerning the disposition of records containing consumers' personal financial information and expressly prohibits licensees from providing any false, misleading, or deceptive information to the Bureau.

Schedule prescribing annual fees paid for examination, supervision, and regulation of consumer finance companies.

Section 10 VAC 5-60-60 contains several technical amendments and clarifies that a licensee's annual fee is calculated on the basis of its total assets combined with the total assets of its affiliates conducting business in any of its authorized offices.

Enforcement; civil penalties.

Section 10 VAC 5-60-65 is new, and it clarifies that violations of Chapter 15 or the Commission's regulations governing consumer finance companies may result in civil penalties, license suspension, license revocation, or other appropriate enforcement action. This proposed section also explains how the maximum civil penalty under § 6.2-1543 of the Code is applied in the case of violations involving multiple loans or borrowers.

Commission authority.

The last new section, 10 VAC 5-60-70, preserves the Commission's authority to waive or grant exceptions to any provision in Chapter 60 for good cause shown.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before October 23, 2020. Requests for a hearing shall

state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2020-00055. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>.

(3) This Order and the attached proposed regulations shall be made available on the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

A COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed consumer finance companies and such other interested persons as he may designate.

10VAC5-60-5. Definitions.

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

"Act" means Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a consumer finance loan. The term includes a communication sent to a consumer as part of a solicitation of business but excludes messages on promotional items such as pens, pencils, notepads, hats, and calendars.

"Consumer finance loan" means a loan made to an individual for personal, family, household, or other nonbusiness purposes.

"Liquid assets," for purposes of the Act and this chapter, means funds held in a checking account or savings account at a depository institution, money market funds, commercial paper, and treasury bills.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-1500 of the Code of Virginia.

10VAC5-60-15. Surety bond; other requirements for licensees; acquisitions.

A. Every licensee and applicant for a license shall file and continuously maintain in full force a surety bond that meets

the requirements of § 6.2-1523.3 of the Code of Virginia. The minimum bond amount required shall be \$25,000. The form of the bond will be prescribed and provided by the commissioner.

B. If a person has filed a surety bond with the commissioner, the bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

1. The person's application for a license is withdrawn or denied;

2. The person's license is surrendered, suspended, or revoked; or

3. The person ceases engaging in business as a consumer finance company.

C. A licensee shall at all times maintain unencumbered liquid assets of at least \$25,000 per place of business. A licensee shall upon request by the bureau submit proof that it is complying with the provisions of this subsection.

D. A proposed office location specified in an application filed under § 6.2-1505 or 6.2-1508.1 A of the Code of Virginia shall be deemed to be open for purposes of the Act and this chapter effective upon the date that the application was either approved by the commission or deemed approved pursuant to § 6.2-1508.1 A.

E. A licensee shall notify the bureau in writing and pay a \$250 fee within 10 days of relocating any approved office that is located either within or outside of the Commonwealth. The bureau shall furnish the licensee with a replacement license certificate that identifies the new location upon finding that the new location is in the same county, city, or town as the old location or in a contiguous county, city, or town. The licensee shall also notify the bureau in writing within 10 days of commencing business at the relocated place of business.

F. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1507 of the Code of Virginia.

G. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

10VAC5-60-20. ~~Time limit for compliance~~ Additional business requirements and restrictions.

A. Licensees shall have ~~30~~ 10 calendar days after the date a consumer finance loan is paid in full, or a judgment is satisfied, or a borrower's obligation is otherwise terminated to accomplish the acts required by § 6.2-1524 G of the Code of Virginia.

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Failure so to comply within that time limit shall constitute a violation of the subsection, which violation will result in penalties as provided by law.

B. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle used as security for a consumer finance loan from or through a particular provider or list of providers.

C. If a licensee disburses loan proceeds by means of a check, neither the licensee nor an affiliate or subsidiary of the licensee shall charge the borrower a fee for cashing the check.

D. A licensee shall give a borrower a signed and dated receipt for each cash payment made in person, which shall state the balance due on the consumer finance loan.

E. A licensee shall not sell or otherwise assign a consumer finance loan to any other person who is not also licensed under the Act. If a consumer finance loan is sold or assigned to another licensee, the purchaser or assignee shall be subject to the same obligations and limitations under the Act and this chapter that were applicable to the licensee that sold or assigned the loan.

F. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding consumer finance loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than 10 calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

G. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

H. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all consumer finance loans that the person made while licensed as a consumer finance company notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making consumer finance loans.

I. A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

J. A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of the Act or this chapter.

K. Consumer finance loans made prior to January 1, 2021, that remain outstanding on or after January 1, 2021, may be collected in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made.

10VAC5-60-25. Access partners.

A. A licensee shall not enter into or maintain a contract with another person that requires or authorizes the person to provide any of the services described in § 6.2-1523.1 A 4 of the Code of Virginia unless (i) the person is an access partner, as defined in § 6.2-1500 of the Code of Virginia; and (ii) pursuant to such definition, the person will be providing the services from one or more physical locations in the Commonwealth.

B. A licensee's access partner shall comply with the requirements and prohibitions set forth in § 6.2-1523.1 A 2 of the Code of Virginia regardless of whether such provisions are specified in the access partner's written agreement with the licensee.

C. A licensee shall provide the commissioner with the following information in such form as the commissioner may require:

1. A list of the licensee's current access partners.
2. The physical addresses of all locations at which each access partner is performing services for the licensee.
3. A description of the services that each access partner is performing for the licensee.
4. The name, address, telephone number, and email address of an employee of the access partner who will be the point of contact for the bureau.
5. Such additional information relating to the licensee's access partners as the commissioner may require.

D. Unless otherwise directed by the commissioner, the information required by subsection C of this section shall be provided by February 15, May 15, August 15, and November 15 of each year.

10VAC5-60-30. Allotment program loans; applicability; definitions; rules Repayment of loans through payroll deductions.

A. This chapter applies to all licensees under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia making any loan under Chapter 15 of Title 6.2 of the Code of Virginia in connection with which loan a borrower authorizes an allotment and automatic disbursement from an account for the purpose of making any payments required by the loan agreement. Such a loan is referred to herein as an "allotment

~~program loan." This section governs when a borrower authorizes the borrower's employer to deduct funds from the borrower's payroll (i.e., wages or other compensation for services rendered) and remit such funds, directly or indirectly, to a licensee for the purpose of repaying, in whole or in part, the borrower's consumer finance loan.~~

B. ~~As used in this chapter the following terms shall have the following meanings:~~

~~"Allotment" means payment of any part of a borrower's military pay to a financial institution as permitted under federal law and regulations.~~

~~"Automatic disbursement" means payment, by a financial institution to a licensee, of funds received pursuant to an allotment.~~

~~"Borrower" means any person in the United States military service obligated, directly or contingently, to repay a loan made by a licensee.~~

~~"Licensee" has the meaning set forth in § 6.2-1500 of the Code of Virginia.~~

~~C.1. No A licensee may offer a borrower the option of making payments on a consumer finance loan through deductions from the borrower's payroll. However, a licensee shall not require any allotment or automatic disbursement, a borrower to (i) repay a consumer finance loan, in whole or in part, through one or more deductions from the borrower's payroll or a borrower's execution of (ii) execute a payroll deduction authorization or the Allotment Payroll Deduction Disclosure Form appended to this chapter, prescribed in subsection G of this section as a condition to making a loan under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia the Act. For purposes of this subsection, a payroll deduction authorization includes a loan agreement or other document that contains a payroll deduction authorization.~~

~~2. A licensee making an allotment program loan C. If a borrower voluntarily elects to repay a consumer finance loan, in whole or in part, through payroll deductions, the licensee shall bear all costs and expenses incident to the allotment and automatic disbursement arising from or related to the establishment or administration of such deductions.~~

~~3. D. When making an allotment program loan giving a borrower the option of making payments on a consumer finance loan through payroll deductions, a licensee shall use furnish the borrower with the Allotment Payroll Deduction Disclosure Form appended to this chapter prescribed in subsection G of this section. The form shall be a single document printed or typed without alteration on one side of a paper in at least 12-point type separate from all other papers or documents obtained by the licensee in type of size not less than that known as 12 point. All blanks on the form, other than those blanks to be filled in with the name of the licensee shall be filled in by the borrower, and the filled-in form shall~~

be signed and dated by the borrower. The completed form shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.2-1533 of the Code of Virginia.

4. ~~E. No licensee making an allotment program a loan that will be repaid, in whole or in part, through payroll deductions shall withhold any part of the proceeds of the loan to be applied to any payment required under the loan.~~

~~F. Automatic payroll deductions that are established and administered in accordance with the provisions of this section are not subject to § 6.2-1526 of the Code of Virginia.~~

Attachment: Allotment Disclosure Form

G. The required text of the Payroll Deduction Disclosure Form shall be as follows:

ALLOTMENT PAYROLL DEDUCTION DISCLOSURE FORM

1. I, (APPLICANT'S NAME), intend to ~~apply for an allotment of my military pay authorize my employer to deduct funds from my (WEEKLY / BIWEEKLY / MONTHLY) paycheck~~ in the amount of \$(AMOUNT) ~~per month to an account in my name at (FINANCIAL INSTITUTION).~~

2. I also intend to authorize disbursement of funds from my account at (FINANCIAL INSTITUTION) in the amount of \$ (AMOUNT) ~~per month~~ for the purpose of making monthly payments on my loan with (FINANCE (CONSUMER FINANCE COMPANY)). I understand that my employer will be sending this amount to (CONSUMER FINANCE COMPANY) each payroll period.

3. ~~2.~~ I am authorizing the ~~allotment and automatic disbursement payroll deductions~~ voluntarily and solely for my own convenience, and I acknowledge that (FINANCE (CONSUMER FINANCE COMPANY) has not required me to authorize the ~~allotment or automatic disbursement payroll deductions~~, or to sign this form, as a condition to making me a loan.

4. ~~3.~~ I understand that I can cancel the ~~allotment and automatic disbursement payroll deductions~~ at any time, and I understand that I am not obligated to pay any fee or charge to any person or company, directly or indirectly, for the ~~allotment or automatic disbursement payroll deductions~~.

(Applicant's Signature)

Applicant's Signature

(Date) Date

10VAC5-60-35. Advertising.

A. A licensee shall conspicuously disclose the following information in its advertisements:

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1. The name of the licensee as set forth in the license issued by the commission.

2. A statement that the licensee is "licensed by the Virginia State Corporation Commission."

3. The license number assigned by the commission to the licensee (i.e., CFI-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

C. Every advertisement used by, or published on behalf of, a licensee shall comply with the disclosure requirements for advertisements contained in Regulation Z (12 CFR Part 1026).

D. Every licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including solicitation letters, print media proofs, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of internet web pages.

E. For purposes of this section, the term "conspicuously" means that the required disclosures are prominently located and readily noticeable by a potential borrower.

10VAC5-60-40. Rules governing open-end credit business in licensed consumer finance offices. (Repealed.)

A. The business of extending open end credit shall be conducted by a separate legal entity, and not by the consumer finance licensee. The separate, open-end credit entity ("separate entity") shall comply with all applicable state and federal laws.

B. Separate books and records shall be maintained by the licensee and the separate entity, and the books and records of the licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with this section.

C. The expenses of the two entities will be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

D. Advertising or other information published by the licensee or the separate entity shall not contain any false, misleading or deceptive statement or representation concerning the rates, terms or conditions for loans or credit made or extended by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

E. The licensee and the separate entity shall not make both a consumer finance loan and an extension of open end credit to the same borrower or borrowers as part of the same transaction.

F. Except as authorized by the Commissioner of Financial Institutions, or by order of the State Corporation Commission, insurance, other than credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, and noncredit related life insurance sold pursuant to 10VAC5 70-10 et seq. shall not be sold in licensed consumer finance offices in connection with any extension of open end credit by the separate entity.

G. When the balance owed under an open end credit agreement is paid, finance charges will be assessed only to the date of payment.

10VAC5-60-45. Conducting other business.

A. This section governs the conduct of any business other than consumer finance lending where a licensed consumer finance lending business is conducted. As used in this section, the term "other business operator" refers to a licensed consumer finance company or third party, including an affiliate or subsidiary of the licensed consumer finance company, that conducts or wants to conduct other business from one or more consumer finance offices.

1. This section shall not apply to any other business that is transacted solely with persons residing outside of the Commonwealth.

2. If a licensee accepts loan applications, sends or receives loan-related information or documents, disburses loan funds, or accepts loan payments on or through the licensee's website or mobile application, and any other products or services are or will be offered or sold to Virginia residents on or through such website or mobile application, then the offer or sale of such other products or services shall constitute the conduct of other business and shall be subject to all of the provisions of this section to the same extent as if such other business was conducted by an other business operator from the licensee's consumer finance offices.

B. Notwithstanding any provision of this section or authority obtained under § 6.2-1518 of the Code of Virginia or a predecessor statute prior to January 1, 2021, a licensee shall not make consumer finance loans at the same location at which the licensee, or any affiliate or subsidiary of the licensee, conducts business under Chapter 18 (§ 6.2-1800 et seq.) or Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. However, if prior to January 1, 2021, a licensee obtained authority under § 6.2-1518 or a predecessor statute for the licensee or its affiliate or subsidiary to make payday loans or motor vehicle title loans from the licensee's consumer finance offices, then the licensee or its affiliate or subsidiary may continue collecting payments on any

outstanding payday loans or motor vehicle title loans (i) in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made, and (ii) subject to the general conditions set forth in subsection F of this section.

C. The sale of insurance or enrolling of borrowers under a group insurance policy by a licensee shall not constitute other business for purposes of § 6.2-1518 of the Code of Virginia or this section when such insurance covers potential risks or losses associated with consumer finance loans made by the licensee. This subsection shall be applicable only to (i) credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, non-filing insurance, and property insurance; and (ii) other types of insurance that the commissioner determines meet the condition prescribed in this subsection.

D. If prior to January 1, 2021, a licensee obtained authority under § 6.2-1518 of the Code of Virginia or a predecessor statute for an other business operator to conduct other business in its consumer finance offices, then the following rules shall govern:

1. If the other business is identified in subsections G through R of this section, then the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) the specific conditions prescribed for such business in subsections G through R of this section. These conditions shall supersede the conditions that were prescribed by regulation or established by the commissioner at the time the authority was obtained. Subject to the conditions referenced in this subsection, the other business may be conducted in any or all of the licensee's consumer finance offices.

2. If the other business is not identified in subsections G through R of this section, then the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) the most recent set of conditions that were established by the commissioner. Subject to these conditions, the other business may be conducted in any or all of the licensee's consumer finance offices.

E. Beginning January 1, 2021, if a licensee seeks to conduct the business of making consumer finance loans from one or more of its consumer finance offices in which an other business operator will conduct other business, then the licensee shall give the commissioner written notice at least 30 days prior to the conduct of the other business, pay a fee of \$300, and provide the commissioner with any additional information pertaining to the other business that the commissioner may require.

1. If the other business specified in the licensee's written notice is identified in subsections G through R of this section, then the other business shall be conducted in

accordance with (i) the general conditions set forth in subsection F of this section and (ii) the specific conditions prescribed for such business in subsections G through R of this section.

2. If the other business specified in the licensee's written notice is not identified in subsections G through R of this section, then the following rules shall govern:

a. The commissioner may, after providing notice to the licensee and offering the licensee an opportunity to request a hearing before the commission, prohibit or establish additional conditions for the conduct of such other business in the licensee's consumer finance offices if the commissioner finds that the other business is or would otherwise be (i) of such a nature or conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of the Act or this chapter; (ii) contrary to the public interest; or (iii) conducted in an unlawful manner.

b. Unless the conduct of such other business is prohibited, the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) any specific conditions established by the commissioner pursuant to this subdivision.

3. Subject to the other provisions in this subsection and except as otherwise provided in subdivision E 2 of this section, the other business may be conducted in any or all of the licensee's consumer finance offices beginning on the earlier of (i) 30 days after the licensee furnishes the commissioner with the written notice, payment, and any additional information required by the commissioner, or (ii) the date the commissioner notifies the licensee that the other business may be conducted in the licensee's offices.

F. All other businesses conducted from a licensee's consumer finance offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a consumer finance loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator from the licensee's consumer finance offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing or registration requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or

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loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a consumer finance loan or vary the terms of a consumer finance loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a consumer finance loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's consumer finance lending business and in a different location within the licensee's consumer finance offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

G. The following additional conditions shall be applicable to conducting open-end credit business from a licensee's consumer finance offices, which, for purposes of this section, includes a line of credit business, a revolving loan business, and the servicing of open-end loans, lines of credit, and revolving loans:

1. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding open-end loan from the other business operator or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.

2. The other business operator shall not make an open-end loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the licensee.

3. The licensee and other business operator shall not make a consumer finance loan and an open-end loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a consumer finance loan or open-end loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

H. The following additional conditions shall be applicable to conducting business under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia from a licensee's consumer finance offices:

1. Pursuant to § 6.2-1507 A 4 of the Code of Virginia, the other business shall be conducted by a person other than the licensee or an affiliate or subsidiary of the licensee.

2. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding short-term loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a short-term loan from the other business operator.

3. The other business operator shall not make a short-term loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the licensee.

4. The licensee and other business operator shall not make a consumer finance loan and a short-term loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or short-term loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

I. The following additional conditions shall be applicable to conducting business under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia from a licensee's consumer finance offices:

1. Pursuant to § 6.2-1507 A 4 of the Code of Virginia, the other business shall be conducted by a person other than the licensee or an affiliate or subsidiary of the licensee.

2. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.

3. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the licensee.

4. The licensee and other business operator shall not make a consumer finance loan and a motor vehicle title loan

contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

J. The following additional condition shall be applicable to conducting a mortgage lender or mortgage broker business from a licensee's consumer finance offices: the licensee and other business operator shall not make a consumer finance loan and make or broker a mortgage loan contemporaneously or in response to a single request for a loan or credit.

K. The following additional conditions shall be applicable to conducting an auto club membership business from a licensee's consumer finance offices:

1. A membership shall not be sold to any person who does not own or lease an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets.

2. A renewal membership shall not be offered or sold more than one month prior to the expiration of a current membership term.

3. A membership shall not be offered or sold for more than a three-year term.

L. The following additional conditions shall be applicable to conducting business as an authorized delegate or agent of a money order seller or money transmitter from a licensee's consumer finance offices:

1. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

M. The following additional conditions shall be applicable to conducting the business of (i) tax preparation or electronic tax filing services, or (ii) facilitating third party tax preparation or electronic tax filing services, from a licensee's consumer finance offices:

1. The other business operator shall not engage in the business of (i) accepting funds for transmission to the

Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The licensee shall not make a consumer finance loan that is secured by an interest in a borrower's tax refund.

N. The following additional conditions shall be applicable to conducting the business of facilitating or arranging tax refund anticipation loans or tax refund payments from a licensee's consumer finance offices:

1. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a consumer finance loan transaction.

3. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee shall not make a consumer finance loan that is secured by an interest in a borrower's tax refund.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

O. The following additional conditions shall be applicable to conducting business as a check casher from a licensee's consumer finance offices:

1. Pursuant to § 6.2-2107 of the Code of Virginia, the check casher business shall be conducted by a person other than the licensee unless the licensee would not be required to be registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not charge a fee to cash a check issued by the licensee or any other person operating in the licensee's consumer finance offices.

P. The following additional condition shall be applicable to conducting the business of operating an automated teller machine from a licensee's consumer finance offices: the other

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business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a loan that was made by the licensee or any other lender conducting business from the licensee's consumer finance offices.

Q. The following additional condition shall be applicable to conducting the business of selling noncredit-related life insurance from a licensee's consumer finance offices: the licensee and other business operator shall comply with 10VAC5-70, Sale of Noncredit-Related Life Insurance in Consumer Finance Offices.

R. The conduct of the following businesses from a licensee's consumer finance offices shall have no conditions other than the conditions prescribed in subsection F of this section:

1. Mortgage servicing business.
2. Sales finance business.

S. Notwithstanding any other provision of this section, the commissioner may, after providing notice to affected licensees and offering them an opportunity to request a hearing before the commission, establish additional conditions for the conduct of any other business in consumer finance offices if the commissioner finds that the other business is or would otherwise be (i) of such a nature or conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of the Act or this chapter; (ii) contrary to the public interest; or (iii) conducted in an unlawful manner.

T. Failure by a licensee or other business operator to comply with any provision of this section or any condition established by the commissioner, or failure by a licensee to comply with the Act or this chapter, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-60-65.

10VAC5-60-50. Rules governing real estate mortgage business in licensed consumer finance offices. (Repealed.)

A. The business of making or purchasing loans secured by liens on real estate shall be conducted by a separate legal entity, and not by the consumer finance licensee. This separate, mortgage entity ("separate entity") shall comply with all applicable state and federal laws.

B. Separate books and records shall be maintained by the consumer finance licensee and the separate entity, and the books and records of the consumer finance licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with this section.

C. The expenses of the two entities shall be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

D. Advertising or other information published by the consumer finance licensee or the separate entity shall not contain any false, misleading or deceptive statement or representation concerning the rates, terms or conditions for loans made by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

E. The consumer finance licensee and the separate entity shall not make both a consumer finance loan and a real estate mortgage loan to the same borrower or borrowers as part of the same transaction.

F. Any compensation paid by the separate entity to any other party for the referral of loans, pursuant to an agreement or understanding between the separate entity and such other party, shall be an expense borne entirely by the separate entity. Such expense shall not be charged directly or indirectly to the borrower.

G. Except as authorized by the Commissioner of Financial Institutions, or by order of the State Corporation Commission, insurance, other than credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, and noncredit-related life insurance sold pursuant to 10VAC5 70 10 et seq. shall not be sold in licensed consumer finance offices in connection with any mortgage loan made or purchased by the separate entity.

H. No interest in collateral other than real estate shall be taken in connection with any real estate mortgage loan made or purchased by the separate entity.

10VAC5-60-55. Books, accounts, and records; responding to requests from the bureau; providing false, misleading, or deceptive information.

A. A licensee shall maintain in its approved offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained (i) for at least three years after a consumer finance loan is satisfied or paid in full or a consumer finance loan application is denied; and (ii) separate and apart from those relating to any other business conducted in the approved offices.

B. A licensee may maintain records electronically provided that (i) the records are readily available for examination by the bureau and (ii) the licensee complies with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia) and the Electronic Signatures in Global and National Commerce Act (15 USC § 7001 et seq.).

C. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

D. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in §§ 6.2-1530 and 6.2-1531 of the Code of Virginia.

E. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

10VAC5-60-60. Schedule prescribing annual fees paid for examination, supervision, and regulation of consumer finance licenses companies.

Pursuant to § 6.2-1532 of the Code of Virginia, the following schedule sets the fees to be paid annually by ~~consumer finance licensees for their licenses, and to defray the costs of examination, supervision, and regulation of licensed consumer finance offices~~ licensees by the bureau:

Minimum fee - \$300 per office open January 1 of the current calendar year.

In addition to the minimum fee, the following fee based on total assets:

SCHEDULE	
Total Assets	Fee
Over \$300,000 - \$750,000	\$.85 per \$1,000 or fraction thereof
\$750,000 - \$2,000,000	\$.70 per \$1,000 or fraction thereof
Over \$2,000,000	\$.55 per \$1,000 or fraction thereof

The annual fee for each licensee will be computed on the basis of its total assets combined with the total assets of ~~all other businesses conducted~~ its affiliates conducting business in any of its ~~licensed~~ authorized offices as of the close of business December 31 of the preceding calendar year. The amounts of such total assets will be derived from the annual reports ~~which that~~ § 6.2-1534 of the Code of Virginia requires licensees to file with the ~~Bureau of Financial Institutions~~ bureau on or before the first day of April of each year.

In accordance with § 6.2-1532 of the Code of Virginia, annual fees for any given calendar year will be assessed on or before May 1 of that year and must be paid on or before June 1 of that year. ~~Fees are to be assessed using the foregoing schedule for the calendar year which began January 1, 1983. This fee schedule will be in effect until it is amended or revoked by order of the Commission.~~

10VAC5-60-65. Enforcement; civil penalties.

A. Failure to comply with any provision of the Act or this chapter may result in civil penalties, license suspension, license revocation, or other appropriate enforcement action.

B. Pursuant to § 6.2-1543 of the Code of Virginia, a licensee shall be subject to a separate civil penalty of up to \$10,000 for every violation of the Act, this chapter, or a commission order that occurred knowingly or without the exercise of due care to prevent the violation. If a licensee violates a provision of the Act, this chapter, or a commission order in connection with multiple loans or borrowers, the licensee shall be subject to a separate civil penalty per violation for each loan or borrower.

10VAC5-60-70. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

V.A.R. Doc. No. R21-6008; Filed September 21, 2020, 4:04 p.m.



TITLE 11. GAMING

VIRGINIA LOTTERY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Lottery Board is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapters 1218 and 1256 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations implementing the provisions of the acts; however, the board is required to provide an opportunity for public comment on the regulations prior to adoption.

Titles of Regulations: 11VAC5-60. Self-Exclusion Program (adding 11VAC5-60-10 through 11VAC5-60-60).

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11VAC5-70. Sports Betting (adding 11VAC5-70-10 through 11VAC5-70-310).

11VAC5-80. Sports Betting Consumer Protection Program (adding 11VAC5-80-10 through 11VAC5-80-160).

Statutory Authority: §§ 58.1-4007, 58.1-4015.1, and 58.1-4030 through 58.1-4047 of the Code of Virginia.

Effective Date: October 12, 2020.

Agency Contact: Amy Dilworth, General Counsel, Virginia Lottery, 600 East Main Street, 22nd Floor, Richmond, VA 23219, telephone (804) 664-0717, or email adilworth@valottery.com.

Summary:

The regulatory action creates three new chapters, 11VAC5-60 (Self-Exclusion Program), 11VAC5-70 (Sports Betting), and 11VAC5-80 (Sports Betting Consumer Protection Program), to establish a sports betting regulatory program administered by the Virginia Lottery pursuant to Chapters 1218 and 1256 of the 2020 Acts of Assembly. The regulations (i) implement a self-exclusion program for individuals who voluntarily agree to refrain from playing account-based lottery games, participating in sports betting, and participating in gaming activities administered by the Office of Charitable and Regulatory Programs and the Virginia Racing Commission; (ii) contain the requirements for sports betting platform operators and their principals, suppliers, vendors, and employees, including the permit application and vetting process, operational standards and oversight, and enforcement procedures; and (iii) outline the consumer protection measures required of sports betting platform operators.

CHAPTER 60
SELF-EXCLUSION PROGRAM

11VAC5-60-10. Definitions.

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

"Department" or "Virginia Lottery" means the Virginia Lottery Department, the independent department that pursuant to § 58.1-4031 of the Code of Virginia is responsible for the operation of the Commonwealth's sports betting program set forth in Articles 1 (§ 58.1-4000 et seq.) and 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Self-excluded individual" means any individual whose name is included, at the individual's own request, on the self-exclusion list maintained by the department.

"Self-exclusion list" means a list maintained by the department of names of individuals who, pursuant to this chapter, have voluntarily agreed to refrain from (i) playing any account based lottery game authorized under the provisions of the Virginia Lottery Law; (ii) participating in sports betting, as defined in § 58.1-4030 of the Code of Virginia; and (iii) participating in gaming activities administered by the Office of Charitable and Regulatory Programs or the Virginia Racing Commission. Self-excluded individuals whose names are on the self-exclusion list are prohibited from collecting any winnings or recovering any losses resulting from violation of the restrictions to which such individuals have agreed.

"Targeted mailing" means an advertisement or promotional offer directed to an individual on the basis of specific criteria, such as being a member or former member of a casino rewards club, a former sports betting participant, or a participant in social games. "Targeted mailing" does not include mass mailings made to an entire area or zip code nor does it include an advertisement that arrives in a packet of five or more non-gaming advertisements if such packet of advertisements is addressed to "resident," "occupant," or some similar wording and not to a specific individual. "Targeted mailing" further does not include any internet "pop-up" advertisement that appears on an individual's computer or mobile device on the basis of the individual's internet protocol address.

"Thing of value" means anything of value that may be used to engage in lottery or sports betting activity, including cash and other forms of payment permissible under Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia as well as free play offers and incentives.

"Winnings" means the aggregate total of proceeds from each individual winning lottery ticket or sports wager and shall not be reduced by any individual losses resulting from such activities.

11VAC5-60-20. Request for self-exclusion.

A. An individual may have his name placed on the self-exclusion list by submitting a request in the form and manner required by this section.

B. An individual requesting placement on the self-exclusion list shall submit a completed request for self-exclusion over the internet as required by this chapter. If an individual requests to be placed on the self-exclusion for life list, such request shall be made in person at department headquarters or any other location specified by the department.

C. An individual requesting placement on the self-exclusion for life list shall submit, in person, a completed request for self-exclusion as required by this chapter. The request shall be delivered to department headquarters or any other location specified by the department. Any individual submitting a self-exclusion for life request shall be required to present valid

identification credentials containing the individual's signature and either a photograph or a general physical description.

D. A request for self-exclusion shall be in a form prescribed by the department that shall include:

1. The following identifying information concerning the individual submitting the request:

a. Name, including any aliases or nicknames;

b. Date of birth;

c. Street and mailing address of current residence;

d. Telephone number; and

e. Social Security Number, which information is voluntarily provided in accordance with § 7 of the Privacy Act (5 USC § 552a);

2. The length of self-exclusion requested by the individual:

a. Two years;

b. Five years; or

c. Lifetime;

3. An acknowledgment that individuals on the self-exclusion list shall be prohibited from participating in any form of legalized gaming in the Commonwealth and are prohibited from collecting any winnings or recovering any losses resulting from violation of the restrictions to which such individuals have agreed;

4. An acknowledgment that the department shall coordinate the administration of the self-exclusion program with the Office of Charitable and Regulatory Programs and the Virginia Racing Commission pursuant to procedures developed by the department;

5. An acknowledgment that the department will share the self-exclusion list with operators of legal gambling in the Commonwealth and that such operators, pursuant to their own policies, may extend the exclusion of the individual to offerings at the operators' locations outside the borders of the Commonwealth;

6. An acknowledgment that the individual requesting self-exclusion shall notify the department within seven days if the individual's address or other contact information changes; and

7. A waiver and release that shall release and forever discharge the Commonwealth of Virginia, the department, the department's employees and agents, all holders of permits to operate a sports betting platform and their employees and agents, the Office of Charitable and Regulatory Programs, and the Virginia Racing Commission and their employees and agents from any liability to the individual requesting self-exclusion, as applicable, and the individual's heirs, administrators,

executors, and assigns for any harm, monetary or otherwise, that may arise out of or by reason of any act or omission relating to the request for self-exclusion or request for removal from the self-exclusion list, including:

a. The processing or enforcement of the request for self-exclusion or request for removal from the self-exclusion list;

b. The failure to withhold gaming privileges from or restore gaming privileges to a self-excluded individual;

c. Permitting a self-excluded individual to engage in gaming activity while on the list of self-excluded individuals; and

d. Disclosure of the information contained in the self-exclusion list, except for a willfully unlawful disclosure of such information.

E. For self-exclusion submissions for a stated period of time:

1. A sports betting permit holder shall provide a link directly to the department's self-exclusion application form.

2. The department's online self-exclusion form shall provide to the self-excluding individual for the individual's acknowledgment the following statement:

"I am voluntarily requesting exclusion from all Virginia sports betting and account based lottery. I also understand that the department will share my information with the Office of Charitable and Regulatory Programs, the Virginia Racing Commission, and all sports betting permit holders, any of whom may prohibit me from participating in further gaming activities regulated or provided by those entities, including out-of-state sports betting sites in accordance with the policies of that sports betting permit holder. I agree to notify the department within seven days if my contact information changes. I certify that the information I have provided is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my digital signature authorizes the department to prohibit me from participating in all account-based lottery games and to direct all holders of sports betting permits in Virginia to restrict my gaming activities. I am further aware that my digital signature authorizes the department to share my information with the Office of Charitable and Regulatory Programs and the Virginia Racing Commission, who may further restrict my gaming activities. In accordance with this request and until such time as the department removes my name from the self-exclusion list under the terms of my request for voluntary self-exclusion, I am aware and agree that during any period of self-exclusion any money obtained by me in violation of the terms of my self-exclusion shall be subject to forfeiture and donated to the

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Commonwealth's Problem Gambling Treatment and Support Fund."

F. For lifetime self-exclusion submissions:

1. The signature of the individual submitting the request shall acknowledge the following statement:

"I am voluntarily requesting exclusion from all Virginia sports betting and account based lottery. In addition, I understand that my information will be shared with the Office of Charitable and Regulatory Programs, the Virginia Racing Commission, and all sports betting permit holders, any of whom may prohibit me from participating in further gaming activities regulated or provided by those entities, including out-of-state sports betting sites in accordance with the policies of that sports betting permit holder. I agree to notify the department within seven days if my contact information changes. I certify that the information I have provided is true and accurate, and that I have read and understand and agree to the waiver and release included with this request for self-exclusion. I am aware that my signature authorizes the department to prohibit me from participating in all account-based lottery games and to direct all holders of sports betting permits in Virginia to restrict my gaming activities. I am further aware that my signature authorizes the department to share my information with the Office of Charitable and Regulatory Programs and the Virginia Racing Commission, who may further restrict my gaming activities. In accordance with this request I am aware and agree that any money obtained by me in violation of the terms of my self-exclusion shall be subject to forfeiture and donated to the Commonwealth's Problem Gambling Treatment and Support Fund."

2. The department shall document the type of identification credentials that were examined containing the signature of the individual requesting lifetime self-exclusion.

3. A department employee authorized to accept a self-exclusion request shall sign the application form and confirm that the signature of the individual on the request for lifetime self-exclusion appears to agree with that contained on his identification credentials.

4. The department shall confirm the individual's request to be placed on the lifetime self-exclusion list.

11VAC5-60-30. Self-exclusion list.

A. The department shall maintain the official self-exclusion list and shall transmit notification of any addition to or deletion from the list to:

1. Each sports betting permit holder;
2. The Office of Charitable and Regulatory Programs; and
3. The Virginia Racing Commission.

B. Each party noted in subsection A of this section shall maintain its own copy of the self-exclusion list and shall establish procedures to ensure that its copy of the list is kept up to date. All appropriate employees and agents of the parties noted in subsection A of this section who are notified of any addition to or deletion from the self-exclusion list shall update their lists accordingly. Changes to the list shall be made by each party noted in subsection A of this section within seven days after the day the notice is transmitted and any remaining balance in the individual's gaming account shall be refunded pursuant to internal control standards approved by the department and the department's regulations. The notice provided by the department shall include the following information concerning any individual whose name is added to the list:

1. Name, including any aliases or nicknames;
2. Date of birth;
3. Street and mailing address of current residence;
4. Telephone number; and
5. Social Security number if voluntarily provided by the individual requesting self-exclusion.

C. Information furnished to or obtained by the department pursuant to this chapter shall be deemed confidential and not be disclosed except in accordance with this chapter. The voluntary self-exclusion list and the personal information of participants in the voluntary self-exclusion program shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Except as provided in this subsection, no employee or agent of the department or any of the parties included in subsection A of this section shall disclose the name of or any information about any excluded individual to anyone other than employees and agents whose duties and functions require access to such information.

1. Any sports betting permit holder may disclose the name of and information about a self-excluded individual to appropriate employees of other sports betting permit holders in Virginia for the purpose of alerting the employees that a self-excluded individual has tried to gamble or obtain gaming related privileges or benefits from the sports betting permit holder. In addition, the permit holder may share the name of and information about self-excluded individuals across the permit holder's corporate enterprise, including sharing such information with any of its affiliates.

2. It shall be permissible for a sports betting permit holder, or an employee or agent thereof, to disclose the names of individuals on the self-exclusion list to a third party that is registered or licensed by the department pursuant to 11VAC5-70 for the purpose of allowing the third party to remove the names of such individuals from a targeted

mailing or other advertising or promotion to be made on behalf of the sports betting permit holder. The company to whom such self-exclusion list is disclosed shall be prohibited from distributing or disclosing the list to the public or to any other party and shall be required to establish procedures approved by the department to ensure the self-exclusion list is not disclosed.

3. A licensed or registered company that obtains the self-exclusion list from a sports betting permit holder shall be permitted to use the list solely to exclude names or addresses from a marketing campaign on behalf of the sports betting permit holder. Such company may not use the self-exclusion list for any other type of marketing or for any other purpose whatsoever.

11VAC5-60-40. Duties of sports betting permit holder.

A. A sports betting permit holder shall establish procedures that are designed, to the greatest extent practicable, to:

1. Prevent an individual on the self-exclusion list from opening a new sports betting account;
2. Identify and suspend any sports betting accounts of an individual on the self-exclusion list;
3. Refund any remaining balance to an individual on the self-exclusion list consistent with the department's regulations and the permit holder's internal control standards as approved by the department;
4. Ensure that self-excluded individuals do not receive, either from the permit holder or any agent thereof, targeted mailings, telemarketing promotions, player club materials, or other targeted promotional materials relating to sports betting; and
5. Enforce the provisions of this chapter.

B. Upon notification that an individual has been added to or deleted from the self-exclusion list, each sports betting permit holder shall comply with all relevant provisions of 11VAC5-60-50.

C. Each sports betting permit holder shall maintain on file a current copy of the permit holder's internal control standards procedures established pursuant to 11VAC5-60-60 and 11VAC5-70.

11VAC5-60-50. Removal from self-exclusion list.

A. Upon expiration of the period of self-exclusion requested pursuant to 11VAC5-60-20, the department shall remove the individual's name from the self-exclusion list and notify each sports betting permit holder, the Office of Charitable and Regulatory Programs, and the Virginia Racing Commission of the removal.

B. Within seven days of receipt of notice from the department, the parties notified in subsection A of this section

shall delete the name of the individual from the parties' self-exclusion lists.

11VAC5-60-60. Forfeiture of winnings by self-excluded individual.

A. If a sports betting permit holder detects or is notified of the presence of a sports bettor suspected of being a self-excluded individual who has engaged in or is engaging in gaming activity, the permit holder shall take reasonable measures to verify that the sports bettor is a self-excluded individual and the evidence of the individual's exclusion.

B. Upon verification of the individual's self-excluded status, the sports betting permit holder shall:

1. Immediately prohibit access to the individual's sports betting account, return the balance accrued prior to the exclusion request, and seize any winnings that accrue after the exclusion request; and
2. Issue a Payout Receipt and Notice of Forfeiture to the excluded player via electronic or regular mail, containing the following:
 - a. The total value and a detailed description of winnings that were seized;
 - b. The date of the incident;
 - c. The name of the self-excluded individual, if known, and basis for determining the individual is a self-excluded individual;
 - d. The street and mailing address of the self-excluded individual, if known, at which the individual may be notified regarding any future proceedings;
 - e. The date of the internet or mobile wagering session during which the self-excluded individual was engaged in a gaming transaction; and
 - f. Notice to the self-excluded individual that the department shall be seeking forfeiture of the winnings seized, that the individual has the right to be heard about the forfeiture, and that failure to respond to a forfeiture notice from the department shall be deemed a waiver of the right to be heard.

C. The original Payout Receipt and Notice of Forfeiture prepared and signed as required in subsection B of this section shall be maintained on file by the sports betting permit holder. Copies of the document shall be provided to the self-excluded individual and filed with the department, which filing may be made electronically.

D. All funds identified by a permit holder as subject to forfeiture shall be maintained separately and held by the sports betting permit holder until further order of the department or upon notice from the department that the funds may be released.

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E. Pursuant to the self-excluded individual's request submitted under 11VAC5-60-20, any winnings seized from a self-excluded individual shall be subject to forfeiture, following notice to the self-excluded individual and an opportunity to be heard. A failure to respond to a forfeiture notice shall result in the waiver of the right to be heard.

F. The internal control standards of a sports betting permit holder shall contain procedures for processing any winnings seized from a self-excluded individual as if the winnings were paid and reported in accordance with normal procedures applicable to such payouts. Such procedures shall include, however, such modification to forms or additional documentation as necessary to record and report the payout as a payout withheld from a self-excluded individual. This documentation shall be compared by the sports betting permit holder's accounting department at the end of the gaming day to the copy of the Payout Receipt and Notice of Forfeiture. Any winnings withheld from a self-excluded individual that are paid and reported in accordance with the normal procedures applicable to such payouts, as modified in this section, shall be deducted in the calculation of gross revenue as if the winnings were actually paid to the self-excluded individual.

G. The department may initiate forfeiture of a self-excluded individual's winnings by sending notice to the self-excluded individual via personal service or regular mail sent to the address provided by the individual. Notice shall include a description of the winnings subject to forfeiture and the self-excluded individual's right to a hearing.

H. If the self-excluded individual wishes to contest the forfeiture, the individual shall submit a written request for a hearing within 15 days of the date of the notice of the forfeiture. If no response is filed by the self-excluded individual within 15 days of the date of the notice of the forfeiture, the winnings shall be deemed forfeited and transmitted to the Commonwealth's Problem Gambling Treatment and Support Fund. The decision of the board shall be final and may not be appealed.

CHAPTER 70 SPORTS BETTING

11VAC5-70-10. Definitions.

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

"ACH" means Automated Clearing House, which is a network that connects all banking and financial institutions within the United States.

"Adjusted gross revenue" means gross revenue minus:

1. All cash or the cash value of merchandise paid out as winnings to players, and the value of all bonuses or

promotions provided to players as an incentive to place or as a result of their having placed wagers,

2. Uncollectible gaming receivables, which shall not exceed 2.0% or a different percentage as otherwise determined by the board pursuant to subsection F of § 58.1-4007 of the Code of Virginia, of gross revenue minus all cash paid out as winnings to players;

3. If the permit holder is a significant infrastructure limited licensee, as defined in § 59.1-365 of the Code of Virginia, any funds paid into the horsemen's purse account pursuant to the provisions of subdivision 14 of § 59.1-369 of the Code of Virginia; and

4. All excise taxes on sports betting paid pursuant to federal law.

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Affiliate" means a person that directly or indirectly through one or more intermediaries owns, controls, is controlled by, or is under common ownership or control with the other person.

"Affiliated marketer" means a person that is involved in promoting, marketing, and directing business to online gaming sites and has an agreement with a permit holder to be compensated based on the number of registrations, the number of depositing registrations, or a percentage of adjusted gross receipts.

"AML" means anti-money laundering.

"Annual permit application period" means the period occurring annually when the department will accept sports betting permit applications.

"Applicant" means a person who applies for a sports betting permit, license, or registration.

"Application" means the forms, information, and documents submitted electronically to the Virginia Lottery to seek a permit, license, or registration.

"Board" means the Virginia Lottery Board established by the Virginia Lottery Law.

"Canceled wager" means a wager that has been canceled due to an event or circumstance that prevents the wager's completion.

"Cheating" means behavior that includes improving the chances of winning or of altering the outcome of a wager, sports betting platform, or sporting event by (i) deception, interference, or manipulation; (ii) use of inside or nonpublic information; or (iii) through use of any equipment, including software pertaining to or used in relation to the equipment used for or in connection with a wager, sports betting platform, or the sporting event on which wagers are placed or

are invited. "Cheating" includes attempts and conspiracy to cheat and colluding with other bettors.

"College sports" means an athletic event (i) in which at least one participant is a team from a public or private institution of higher education, regardless of where such institution is located and (ii) that does not include a team from a Virginia public or private institution of higher education.

"Covered persons" means athletes; umpires, referees, and officials; personnel associated with clubs, teams, leagues, and athletic associations; medical professionals and athletic trainers who provide services to athletes; and the immediate family members and associates of such persons.

"Date of final action on a denial" means:

1. If, after the director sends written notice of permit, license, or registration denial or recommendation of denial, an applicant fails to timely request a reconsideration meeting, the date of the director's written notice;
2. If, after a reconsideration meeting, an applicant fails to timely request a board hearing, the date of the director's written notice after the reconsideration meeting; or
3. If the board holds a hearing on an appeal of the director's permit, license, or registration denial or reconsideration of such a denial, the date of the board's written decision.

"Date of final action on a sanction" means:

1. If, after the director sends a deficiency notice under the Virginia Lottery's regulations, a permit holder, licensee, or registrant fails to submit a timely, acceptable corrective action plan, the date the board adopts as final the director's deficiency notice; or
2. If the board holds a hearing on the director's recommendation to impose a sanction, the date of the board's written decision.

"Department" or "Virginia Lottery" means the Virginia Lottery Department, the independent department that pursuant to § 58.1-4031 of the Code of Virginia is responsible for the operation of the Commonwealth's sports betting program set forth in Articles 1 (§ 58.1-4000 et seq.) and 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Director" means the Executive Director of the Virginia Lottery or the director's designee.

"Global risk management" means management, consultation, instruction, or transmission of information relating to sports betting by a permit holder or sports betting platform supplier that also holds a license to conduct sports betting in another permissible jurisdiction. The term includes the management of risks associated with sports betting involving a sporting event for which a wager may be accepted; the setting or changing of bets or wagers; cutoff

times for bets or wagers; acceptance or rejection of bets or wagers; pooling or laying off of bets or wagers, lines, point spreads, odds, or other activity relating to betting or wagering.

"Gross revenue" means the total of all cash, property, or any other form of remuneration, whether collected or not, received by a permit holder from its sports betting operations.

"Individual" means a human being and not a corporation, company, partnership, association, trust, or other entity.

"Initial permit application period" means the period during which initial sports betting permit applications may be submitted to the department. The initial application period begins October 15, 2020, and ends October 31, 2020, at 11:59:59 p.m.

"Integrity monitoring system" means a system of policies and procedures approved by the board through which a permit holder receives and sends reports from other permit holders to assist in identifying unusual or suspicious wagering activity.

"Internal control standards" mean the internal procedures, administration, and accounting controls designed by the permit holder to conduct sports betting operations.

"License" means the authority granted by the director to a person to perform the functions and responsibilities of a principal, sports betting supplier, or sports betting employee.

"Licensee" means a person that holds a license, including a temporary license.

"Minor" means an individual who is younger than 21 years of age.

"Mobile application" means any interactive platform for use through the internet, a mobile device, or a computer that has been approved by the Virginia Lottery Board for operation of sports betting by a permit holder.

"Multi-source authentication" means a strong procedure that requires more than one method to verify a player's identity through a combination of two or more independent credentials, such as information known only to the player, for example, a password, pattern, or answers to challenge questions, and a player's personal biometric data, such as fingerprints, facial recognition, or voice recognition, to the extent the verification method does not violate any privacy laws.

"Permissible jurisdiction" means any jurisdiction in which global risk management or the betting or wagering on a sporting event is lawful or not otherwise expressly prohibited under the laws of that jurisdiction.

"Permit" or "sports betting permit" means written authorization given by the director following an application and investigation process that allows a person to legally

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operate a sports betting platform in the Commonwealth of Virginia.

"Permit holder" means a person that has been issued a permit by the director to operate a sports betting platform.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

"Personal biometric data" means any information about an individual that is derived from that individual's DNA, heart rate, blood pressure, perspiration rate, internal or external body temperature, hormone levels, glucose levels, hydration levels, vitamin levels, bone density, muscle density, or sleep patterns, or other information as may be prescribed by the board by regulation.

"Player" or "sports bettor" means an individual physically located in the Commonwealth of Virginia who participates in sports betting.

"Principal" means an individual who, solely or together with the individual's immediate family members, (i) owns or controls, directly or indirectly, 5.0% or more of the pecuniary interest in any entity that is a permit holder or (ii) has the power to vote or cause the vote of 5.0% or more of the voting securities or other ownership interests of such entity. "Principal" includes an individual who is employed in a managerial capacity for a sports betting platform on behalf of a permit holder, and, for purposes of this definition, "employed in a managerial capacity" means the chief executive officer of the permit holder; if applicable, its sports betting platform supplier; and any individual who has ultimate responsibility for the operation of the sports betting platform in Virginia.

"Professional sports" means an athletic event involving at least two human competitors who receive compensation in excess of their expenses for participating in such event. "Professional sports" does not include charitable gaming, as defined in § 18.2-340.16 of the Code of Virginia; fantasy contests, as defined in § 59.1-556 of the Code of Virginia; or horse racing, as defined in § 59.1-365 of the Code of Virginia.

"Prohibited conduct" means any statement, action, or other communication intended to influence, manipulate, or control a betting outcome of a sports event or of any individual occurrence or performance in a sports event in exchange for financial gain or to avoid financial or physical harm. "Prohibited conduct" includes statements, actions, and communications made to a covered person by a third party. "Prohibited conduct" includes cheating. "Prohibited conduct" does not include statements, actions, or communications made or sanctioned by a sports team or sports governing body.

"Prohibited individual" means any individual (i) who is prohibited from wagering pursuant to the sports betting law; (ii) whose name is on any self-exclusion list or the Virginia Lottery Exclusion List; (iii) whose participation may undermine the integrity of the wagering or the sporting event; (iv) who is excluded from wagering for any other good cause; or (v) who makes or attempts to make a wager as an agent or proxy on behalf of another for compensation (i.e., messenger betting).

"Prohibited wager" means an attempted wager on any sporting event or occurrence that is not explicitly permitted (i) under the sports betting law or (ii) by board action, whether by regulation or according to any list of permissible wagers published and updated by the department from time to time. "Prohibited wager" includes wagers on youth sports, proposition bets on college sports, and bets on Virginia college sports. For youth sports and Virginia college sports, "prohibited wagers" are limited to the single game or match in which a youth sports or Virginia college sports team is a participant and shall not be construed to prohibit wagering on other games in a tournament or multi-game events in which a youth sport or Virginia college sports team participates, so long as such other games do not have a participant that is a youth sports or Virginia college sports team.

"Proposition wager" or "proposition bet" means a wager on a single specific action, statistic, occurrence, or nonoccurrence to be determined during a sporting event and includes any such action, statistic, occurrence, or nonoccurrence that does not directly affect the final outcome of the sporting event to which it relates.

"Registrant" means a person that has received a registration approval from the director.

"Registration" means the authority granted by the director to a person to perform the functions and responsibilities of a sports betting vendor.

"Sports betting" means placing wagers on professional sports, college sports, sporting events, and any portion thereof and includes placing wagers related to the individual performance statistics of athletes in such sports and events. "Sports betting" includes any system or method of wagering approved by the director, including single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, and straight bets. "Sports betting" does not include (i) participating in charitable gaming authorized by Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia; (ii) participating in any lottery game authorized under Article 1 (§ 58.1-4000 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia; (iii) wagering on horse racing authorized by Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia; (iv) participating in fantasy contests authorized by Chapter 51 (§ 59.1-556 et seq.) of Title 59.1 of the Code of Virginia; (v) placing a wager on a college sports

event in which a Virginia public or private institution of higher education is a participant; or (vi) placing a wager on sports events organized by the International Olympic Committee.

"Sports betting account" or "player account" means an account established by a permit holder for an individual to use for sports betting with a specific identifiable record of deposits, wagers, and withdrawals established by a sports bettor and managed by the permit holder.

"Sports betting employee" means an individual who does not meet the definition of a principal and works within the borders of the Commonwealth of Virginia for a permit holder, sports betting supplier, or vendor on nonmanagement support services, such as software or hardware maintenance or the provision of products, services, information, or assets, directly or indirectly, to the permit holder.

"Sports betting law" means Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Sports betting operation" means the legal provision of sports betting to individuals through a sports betting platform in the Commonwealth of Virginia.

"Sports betting platform" means a website, application, or other platform accessible via the internet or mobile, wireless, or similar communications technology that sports bettors may use to participate in sports betting.

"Sports betting supplier" or "supplier" means a person that (i) manages, administers, or controls wagers initiated, received, or made on a sports betting platform; (ii) manages, administers, or controls the games on which wagers are initiated, received, or made on a sports betting platform; or (iii) maintains or operates the software or hardware of a sports betting platform, including geolocation services, customer integration, and customer account management.

"Sports event" or "sporting event" means professional sports, college sports, and any athletic event, motor race event, electronic sports event, or competitive video game event.

"Sports governing body" means an organization headquartered in the United States that prescribes rules and enforces codes of conduct with respect to a professional sports or college sports event and the participants therein. "Sports governing body" includes a designee of the sports governing body.

"Submit" means to deliver a document or electronic information (i) in a manner that ensures its receipt by the party to whom it is addressed and (ii) that is considered complete only upon actual receipt by that party.

"Suspicious wagering activity" means unusual wagering activity that cannot be explained; that is in violation of the sports betting law or this chapter; that is made or attempted to

be made by an agent or proxy for compensation (i.e., messenger betting); or that is or may be indicative of match-fixing, the manipulation of an event, misuse of inside information, sports corruption, or other prohibited activity.

"Unusual wagering activity" means abnormal wagering activity exhibited by players and deemed by a permit holder as a potential indicator of suspicious wagering activity. Unusual wagering activity may include the size of a player's wager or increased wagering volume on a particular event or wager type.

"Vendor" or "sports betting vendor" means a person within the Commonwealth that is engaged by, under contract to, or acting on behalf of a permit holder to provide sports betting-related goods or services that directly affect sports betting in Virginia and that does not meet the criteria for licensing as a principal or a supplier, such as an affiliated marketer or an equipment maintenance provider.

"Virginia college sports" means an athletic event in which at least one participant is a team from a Virginia public or private institution of higher education.

"Voided wager" means a wager voided by a permit holder for a specified sporting event.

"Wager" or "bet" means a sum of money or thing of value that is risked by a sports bettor on the unknown outcome of one or more sporting event, including the form of fixed-odds betting, a future bet, live betting, a money line bet, pari-mutuel betting, parlay bet, pools, proposition bets, spread bet, or in any other form or manner as authorized by regulation of the board. "Wager" or "bet" does not include a sum of money or thing of value risked on an unknown outcome pursuant to the Fantasy Sports Act.

"Written notice" or "notice" means notice provided in paper or electronic form, including electronic mail.

"Youth sports" means an athletic event (i) involving a majority of participants younger than 18 years of age or (ii) in which at least one participant is a team from a public or private elementary, middle, or secondary school, regardless of where such school is located. Regardless of the age of the participants, an athletic event that meets the definition of "college sports" or "professional sports" shall not be considered "youth sports."

11VAC5-70-20. Application process.

A. General provisions.

1. Upon filing of an online application for a permit, license, or registration, the applicant shall pay by wire transfer the applicable investigation and nonrefundable application fees established by the board by regulation.

2. If an application for a permit, license, or registration must be submitted to the director by a particular date, the application shall be delivered to the director not later than

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11:59:59 p.m. on the last day of the specified period, and an application submitted after the deadline will not be accepted or considered by the director.

3. Applications and required fees for permits will be accepted by the director only during the initial permit application period and, thereafter, during an annual permit application period, as defined in this chapter.

a. The initial application period begins October 15, 2020, and ends October 31, 2020, at 11:59:59 p.m. The initial permit application period does not apply to applications other than permit holder applications.

b. In 2021 and succeeding years, the annual permit application period begins May 15 and ends May 31 at 11:59:59 p.m. The annual permit application period does not apply to applications other than permit holder applications.

4. Applications and required fees for licenses and registrations may be accepted by the director at any time following October 12, 2020.

5. An applicant may not submit an application earlier than one year after the director has:

a. Taken final action on a denial of a previous permit, license, or registration application involving the applicant;

b. Taken final action on a sanction resulting in revocation of a previous permit, license, or registration application involving the applicant; or

c. Provided a permit holder, licensee, registrant, or individual with written notice of termination of a temporary permit, license, or registration.

B. Applications.

1. Information and documents submitted to the director under this chapter shall be made using the electronic form required by the director and, as required by the director, may include an original and copies.

2. Information and documents submitted to the director in a permit, license, or registration application shall be sworn under the penalties of perjury as to their truth and validity by the applicant or, if the applicant is not an individual, by an officer or director of the applicant.

3. Upon receipt of an application by the director, department staff shall review the application to determine whether it contains all the information required under this chapter.

4. If the director determines that required information has not been submitted, department staff shall notify the applicant and state the nature of the deficiency.

5. An applicant notified in accordance with subdivision 4 of this subsection shall submit the information necessary to complete the application no later than 15 days after issuance of the notice.

6. The director will not consider the application of an applicant notified in accordance with subdivision 4 of this subsection that fails to submit the requested information in a timely manner.

7. The director will consider only a timely, complete application.

C. Changes in application.

1. If information submitted by an applicant as part of a permit, license, or registration application changes or becomes inaccurate before the director acts on the application, the applicant shall immediately notify department staff of the change or inaccuracy.

2. After an application has been filed by an applicant, the applicant may not amend the application except:

a. To address a deficiency in accordance with a notice sent under subdivision B 4 of this section;

b. As required by the director or department staff for clarification of information contained in the application; or

c. To address a change in the circumstances surrounding the application that was outside the control of the applicant and that affects the ability of the applicant to comply with the law or the regulations of the board.

3. To amend an application under this subsection, an applicant shall submit to the director a written request to amend the application stating:

a. The change in the circumstances surrounding the application that necessitates the amendment;

b. The nature of the amendment; and

c. The reason why the amendment is necessary to bring the application into compliance with the law or the regulations of the board.

4. The director or department staff shall grant or deny each request submitted under subdivision 2 c of this subsection.

5. A request shall be granted if the applicant demonstrates to the satisfaction of the director that:

a. Before the change in the circumstances surrounding the application, the application complied with the pertinent provisions of the law or the regulations of the board; and

b. The amendment is necessary to bring the application into compliance with the pertinent provisions of the law or the regulations of the board.

6. An application for a permit, license, or registration may be withdrawn if the:

a. Applicant submits a written request to the director to withdraw the application; and

b. Written request is submitted before the director has:

(1) Denied the application; or

(2) Terminated a temporary permit, license, or registration.

D. Burden of proof.

1. The burden of proof shall be on the applicant to show by clear and convincing evidence (i) that the applicant complies with the laws of the Commonwealth of Virginia and the regulations of the board regarding eligibility and qualifications for the permit, license, or registration (ii) and that the applicant is not otherwise disqualified from holding a permit, license, or registration.

2. The director may deny a permit, license, or registration to an applicant whose gaming or similar license has been suspended or revoked in another jurisdiction.

3. The director may deny a permit, license, or registration to an applicant whose past or present conduct would bring the Commonwealth into disrepute.

4. Inadvertent, nonsubstantive errors that might be made in furnishing the information required by this section may not be used as a reason by the director for disqualifying the applicant.

E. Administrative costs of background investigations.

1. Except for a permit, principal license, or supplier license application, the administrative costs associated with performing background investigations shall be incorporated into the fixed application/license fee set out in this chapter.

2. For a permit, principal license, or supplier license application, the administrative costs associated with performing background investigations shall vary depending on the complexity of the investigation and the time spent conducting the investigation.

3. Promptly upon receipt of an invoice from the department, an applicant for a permit, principal license, or supplier license shall reimburse the department by wire transfer for:

a. The administrative costs associated with performing background investigations of the applicant and any individual required to provide information under this chapter; and

b. Any payments made by the director to a person approved by the director to conduct the background investigation.

4. Failure to reimburse the director shall be grounds for disqualification of the applicant.

5. The director may require initial and additional deposits from an applicant for the administrative costs of conducting the applicant's background investigation.

6. The director will refund to an applicant for a permit, principal license, or supplier license any unused amount of the advance deposit.

F. Effect of permit, license, or registration.

1. Participation in sports betting operations by a permit holder, licensee, or registrant shall be deemed a revocable privilege and shall be conditioned on the proper and continued qualification of the permit holder, licensee, or registrant and on the discharge of the affirmative responsibility of each permit holder, licensee, and registrant to provide to the regulatory and investigatory authorities under this chapter or any other provision of law, any assistance and information necessary to assure that the policies underlying this chapter are achieved.

2. Consistent with subdivision 1 of this subsection, the intent of this chapter is to:

a. Preclude:

(1) The creation of any property right in any permit, license, or registration required under this chapter;

(2) The accrual of any monetary value to the privilege of participation in sports betting operations; and

(3) Except as specifically provided by the sports betting law and the board's regulations, the transfer of any permit, license, or registration issued under this chapter; and

b. Require that participation in sports betting operations be conditioned solely on the continuing qualifications of the person who seeks the privilege.

3. A permit holder may sublicense, convey, concede, or otherwise transfer the holder's permit to a third party only after the transferee:

a. Applies and pays all application and background investigation fees for a permit;

b. Receives the approval of the director; and

c. Pays a nonrefundable transfer fee of \$200,000.

G. Continuing obligations.

1. Applicants who are awarded a permit, license, or registration shall, during the term of their permits, licenses, or registrations, conform to all the information contained in their applications.

2. If information submitted by an applicant issued a permit, license, or registration changes during its term, the permit

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holder, licensee, or registrant shall immediately submit to the director notice in writing of the change.

3. As a condition of holding a permit, license, or registration, a permit holder, licensee, or registrant must comply with all requirements of the sports betting law, this chapter, and any other chapter in this title related to sports betting.

4. Failure to comply with the obligations of subdivision 1, 2, or 3 of this subsection shall be grounds for the director taking enforcement action against the permit holder, licensee, or registrant.

H. Temporary or conditional permit, license, or registration.

1. Upon request of an applicant, the director may in his sole discretion issue a temporary or conditional permit, license, or registration to an apparently-qualified applicant.

2. An applicant for a permit, license, or registrant may not be considered to be apparently-qualified if:

a. The applicant has an immediately known present or prior activity, criminal record, reputation, habit, or association that would disqualify the applicant from holding a permit, license, or registration under the sports betting law or this chapter;

b. The applicant poses a serious imminent risk of harm to the integrity, security, or profitability of the Commonwealth's sports betting program; or

c. Reasonable grounds exist to believe that the applicant will not be able to establish the applicant's qualifications by clear and convincing evidence under this chapter.

3. By accepting a temporary or conditional permit, license, or registration, an applicant waives the right to challenge or contest a final decision by the director concerning the application.

4. A temporary or conditional permit holder, licensee, or registrant whose permanent permit, license, or registration is denied shall not receive a refund of any fees paid toward the application and the costs of the department's investigation.

5. A temporary or conditional permit, license, or registration:

a. May not be issued until the applicant has acknowledged in writing that the Commonwealth is not financially responsible for any consequences resulting from termination of a temporary or conditional permit, license, or registration or a denial of the application;

b. Expires 180 days after the date of issuance; and

c. May be extended by the director for one period of up to 180 days.

6. When the director changes a temporary or conditional permit, license, or registration into permanent status, the date of issuance of the permanent permit, license, or registration shall be deemed to be the date that the director approved the temporary permit, license, or registration.

7. By written notice to a temporary or conditional permit holder, licensee, or registrant, the director may terminate, without a hearing and without following the denial process under 11VAC5-70-120, the temporary or conditional permit, license, or registration of an applicant for:

a. Failure to pay a required fee;

b. Failure to submit required information and documentation to department staff within 15 days of responding to a request for additional information or documents;

c. Failure to comply with any other request of department staff;

d. Engaging in conduct that obstructs department staff from completing the applicant's background investigation;

e. Failure to comply with the conditions imposed by the director, or

f. Violating any provision of the sports betting law or this chapter.

8. The director's written notice of termination of a temporary or conditional permit, license, or registration is the final action of the director.

9. If, during the course of conducting an applicant's background investigation, department staff reasonably believes there is a basis for recommending denial of a permanent permit, license, or registration to a temporary or conditional permit holder, licensee, or registrant, department staff shall:

a. Notify the director and the temporary or conditional permit holder, licensee, or registrant; and

b. If the director has not yet issued a final decision on the application, allow the application to be withdrawn.

11VAC5-70-30. Consent for investigation.

A. An individual who is required to provide personal and background information under this chapter shall provide a statement that irrevocably gives consent to the director, department staff and its investigative contractors, and persons authorized by the director to:

1. Verify all information provided in the application; and

2. Conduct a background investigation of the individual.

B. An applicant shall authorize the director, department staff, and investigative contractors to have access to any and

all information the applicant has provided to any other jurisdiction while seeking a gaming or similar license in that other jurisdiction as well as the information obtained by that other jurisdiction during the course of any investigation the other jurisdiction may have conducted regarding the applicant.

11VAC5-70-40. Waiver of requirement.

A. A waiver of requirements in general.

1. The director may waive any of the grounds for denial or renewal of a permit, license, or registration.
2. The director may waive the grounds for denial under this section only after the director determines that denial would limit the number of applicants, permit holders, licensees, or registrants in a manner contrary to the best interests of the Commonwealth of Virginia.

B. Process for waiver of requirements.

1. A person requesting a waiver shall submit a written request in a format specified by the director.
2. A written request shall contain at least the following:
 - a. The standard for which the waiver is sought;
 - b. Detailed facts in support of the request;
 - c. An explanation of the unique circumstances justifying the request; and
 - d. Any other information requested by department staff or the director.
3. Upon receipt of a waiver request that fails to comply with subdivision 1 or 2 of this subsection, department staff shall notify the requestor:
 - a. Of any deficiency; and
 - b. That the request will not be presented to the director unless the identified deficiency is corrected.

C. Decision for waiver of requirements.

1. Upon receipt of a request that complies with subsections A and B of this section, department staff shall present the request to the director as soon as practicable.
2. At any time before or after a waiver has been granted, the director may:
 - a. Limit or place restrictions on the waiver as the director considers necessary in the best interest of the Commonwealth; and
 - b. Require the permit holder or licensee who is granted the waiver to cooperate with the director and to provide the director with any additional information required as a condition of the waiver.

3. After the director decides whether to grant or deny the request for a waiver, department staff shall notify the requestor of the decision.

4. The decision of the director on a request for a waiver is final and may not be appealed.

11VAC5-70-50. Sports betting permit applications.

A. An application for a sports betting permit shall consist of two parts and shall include:

1. A narrative description in an electronic format of the applicant's plan for offering a sports betting platform in the Commonwealth; and
2. Information to be provided to the department in an electronic format for the purposes of allowing the department to conduct its background investigation.

B. The narrative component of the application shall include information describing:

1. The applicant's background in sports betting;
2. The applicant's experience in wagering activities in other jurisdictions, including the applicant's history and reputation of integrity and compliance;
3. The applicant's proposed internal control standards, including controls to ensure that no prohibited or voluntarily excluded person will be able to participate in sports betting;
4. The applicant's history of working to prevent compulsive gambling including training programs for its employees;
5. If applicable:
 - a. All supporting information and documentation necessary to establish eligibility for substantial and preferred consideration pursuant to the provisions of the sports betting law;
 - b. The identity of any partner, subcontractor, or other affiliate through which the applicant wishes to demonstrate compliance with the requirements of this chapter; and
 - c. Assurances that the permit application also includes a completed application, along with all applicable permitting, licensing, registration, and background investigation fees, for the applicant's partner, subcontractor, or other affiliate, and their applicable principals.
6. The applicant's proposed procedures to detect and report suspicious or illegal gambling activity;
7. Whether the applicant intends to limit its participation in any of the types of allowable sports events available in the Commonwealth;

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8. Whether the applicant has entered into or plans to enter into any agreements to offer its sports betting platform in coordination with other applicants or persons; and

9. If the applicant is the subsidiary of another entity, an explicit statement that the parent organization will fully and absolutely guarantee the performance of the subsidiary for at least the first year of operation.

C. Information that is provided to the department in electronic format for the purposes of allowing the department to conduct its background investigation need not be repeated in the narrative submission.

D. The applicant shall include in its narrative:

1. A high-level description of the application, which shall be designed to be released to the public; and

2. An authorization for the department to release that portion of the narrative despite the otherwise-applicable provisions of § 2.2-3704.01 of the Code of Virginia.

E. The applicant shall submit the information described in subsections F through X of this section using the electronic form required by the director, along with copies if requested by department staff.

F. If the applicant is a corporation, the application shall include a:

1. Statement of when the corporation was organized;

2. Copy of the articles of incorporation and bylaws of the corporation;

3. Statement and documentation of whether the corporation has been reorganized or reincorporated during the five-year period preceding the date on which the application is submitted to the director;

4. Statement and documentation of whether the corporation has filed restated articles of incorporation; and

5. List identifying each person who:

a. Exercises voting rights in the corporation; and

b. Directly or indirectly owns 5.0% or more of the corporation.

G. If the applicant is an unincorporated business association, the application shall include a:

1. Copy of each organizational document of the applicant, including any partnership agreement;

2. Description of any oral agreements involving the organization of the applicant; and

3. List identifying each person who:

a. Exercises voting rights in the applicant;

b. Directly or indirectly owns 5.0% or more of the business association.

H. If the applicant is authorized to issue capital stock, the applicant shall state for each class of stock authorized the:

1. Total number of shares;

2. Par value if any;

3. Voting rights;

4. Current rate of dividend;

5. Number of shares outstanding and the market value of each share on the date of the application;

6. Existence of any voting trust or voting agreement in which capital stock of the applicant is held; and

7. The following information:

a. Name and address of each stockholder participating in the trust or agreement;

b. Class of stock involved; and

c. Total number of shares held by the trust or agreement.

I. The application shall include a certified copy of each voting trust or voting agreement in which capital stock is held.

J. The application shall describe the terms of any proxy by which any capital stock may be voted and shall state the:

1. Name and address of the person holding the proxy;

2. Name and address of the stockholder who granted the proxy;

3. Class of stock for which the proxy may vote; and

4. Total number of shares voted by the proxy.

K. The application shall state any provisions, and the procedures by which these provisions may be modified, for the redemption, repurchase, retirement, conversion, or exchange of an ownership interest.

L. The application shall state whether the applicant's stock may be traded through options and whether the corporation or a stockholder has executed an agreement or contract to convey any of the corporation's or the stockholder's stock at a future date.

M. The application shall include a copy or a description of each agreement or contract disclosed under subsection L of this section.

N. The application shall include a copy of each prospectus, pro forma, or other promotional material given to potential investors about the permit holder applicant's operation.

O. The application shall provide full disclosure for any stock options that may exist or have been granted.

P. The application shall:

1. Disclose all individuals and entities that have an ownership interest of 5.0% or more in the applicant, including any beneficial ownership as defined in § 13.1-1201 of the Code of Virginia; and
2. Describe the:
 - a. Nature of the ownership; and
 - b. Extent of control exercised by the owner; and
3. Include information and documents required by this chapter as to each owner.

Q. If the applicant is not an individual, the application shall include a list of the individuals who are serving or who are designated to serve, during the first year after the date the application is submitted to the director, as a director, officer, partner, or principal as defined in this chapter. The application shall also provide:

1. The individual's name and address;
2. Each position or office of the applicant held by the individual;
3. The individual's primary occupation during the five-year period preceding the date on which the application is submitted to the director; and
4. The nature and extent of any ownership interest that the individual has in the applicant.

R. The director shall take final action on a completed initial application for a sports betting permit within the timeframe set forth in § 58.1-4032 of the Code of Virginia, including the application of any required principals.

S. The director may award a sports betting permit after consideration of the application and based on:

1. The contents of the submitted application;
2. The extent to which the applicant has demonstrated past experience, financial viability, compliance with applicable laws and regulations, and success with sports betting in other jurisdictions in the United States;
3. The extent to which the applicant has demonstrated that the applicant will be able to meet the duties of a permit holder;
4. Whether the applicant has demonstrated that the applicant has made serious, good faith efforts to solicit and interview a reasonable number of investors that are minority individuals as defined in § 2.2-1604 of the Code of Virginia;
5. The amount of adjusted gross revenue and associated tax revenue that an applicant expects to generate;

6. The effect of issuing an additional permit on the amount of gross revenue and associated tax revenue generated by all permit holders, considered in the aggregate;

7. The extent to which the applicant will generate new jobs within the Commonwealth of Virginia;

8. Whether the applicant has adequate capitalization and the financial ability and the means to develop, construct, operate, and maintain the applicant's proposed internet sports betting platform in accordance with the sports betting law and this chapter;

9. Whether the applicant has the financial ability to purchase and maintain adequate liability and casualty insurance and to provide an adequate surety bond;

10. Whether the applicant has adequate capitalization and the financial ability to responsibly pay its secured and unsecured debts in accordance with its financing agreements and other contractual obligations;

11. Whether the applicant has a history of material noncompliance with casino or casino-related licensing requirements or compacts with this state or any other jurisdiction, where the noncompliance resulted in enforcement action by the person with jurisdiction over the applicant;

12. Whether the applicant or the applicant's principals have been (i) indicted for, (ii) charged with, (iii) arrested for, (iv) convicted of, (v) pleaded guilty or nolo contendere to, (vi) forfeited bail concerning, or (vii) had expunged any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, regardless of whether the offense has been expunged, pardoned, or reversed on appeal or otherwise. The board may consider mitigating factors;

13. Whether the applicant has filed or had filed against it a proceeding for bankruptcy or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt;

14. Whether the applicant has a history of material noncompliance with any regulatory requirements in the Commonwealth or any other jurisdiction where the noncompliance resulted in an enforcement action by the regulatory agency with jurisdiction over the applicant;

15. Whether at the time of application the applicant is a defendant in litigation involving the integrity of the applicant's business practices; and

16. Any other factor the director considers relevant.

T. If during the initial application period the director receives more applications for permits than are authorized under the sports betting law, the director shall:

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1. Evaluate whether any of the applications are so deficient that they should be rejected immediately;

2. Qualitatively compare the remaining applications and award permits only from the pool of the top two-thirds of the remaining applicants that meet all the qualifications of a permit holder and are not otherwise disqualified from holding a permit; and

3. Conduct further investigation and comparison before determining which, if any, of the remaining one-third of the applicants should be awarded a permit.

U. Prior to issuance of a permit, an applicant awarded a permit shall pay to the Virginia Lottery a nonrefundable permit issuance fee of \$250,000.

V. The term of a permit is three years from the date of issuance.

W. At least 60 days before the end of the term of a permit, a permit holder shall submit a:

1. Renewal application in the form required by the department; and

2. Nonrefundable wire transfer of \$200,000 as a permitting and background investigation fee.

X. Renewal applications not submitted in compliance with subdivision W 1 or W 2 of this section will not be considered.

11VAC5-70-60. Principal applications.

A. An applicant for a principal license who is associated with a sports betting permit applicant shall submit the principal application together with the permit application.

B. A principal who will be employed in a managerial capacity for a sports betting platform on behalf of a permit holder:

1. Shall submit the application separately from the application for the sports betting permit; and

2. May submit the application together with a supplier license application.

C. The application for a principal shall be made using the electronic form required by the department.

D. For an applicant who is a citizen of any country other than the United States, the background investigation shall require an international criminal history records check.

E. The application for each principal license shall be accompanied by a wire transfer of \$50,000, \$1,000 of which shall be considered an application/license fee, with the remainder constituting a nonrefundable initial deposit toward the department's administrative costs to conduct the background investigation of the applicant.

F. The term of a principal license shall be three years from the date of issuance.

G. At least 60 days before the end of the term of a principal license, a principal shall submit a:

1. Renewal application using the electronic form required by the department; and

2. Nonrefundable wire transfer of \$50,000 as an application/license fee and background investigation fee.

11VAC5-70-70. Sports betting supplier applications.

A. An applicant for a sports betting supplier license shall be made using the electronic form required by the department.

B. A principal who will be employed in a managerial capacity for a sports betting platform may submit the principal application together with a supplier license application.

C. The application for a sports betting supplier license shall include all information required by department staff.

D. The application for a supplier license to operate a permit holder's sports betting platform shall be made using the electronic form required by the department.

E. The application for a supplier license to operate a permit holder's sports betting platform shall be accompanied by a wire transfer of \$125,000, \$10,000 of which shall be considered an application/license fee, with the remainder constituting a refundable initial deposit toward the department's administrative costs to conduct the background investigation of the applicant and its employees and directors.

F. An applicant for a supplier license to operate a sports betting platform shall identify those individuals who will be employed in a managerial capacity on the platform.

G. The application for a supplier license other than to operate a permit holder's sports betting platform shall be accompanied by a wire transfer of \$50,000, \$5,000 of which shall be considered an application/license fee, with the remainder constituting a refundable initial deposit toward the department's administrative costs to conduct the background investigation of the applicant and its employees and directors.

H. The term of a supplier license shall be three years from the date of issuance.

I. At least 60 days before the end of the term of a supplier license, a supplier shall submit a:

1. Renewal application in the form required by the department; and

2. Nonrefundable wire transfer of \$50,000 as an application/license fee and background investigation fee.

11VAC5-70-80. Sports betting vendor registrations.

A. Any person not approved by the director as a registered sports betting vendor may not perform vendor functions for a

permit holder or sports betting supplier within the Commonwealth.

B. An applicant for a sports betting vendor registration shall complete and submit the electronic application form required by the department.

C. The application for a sports betting vendor registration shall include all information required by department staff.

D. The application for a sports betting vendor registration shall be accompanied by a wire transfer of nonrefundable \$500 application/registration fee toward the department's administrative costs to conduct the background investigation of the applicant.

E. The term of a sports betting vendor registration shall be three years from the date of issuance.

F. At least 60 days before the end of the term of a vendor registration, a vendor registrant shall submit a:

1. Renewal application in the form required by the department, and

2. Nonrefundable wire transfer of \$500 as an application/registration fee and background investigation fee.

11VAC5-70-90. Sports betting employee applications.

A. Any individual not holding a valid sports betting employee license issued by the director may not be employed by a permit holder or sports betting supplier to work within the borders of the Commonwealth as a sports betting employee.

B. The director may issue a sports betting employee license to an individual upon:

1. Payment of all required application/license and background investigation fees;

2. Submission of a completed license application to the director;

3. Disclosure of all personal and background information and other information required by department staff;

4. Signed consent for investigation required under this chapter;

5. Unless exempt, issuance of any applicable bond required under this chapter;

6. Receipt of at least a conditional offer of employment as a sports betting employee from a permit holder or sports betting supplier that has:

a. Obtained a bond if required under this chapter; and

b. Performed, at a minimum, criminal, credit, and tax checks, employment verification, and a national database search;

7. Provided confirmation that within the 365 days before the application is submitted, the applicant has not served as a Virginia Lottery Board member or been employed by the department; and

8. Provided the director with sufficient information, documentation, and assurances to establish by clear and convincing evidence that the individual (i) meets the applicable requirements of the laws of Virginia and this chapter and (ii) is otherwise qualified for a sports betting employee license.

C. The application/license fee and background investigation fee for a sports betting employee license or renewal is \$500.

D. A licensed sports betting employee may not wager on a sports event at or receive winnings from a permit holder where the individual is employed or that is operated by the individual's employer, or where the individual is currently assigned to work.

E. A licensee has a continuing duty to inform the director of any act or omission the licensee knows or should know constitutes a violation of the Code of Virginia or this chapter.

F. Term and renewal.

1. The term of a sports betting employee license is three years from the date of initial licensure.

2. Except in the case of a temporary license, the director may renew the sports betting license if 60 days before the term of the license expires, the licensee:

a. Applies for renewal in the format required by the department;

b. Continues to demonstrate compliance with all licensing requirements;

c. Maintains employment as a sports betting employee;

d. Submits to a background investigation under this chapter; and

e. Pays the fees for licensure and backgrounding as described in this section.

11VAC5-70-100. Bonds.

A. The director may require an applicant, permit holder, licensee, or registrant to obtain a bond before the director issues or reissues a permit, license, or registration.

B. A sports betting employee may be exempted from obtaining a bond if the employee is involved in activities that the director has determined do not require a bond to protect the public interest.

C. A bond shall be for the benefit of the Commonwealth for the faithful performance of the requirements imposed by the laws of Virginia and this chapter, shall be renewable annually, and may not be canceled without at least 30 days

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written notice submitted to the director. The original bond shall be submitted to the director.

D. A bond shall be issued only by a company that is financially rated A or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia.

E. For a permit holder, the amount of the bond may not exceed \$5 million.

F. As approved by the director, the bond for a principal may be included in the bond submitted by the permit holder or sports betting supplier.

G. For a principal or sports betting employee not covered by a bond under subsection E of this chapter, the amount of the bond:

1. Shall be determined by the director based on the employee's level of responsibility and the Commonwealth's risk of exposure to liability for the employee's performance; and

2. May not exceed \$150,000.

H. For a sports betting supplier licensee or vendor registrant, the amount of the bond:

1. Shall be determined by the director based on the licensee's or vendor's level of responsibility and the Commonwealth's risk of exposure to liability for the licensee's or vendor's performance; and

2. May not exceed \$150,000.

I. The director will not issue or reissue a permit, license, or registration until the director has received satisfactory proof of a bond.

J. The director may apply a bond to the payment of an unpaid liability associated with this chapter of the applicant, permit holder, licensee, or registrant.

K. On an annual basis, the director shall review the need for and the amount of bonds required of a permit holder, licensee, or registrant.

11VAC5-70-110. Denial of a permit, license or registration.

A. In addition to the hearing requirements in subsection C of this section, the process set out in subsection B of this section shall precede a hearing by the board on the denial of a permit, license, or registration application.

B. After reviewing an application submitted for a permit, license, or registration, department staff may recommend that the director deny the application of an applicant who:

1. Has not established by clear and convincing evidence that the applicant meets applicable qualifications set out in the Virginia sports betting law and this chapter, including

demonstration of the good character, honesty, and integrity of the applicant and its principals and employees; or

2. Has violated:

a. A provision of the sports betting law;

b. A provision of this chapter or any other chapter related to sports betting; or

c. A condition set by the director.

3. If department staff recommends that the director deny a permit, license, or registration, the director or the director's designee shall promptly provide the applicant with written notice of:

a. The recommendation and the basis therefor; and

b. The applicant's right to request an Informal Fact-Finding Conference with the director or the director's designee as provided by Article 1, Chapter 40 (§ 58.1-4007) of the Code of Virginia.

4. An applicant may submit to the director a written request for an Informal Fact-Finding Conference within 15 days of the date of the notice described in subdivision 3 of this subsection.

5. If an applicant fails to timely submit a request under subdivision 4 of this subsection, the director may adopt as final the recommendation of department staff.

6. During an Informal Fact-Finding Conference, an applicant may:

a. Be represented by counsel; and

b. Present evidence as to why the permit, license, or registration should be granted;

7. If after the Informal Fact-Finding Conference, the applicant is dissatisfied with the decision of the director, the applicant may submit to the board, in writing:

a. A request for hearing before the board on the decision of the director; and

b. The applicant's legal and factual bases for disagreeing with the recommendation of the director.

8. An applicant may submit a hearing request to the board within 15 days of the date of the recommendation of the director after the Informal Fact-Finding Conference.

9. If an applicant fails to timely submit a written hearing request under subdivision 8 of this subsection, the director's decision shall be adopted as final.

C. Board Process.

1. Upon receipt of a timely written hearing request, the board shall provide the applicant a hearing notice for a hearing before the board.

2. The board's hearing notice, and the board's hearing at which the director's denial will be considered, shall comply with the requirements of the Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

3. The board shall:

a. Grant the permit, license, or registration after determining that the applicant is qualified; or

b. Deny the permit, license, or registration after determining that the applicant:

(1) Is not qualified for a permit, license, or registration, or is disqualified from holding a permit, license, or registration;

(2) Has violated a provision described in subdivision B 2 of this section; or

(3) Has failed to demonstrate by clear and convincing evidence that its application should have been granted.

4. Following a hearing, if it decides to uphold the decision of the director, the board shall:

a. Prepare an order denying the permit, license, or registration with a statement of the reasons and specific findings of fact; and

b. Provide the applicant with written notice of its final action.

5. The board's final action on a permit, license, or registration denial is subject to judicial review as provided in § 58.1-4027 of the Code of Virginia.

D. The procedures set out in this section shall apply to decisions by the director not to renew a permit, license, or registration.

11VAC5-70-120. Sanctions.

A. In addition to any other permissible enforcement action, the director may impose sanctions on a permit holder, licensee, or registrant.

B. Permissible sanctions against a permit holder include:

1. Suspension or revocation of the permit; and

2. A monetary penalty of up to \$1,000 per day per violation.

C. Permissible sanctions against a licensee or registrant include suspension or revocation of the license or registration.

D. The director may impose sanctions on a permit holder, licensee, or registrant for violations committed by its principals, suppliers, vendors, or employees.

E. The director may impose a sanction for any violation of the sports betting law or this chapter or other chapters in this title related to sports betting, including:

1. Any basis for the denial of a permit, license, or registration under 11VAC5-70-110;

2. Knowingly making a false statement of material fact to the director;

3. Having been suspended or denied from operating a gambling game, gaming device, gaming or sports betting operation or having had a license revoked by any governmental authority responsible for the regulation of gaming activities in any jurisdiction;

4. Having been convicted of or pled guilty to a felony or misdemeanor in any jurisdiction that could affect the suitability of the permit holder, licensee, or registrant, as determined by the director;

5. Having been convicted of or pled guilty to a gambling-related, theft, embezzlement, or fraud offense;

6. Having been arrested, charged, indicted, convicted, or received notice of civil or criminal investigation or threat of prosecution for illegal or offshore sports betting activities that serviced the United States or otherwise accepted wagers in violation of state or federal law from individuals located inside the United States;

7. Failure to fully and timely submit a tax, fee, or penalty as required by the board, the Commonwealth of Virginia or any applicable subdivision;

8. Failure to submit a report as required to the director;

9. Failure to participate in an investigation as required by the director;

10. Failure to maintain reserves, insurance, or bond as required by the director;

11. Failure to adhere to the internal control standards approved by the director;

12. Knowing, or grossly negligent, failure to prevent prohibited conduct from occurring within a sports betting platform; or

13. Any other activity or failure to act that the director determines requires the imposition of a sanction in order to maintain the integrity of the sports betting program and the interests of the Commonwealth of Virginia.

F. The procedure for imposing a sanction shall parallel the procedure established in 11VAC5-70-110 for the denial of a permit, license, or registration, including judicial review of the board's final action on the imposition of a sanction.

G. In addition to the requirements set out in subdivision F of this section, a permit holder shall be afforded at least 15 days' notice and a hearing before the board prior to the imposition of a sanction.

H. If the director determines that it is in the best interests of the Commonwealth of Virginia, the director may negotiate

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and reach an agreed-upon settlement of a violation with a permit holder, licensee, or registrant, and the sanctions imposed in that settlement shall not be subject to appeal.

11VAC5-70-130. (Reserved.)

11VAC5-70-140. Reserve and insurance requirements.

A. A permit holder shall maintain a reserve in the form of cash, cash equivalents, irrevocable letter of credit, or bond, or a combination thereof, in an amount approved by the director to cover the outstanding liability of the permit holder to players. A bond used by a permit holder to maintain any portion of its reserve shall comply with the bond requirements of 11VAC5-70-100. A permit holder may not remove, release, or withdraw funds from its reserves without the written approval of the director. Permit holders shall at all times also maintain cash reserves in amounts to be established by board regulation.

B. The amount in the reserve fund shall be at least \$500,000 and equal or exceed the aggregate sum of:

1. Funds held by the permit holder in player accounts;
2. The total amount of funds accepted by the permit holder as wagers on sports events with outcomes that have not been determined; and
3. Money owed but unpaid by the permit holder to players on winning wagers.

C. All reserve funds shall be held with a financial institution federally insured by the FDIC and licensed to transact business in the Commonwealth of Virginia.

D. A permit holder shall calculate its reserve requirements each day and, if the permit holder determines its reserve is insufficient to cover the requirement of this subsection, it shall notify the director of the deficiency within 24 hours and identify the steps taken to remedy the deficiency.

E. Before its sports betting permit or renewal is issued, a permit holder shall provide the director with certificates of insurance from a company financially rated A or better by a nationally recognized rating agency and permitted to transact business in the Commonwealth of Virginia.

F. A permit holder shall maintain the following types and levels of insurance:

1. General commercial liability insurance in the amount of \$5 million;
2. Errors and omissions insurance in the amount of \$15 million; and
3. Such other types and amounts of insurance as the director requires.

11VAC5-70-150. Liability pooling.

A. A permit holder may offset loss and manage risk, directly or with a third party approved by the director, through the use of a liquidity pool in Virginia or, if the permit holder or its affiliate is licensed to operate a sports betting business in a permissible jurisdiction, in that permissible jurisdiction.

B. A permit holder's use of a liquidity pool does not eliminate the permit holder's reserve obligations under 11VAC5-70-140.

11VAC5-70-160. Audit, financial, recordkeeping, and banking requirements.

A. A permit holder shall engage a certified public accountant to prepare in accordance with generally accepted accounting principles an annual audit of the financial transactions and condition of the permit holder's sports betting operation and submit that audit to the director.

B. A permit holder shall establish and maintain books, records, and documents, including electronic storage media, in accordance with generally accepted accounting principles and practices that sufficiently and properly reflect all revenues and expenditures of funds associated with its sports betting operation.

C. A permit holder shall retain all records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to its sports betting operation for at least five years from their creation.

D. Books and records pertaining to a permit holder's sports betting operation shall be subject to inspection, review, and audit by the director or department staff at any time within the sole discretion of the director.

E. A permit holder shall deliver all data requested by the director either by report or data file in the form and frequency required by the director while achieving compliance with the standards of integrity, security, and control.

F. A permit holder shall generate reports necessary to record all the components of the adjusted gross revenue calculation over a specific period as required by the director.

G. All requested data shall be made available in the report formats and database formats required by the director.

H. All required reports shall be generated by the permit holder even if the period specified contains no data to be presented, in which case the report shall indicate all required information and contain an indication of "No Activity" or similar message.

I. A permit holder shall generate reports for each day of operation in order to calculate the adjusted gross revenue and to ensure the integrity of its sports betting platform.

J. A permit holder shall maintain an operating account with a financial institution that is federally insured by the FDIC and licensed to transact business in the Commonwealth of Virginia.

K. A permit holder shall maintain an escrow account with a financial institution federally insured by the FDIC and licensed to transact business in the Commonwealth of Virginia, into which shall be deposited all taxes and fees due to be transferred to the department pursuant to procedures to be established by the director. The department shall be designated as sole beneficiary on the account. This escrow account shall be separate from all other operating accounts of the permit holder to ensure the security of funds due to the Commonwealth of Virginia.

11VAC5-70-170. Permissible wagers.

A. A permit holder may accept a wager from a player on sporting events, including:

1. A proposition wager, except a proposition wager on college sports or a proposition wager placed on any type of possible injury, unsportsmanlike conduct, or any other officiating call;
2. A bet placed before or after the sporting event has started; or
3. A bet placed after the sporting event has started, in compliance with § 58.1-4036 of the Code of Virginia and 11VAC5-70-190.

B. A permit holder may accept wagers on those sporting events, leagues, and bet types approved by the director and published on an Authorized Sports Events, Leagues and Bets List.

C. If a sports league has been generally authorized by the director, a permit holder may accept wagers on all sports events of the kind generally conducted by that league.

D. The director shall post on the Virginia Lottery's website the Authorized Sports Events, Leagues and Bets list.

E. When new sporting events, leagues, or bet types are authorized by the director, the director shall update the Authorized Sports Events, Leagues and Bets List.

F. A permit holder shall be responsible for keeping itself up-to-date with respect to the contents of the Authorized Sports Events, Leagues and Bets list.

G. At least 72 hours before any proposed new scheduled sports event, a permit holder may request in writing that the director authorize sporting events, leagues, or bet types not previously authorized.

H. The application shall be in the form and format specified by the director, including, if applicable, the name of the sports governing body and a description of its policies and procedures regarding event integrity.

I. If a permit holder requests that the Virginia Lottery authorize a sporting event of a type not generally conducted by that sports league, the director may request input from that sports governing body.

J. Before authorizing a request for a new sporting event, league, bet type, or any portion of a sporting event, league, or bet type, the director shall consider:

1. Input from the sports governing body or conductor of the sporting event;
2. Whether the outcome of the sporting event is determined solely by chance;
3. Whether the outcome of the sporting event can be verified;
4. Whether the event generating the outcome is conducted in a manner that ensures sufficient integrity controls so the outcome can be trusted;
5. Whether the outcome may be affected by any bet placed; and
6. Whether the event is conducted in conformity with all applicable laws.

11VAC5-70-180. Requests from sports governing bodies.

A. If a sports governing body has a good faith, reasonable basis to believe such restriction, limitation or prohibition is reasonably necessary to protect the integrity or the public's confidence in the integrity of the sports governing body, by written request in the form and format required by the director, a sports governing body may ask the director to restrict, limit, or prohibit sports betting on its sporting events, or to restrict the types of bets on such sporting events that may be offered by a permit holder.

B. For any request made by a sports governing body under subsection A of this section:

1. The requester shall bear the burden of establishing to the satisfaction of the director that the relevant betting or other activity poses a significant and unreasonable integrity risk;
2. The director shall seek input from affected permit holders before making a determination on the request; and
3. If the director grants the request, the board shall promulgate by regulation such restrictions, limitations, or prohibitions as appropriate.

C. If the director denies a request made by a sports governing body under subsection A of this section, the director shall notify the requestor:

1. Of the decision;
2. That the decision may be reviewed by the board after an Informal Fact-Finding Conference with the director or the

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director's designee as provided by Article 1, Chapter 40 (§ 58.1-4007) of the Code of Virginia;

3. That the general process in 11VAC5-70-110 for appealing the denial of a permit, including its timeframes and burden of proof, shall be followed by the board; and

4. That the requestor must offer proof in opposition to the director's decision.

D. A permit holder may not offer or take any bets in violation of regulations promulgated by the board pursuant to this subsection.

11VAC5-70-190. Use of official league data.

A. In this section, "official league data" means statistics, results, outcomes, and other data relating to a professional sports event obtained by a permit holder under an agreement with a sports governing body or with an entity expressly authorized by a sports governing body for determining the outcome of a bet placed after the sporting event has started.

B. Unless a sports governing body, pursuant to this section, has requested that permit holders use official league data to settle bets, a permit holder may use any lawful data source for determining the result of a wager. A permit holder shall not purchase or use any personal biometric data unless the permit holder has received written permission from the athlete.

C. A permit holder shall report to the director the data source that it uses to resolve sports wagers. The director may disapprove of a data source for any reason, including the type of wager and method of data collection.

D. A sports governing body may submit a request to the director in the form and format required by the director to require permit holders to use official league data to settle those bets placed after a sporting event has started.

E. Within 60 days after notification from the director to do so, permit holders shall use only official league data to determine the results of bets placed after a sporting event has started.

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

1. The sports governing body is unable to provide, on commercially reasonable terms as determined by the director, a feed of official league data; or

2. A permit holder demonstrates to the director that a sports governing body has not provided or offered to provide a feed of official league data to the permit holder on commercially reasonable terms, by providing the director with sufficient information to show:

a. The availability of a sports governing body's official league data for such bets from more than one authorized source;

b. Market information regarding the purchase, in Virginia and in other states, by permit holders of data from all authorized sources;

c. The nature and quantity of the data, including the quality and complexity of the process used for collecting the data; and

d. Any other information the director requires.

G. While the director is considering whether official league data is available on commercially reasonable terms pursuant to this section, a permit holder may use any lawful data source for determining the results of bets placed after a sporting event has started, unless otherwise determined by the director.

11VAC5-70-200. System integrity and security assessment.

A. Within 90 days after beginning operations and annually thereafter, a permit holder shall engage an independent testing laboratory or an independent firm approved by the director to perform a system integrity and security assessment of its sports betting operations.

B. The scope of the integrity and security assessment shall include, at a minimum, all of the following:

1. A vulnerability assessment of internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, internet sports betting platforms, and applications transferring, storing, or processing personally identifiable information (PII) or other sensitive information connected to or present on the networks;

2. A penetration test of all internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, internet sports betting platforms, and applications are susceptible to compromise;

3. A technical security control assessment against the provisions of the sports betting law and this chapter consistent with generally accepted professional standards and as approved by the director;

4. An evaluation of information security services, cloud services, payment services (financial institutions, payment processors, etc.), location services, and any other services that may be offered directly by the permit holder or involve the use of third parties; and

5. Any other specific criteria or standards for the integrity and security assessment required by the director.

C. The independent testing laboratory or independent firm shall issue a report on its assessment and submit it to the director. The report shall include, at a minimum:

1. The scope of review;

2. Name and company affiliation of any individual who conducted the assessment;

3. Date of assessment;

4. Findings;

5. Recommended corrective action, if any; and

6. Permit holder's response to the findings and recommended corrective action.

11VAC5-70-210. Minors and prohibited players.

A. A permit holder may not permit wagers to be placed by minors and shall maintain a system approved by the director through which it verifies that wagers are not made by minors.

B. A permit holder shall submit to the director for approval its methodology for verifying the age of an individual who wishes to place a wager on a sporting event and shall notify the director before making changes to its methodology or replacing a sports betting supplier or vendor who provides age verification services for the permit holder.

C. A permit holder shall prevent a minor from collecting payouts or winnings from its sports betting operation.

D. A permit holder shall confidentially maintain the Virginia Lottery Exclusion List of prohibited individuals that is provided to permit holders by the director and shall prevent prohibited individuals from placing wagers through its platform. A permit holder shall maintain a system approved by the director through which the permit holder verifies that wagers are not placed by such prohibited individuals.

E. A permit holder shall submit to the director for approval its screening methodology for preventing prohibited individuals from utilizing its sports betting platform and shall notify the director before making any changes to its methodology.

F. A permit holder shall prohibit a prohibited individual from placing a wager on a sporting event and from collecting payouts or winnings.

11VAC5-70-220. Integrity monitoring.

A. A permit holder shall maintain membership in the Global Lottery Monitoring System (GLMS), the Sports Wagering Integrity Monitoring Service (SWIMA), or other integrity monitoring association or contract with an integrity monitoring system provider as approved by the department.

B. A permit holder shall have controls in place to identify unusual or suspicious wagering activity and report such activity to the director according to the integrity monitoring system procedures approved by the director.

C. A permit holder shall ensure that its integrity monitoring system procedures provide for the sharing of information with each other permit holder.

D. A permit holder shall review information and reports from other permit holders and, as approved by the director, notify other permit holders of any similar activity. A permit holder shall comply with the specific reporting requirements designated in its internal control standards.

E. A permit holder shall immediately notify the director of suspicious wagering activity, including previously reported unusual wagering activity rising to the level of suspicious wagering activity.

F. A permit holder that reports on suspicious wagering activity may suspend wagering on a sporting event related to the report.

G. A permit holder may void or cancel wagers related to suspicious wagering activity only after receiving the approval of the director.

H. A permit holder's integrity monitoring system shall be accessible to the director via remote access and shall produce, at a minimum:

1. Reports of all unusual wagering activity;

2. Reports of accounts showing unusual wagering activity subsequently determined to be suspicious wagering activity;

3. Reports of all activity initially deemed suspicious wagering activity; and

4. A summary of actions taken in response to all such reports.

I. All information and data received by the director with respect to unusual or suspicious wagering activity shall be considered confidential, and such information and data may not be revealed in whole or in part, except:

1. In compliance with a valid court order;

2. To any law-enforcement entity, regulatory agency, governing authority, integrity monitoring organization, or other organization necessary to facilitate integrity monitoring as approved by the director; or

3. An accredited sports governing body as required by the director pursuant to the sports betting law.

11VAC5-70-230. Investigations; reporting.

A. For the purposes of this section, "regulated entity" means a person or individual who is a permit holder, license holder, or registrant.

B. A regulated entity shall cooperate in good faith with an investigation conducted by the director, a sports governing body, or a law-enforcement agency.

C. A regulated entity shall provide or facilitate provision of account-level betting information and data files relating to individuals placing wagers and any other information

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necessary for investigations conducted by the director, a sports governing body, or a law-enforcement agency.

D. During normal business hours, the director may enter the premises of any facility of a regulated entity that is utilized by the regulated entity to conduct or to assist in the conducting of sports betting operations in the Commonwealth of Virginia for the purpose of inspecting equipment, books, and records kept as required by the sports betting law or this chapter to ensure that the regulated entity is in compliance with the sports betting law and this chapter, or to make any other inspection as necessary to enforce the sports betting law or this chapter. Failure to admit the director or department staff after presentation of credentials shall be grounds for the imposition of sanctions.

E. The director, department staff, and representatives of any law-enforcement agency with jurisdiction may demand access to inspect the business records of any regulated entity without the requirement of obtaining a subpoena. Failure to provide access to the director or department staff after presentation of credentials shall be grounds for the imposition of sanctions.

F. A regulated entity shall maintain all records relating to the conduct of its sports betting operations in the Commonwealth of Virginia for a period of at least five years.

G. The director may investigate the possibility of any of the following activities:

1. Acceptance of a prohibited wager;
2. Transmission of material nonpublic information for the purpose of wagering on a sporting event or to influence a wager;
3. Abnormal betting activity, unusual wagering activity, suspicious wagering activity, or patterns that may indicate concerns about the integrity of a sporting event;
4. Violations of the Virginia Comprehensive Money Laundering Act (§ 18.2-246.1 et seq. of the Code of Virginia) or federal law prohibiting money laundering;
5. Criminal, civil, administrative, or disciplinary proceedings or nonroutine government or law enforcement investigations against the regulated entity;
6. Offering or extending credit to a player;
7. Directly targeting sports betting advertisements or promotions to minors;
8. Offering or accepting a wager on sporting events not approved by the director, including high school and youth league sports events;
9. Offering or accepting any wager prohibited by the sports betting law or this chapter;
10. Engaging in or facilitating illegal or suspicious wagering activity;

11. Any complaints of illegal activity; or

12. Any other complaint, activity, or conduct that may affect the integrity of sports betting in the Commonwealth of Virginia.

H. Referral of investigations.

1. Upon receipt of a report of prohibited conduct, the director shall conduct a preliminary investigation.

2. After the preliminary investigation, if the director concludes that the allegations contained in the report are credible, the director shall refer the allegations to the appropriate law-enforcement agency.

3. If the alleged conduct occurred entirely or primarily within the Commonwealth of Virginia, the referral shall be made to the Office of the Attorney General.

4. If the alleged conduct occurred entirely or primarily within a United States jurisdiction other than the Commonwealth of Virginia, the referral shall be made to the Office of the Attorney General of that jurisdiction and, if applicable, to any appropriate sports wagering regulatory agency of that jurisdiction.

5. If the alleged conduct implicates interstate commerce or any other violation of federal law, the referral shall be made to the Federal Bureau of Investigation.

6. In addition to any referral under this subsection, if a report alleged prohibited conduct by an athlete, upon determining that the allegations in the report are credible, the director shall notify the appropriate sports governing body in writing, including in the report the identity of the athlete and a general description of the allegation.

I. A regulated entity shall immediately report to the director any information relating to:

1. Criminal or disciplinary proceedings or nonroutine government or law enforcement investigations commenced against the regulated entity in connection with its operations in any jurisdiction;

2. Unusual or suspicious wagering activity or wagering activities or patterns that may indicate a concern with the integrity of a sporting event;

3. Any potential or actual breach of a sports governing body's internal rules and codes of conduct pertaining to sports betting, either:

a. Known to the regulated entity, or

b. That reasonably should have been known by the regulated entity;

4. Conduct that corrupts, is intended to corrupt, or unduly influences the betting outcome of a sporting event for the purposes of financial gain, including match fixing; or

5. Suspicious or illegal wagering activities, including:

- a. Cheating;
- b. The use of funds derived from illegal activity;
- c. Suspicious activities reported to the federal government pursuant to AML laws and regulations;
- d. Prohibited wagers;
- e. Wagers to conceal or launder funds derived from illegal activity;
- f. Use of compensated agents or proxies to place wagers; and
- g. Use of false identification in connection with sports betting activity.

J. Reporting prohibited conduct.

1. Reports submitted via the hotline established pursuant to § 58.1-4043 of the Code of Virginia or by any other method shall include a summary of the facts supporting the allegation.

2. The identity of an individual making a report and the contents of any report under this subsection:

- a. Shall be confidential and not subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700, et seq. of the Code of Virginia); and
- b. Shall not be disclosed for any reason except:
 - (1) As authorized by the individual;
 - (2) Upon referral of the allegation to law enforcement; or
 - (3) As ordered by a court of competent jurisdiction.

K. A regulated entity shall promptly report information relating to conduct described in subdivisions I 2, I 3, and I 4 of this section, to the relevant sports governing body and provide written notice of that communication to the director. With respect to information provided by a permit holder or supplier to a sports governing body, the sports governing body may use such information only for integrity purposes and shall maintain the confidentiality of such information unless disclosure is required by the director, the sports betting law or other law, or a court order; if the permit holder or supplier consents to disclosure; or if the director determines that disclosure is necessary to allow the sports governing body to conduct and resolve integrity-related investigations.

L. Upon request of the director, a regulated entity promptly shall share with the director, in the form and format required by the director at the account level information regarding a bettor; amount and type of wager; the time the wager was placed; the location of the wager, including the internet protocol address if applicable; the outcome of the wager; and records of abnormal, unusual, or suspicious wagering activity.

M. If a sports governing body notifies the director that real-time information sharing for wagers placed on its sporting events is necessary and desirable, a regulated entity shall share the information described in subsection L of this section with the sports governing body or its designee with respect to wagers on the sports governing body sporting events. Such information may be provided in anonymized form and may be used by a sports governing body solely for integrity purposes.

11VAC5-70-240. Advertising and marketing.

A. A permit holder shall maintain and make available to the director upon request all advertising, marketing, and promotional materials developed by or on behalf of the permit holder by a supplier or vendor.

B. A supplier or vendor that advertises, markets, or offers promotions on behalf of more than one permit holder or without affiliation to any permit holder shall maintain and make available to the director upon request all advertising, marketing, and promotional materials related to sports betting in the Commonwealth of Virginia that it has developed.

C. A permit holder may not directly target sports betting advertisements or promotions to minors.

D. Advertising, marketing, and promotional materials shall include a responsible gaming message, which includes, at a minimum, a director-approved problem gambling helpline number and an assistance and prevention message, except as otherwise permitted by the director for certain mediums such as social media messages.

E. A permit holder shall communicate the minimum legal age to participate on any website, mobile application, and other mediums or forms of advertising, marketing, and promotions, except as otherwise permitted by the director for certain mediums such as social media messages.

F. A permit holder shall comply strictly with all state and federal standards to make neither false or misleading claims, nor to create a suggestion that the probabilities of winning or losing with the permit holder's sports betting platform are different than those actually experienced.

G. Advertising, marketing, and promotional materials may not contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal specifically to individuals younger than 21 years of age.

H. Advertising, marketing, and promotional materials may not feature anyone who is or appears to be younger than 21 years of age except for professional athletes who may be minors.

I. A permit holder may not advertise in a media outlet (including social media) that appeals primarily to individuals younger than 21 years of age.

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J. Advertisements may not be placed with such intensity and frequency that they represent saturation of that medium or become excessive.

K. Advertising, marketing, or promotional materials may not contain claims or representations that sports betting will guarantee an individual's social, financial, or personal success.

L. Advertising, marketing, or promotional materials may not be placed before an audience where the majority of the participants is presumed to be younger than 21 years of age or that targets potentially vulnerable persons, including self-excluded bettors.

M. Advertising, marketing, or promotional materials may not imply that chances of winning increase the more one participates in, or the more one spends on, sports betting.

N. A permit holder, or a supplier or vendor acting on behalf of a permit holder, shall discontinue targeted advertising and marketing to a self-excluded individual's mobile device through direct messaging or text, email, or through other contact information collected by the permit holder, supplier, or vendor.

O. Advertising, marketing, or promotional materials may not be placed on any website or printed page or medium devoted primarily to responsible gaming.

P. Advertising, marketing, or promotional materials shall neither contain nor imply lewd or indecent language, images, or actions.

Q. Advertising, marketing, and promotional materials shall reflect generally accepted contemporary standards of good taste.

R. All direct advertising, marketing, and promotions via email or text message shall allow the option to unsubscribe.

S. A permit holder shall respect user privacy and comply with all applicable legal privacy requirements, including those requiring governing consent.

T. A permit holder shall provide the requirements of this section to advertising, marketing, and promotions personnel, contractors, agents, and agencies and shall require compliance.

U. Cooperative marketing with ABC licensee

1. For purposes of this subsection:

(a) "ABC licensee" means a person to whom a license has been issued pursuant to the provisions of Title 4.1 of the Code of Virginia.

(b) "Casino gaming operator" and "casino gaming establishment" shall have the meanings established in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia.

(c) "Major league sports franchise" and "motor sports facility" shall have the meanings established in § 58.1-4030 of the Code of Virginia.

2. A permit holder shall not combine its sports betting platform marketing efforts with those of an ABC licensee for the parties' mutual benefit, except as follows:

(a) A permit holder that is a (i) motor sports facility or (ii) motor sports facility operator may combine its platform marketing efforts with those of an ABC licensee, provided such marketing is limited to consumers physically located on the premises of the motor sports facility;

(b) A permit holder that is a major league sports franchise may combine its platform marketing efforts with those of an ABC licensee, provided such marketing is limited to consumers physically located on the premises of the stadium where the sports franchise plays its games; and

(c) A permit holder that is a casino gaming operator may combine its platform marketing efforts with those of an ABC licensee, provided such marketing is limited to consumers physically located on the premises of the casino gaming establishment.

3. Prior to marketing its platform as permitted in this section, a permit holder must be able to demonstrate to the satisfaction of the director:

(a) Compliance with all applicable zoning ordinances; and

(b) Approval of the local governing body in the form of an ordinance allowing such marketing to occur with respect to the permit holder's motor sports facility, stadium, or casino gaming establishment.

11VAC5-70-250. Reporting requirements.

A. A permit holder shall report to the director by January 15 of each year:

1. The total amount of wagers received from players in the Commonwealth of Virginia for the immediately preceding calendar year;

2. The adjusted gross revenue of the permit holder in the Commonwealth of Virginia for the immediately preceding calendar year;

3. The aggregate annual payout of the permit holder for the immediately preceding calendar year; and

4. Any additional information required by the director.

B. A permit holder shall promptly report to the director any information relating to:

1. The name, home address, and date of birth of any new officer, director, general partner, manager, trustee, or

principal of the permit holder or supplier or their parent, holding, intermediary, or subsidiary (whether or not wholly owned), and the individual shall submit to the director any required application within 30 days;

2. Potential purchase or sale, transfer, assignment, gift or donation, or other disposal or acquisition of 5.0% or more ownership in the permit holder, with an acknowledgment that the transaction may require an application and findings of suitability and may not occur until advance approval is given by the director, unless the ownership is of a publicly-traded entity not otherwise considered a change in control; and

3. The resignation, termination, removal, or departure of any new officer, director, general partner, manager, trustee, or principal of the permit holder, its parent, holding, intermediary, or subsidiary (whether or not wholly owned).

11VAC5-70-260. House rules.

A. A permit holder shall adopt comprehensive house rules that shall be submitted to the director for approval with the initial application for a permit. Amendments to the House Rules shall be submitted to the director for approval.

B. House Rules shall address at least the following items:

1. A method for the calculation and payment of winning wagers;
2. The effect of schedule changes;
3. The method of notifying players of odds or proposition changes;
4. Acceptance of wagers at terms other than those posted;
5. The method of contacting the permit holder for questions and complaints;
6. A description of prohibited individuals and others who may be restricted from placing a wager;
7. The permissible methods of funding a wager; and
8. A description of all types of wagers that may be accepted.

C. House rules shall include a provision prohibiting the structuring of bets to avoid federal currency transaction reporting thresholds.

D. House rules shall put players on notice that wagers are subject to AML standards, including triggers and requirements for filing of currency transaction reports and suspicious activity reports.

E. House rules shall disclose the operator's ability to limit the maximum bet amount.

F. House rules shall be readily available on the permit holder's websites and mobile applications.

11VAC5-70-270. Sports betting platform requirements.

A. All wagers on sporting events authorized by the sports betting law and this chapter shall be initiated, received, and otherwise made within the Commonwealth of Virginia unless otherwise permitted by federal law. Consistent with the Unlawful Internet Gambling Enforcement Act (31 USC §§ 5361-5367), the intermediate routing of electronic data relating to the lawful intrastate sports betting authorized under the sports betting law and this chapter shall not determine the location in which such bet is initiated and received.

B. Before a permit holder is issued its permit, all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory approved by the director.

C. A sports betting platform submitted to an approved independent testing laboratory shall contain:

1. A complete, comprehensive, technically accurate description and explanation of the sports betting platform;
2. Detailed operating procedures of the sports betting platform;
3. A description of the risk management framework, including:
 - a. User access controls for all permit holder personnel;
 - b. Information regarding segregation of duties;
 - c. Information regarding automated risk-management procedures;
 - d. Information regarding identifying and reporting fraud and suspicious activity;
 - e. Controls for ensuring regulatory compliance;
 - f. A description of AML compliance standards;
 - g. A description of all software applications that comprise the system;
 - h. A description of all types of wagers available to be offered by the system;
 - i. A description of all types of third-party systems proposed for utilization; and
 - j. A description of the method proposed by the permit holder to prevent past posting.

D. Upon request, a permit holder shall promptly provide the director with relevant reports and documentation that shall include, at a minimum:

1. Complete access to all wagers, including canceled, voided, pending, and redeemed wagers;
2. The ability to query or sort wagering data; and

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3. The ability to export wagering data.

E. A permit holder or the supplier providing a permit holder's sports betting platform shall maintain all transactional wagering data for a period of five years.

F. The house rules that apply to wagers placed on a sports betting platform shall be readily available to a player.

G. A sports betting platform shall be capable of recording, for each wager made:

1. Description of the sporting event;
2. Wager selection;
3. Type of wager;
4. Amount of wager;
5. Date and time of the wager;
6. Unique wager identifiers;
7. Player identification number;
8. Current wager status (i.e., active, canceled, voided, pending, etc.);
9. Relevant location information;
10. Results of the wager;
11. Amount won; and
12. Date and time the winning wager was paid to the player.

H. A sports betting platform that offers live betting shall be capable of:

1. Accurate and timely updates of odds for live betting wagers;
2. Notifying a player of any change in odds that is not beneficial to the player while the wager is selected but before it is placed;
3. Allowing players to confirm the wager after notification of the odds change; and
4. Freezing or suspending the offering of wagers when necessary.

I. A sports betting platform shall be capable of:

1. Creating wagers;
2. Settling wagers;
3. Voiding wagers;
4. Canceling wagers; and
5. Preventing the acceptance of wagers on prohibited sports events.

J. When a wager is voided or canceled, a sports betting platform shall indicate clearly that the transaction was voided or canceled, render the transaction nonredeemable, and make an entry in the system indicating the voiding or cancellation of the wager.

K. Unless approved in advance by the director, a permit holder or a supplier providing a permit holder's sports betting platform may not alter the odds or any other material aspect of the transaction after a player's wager has been accepted.

L. A sports betting platform shall prevent past posting of wagers and the voiding and cancellation of wagers after the outcome of an event is known.

M. If a player has a pending wager and the player subsequently self-excludes, the wager may settle and the funds and account balance shall be returned to the player in accordance with the permit holder's internal control standards.

N. At least once every 24 hours, a sports betting platform shall perform an authentication process on all software used to offer, record, and process wagers to ensure there have been no unauthorized modifications. As part of this authentication process, the sports betting platform must be able to detect if any system component is determined to be invalid in the event of an authentication failure.

O. In the event of an authentication failure, the permit holder shall notify the director within 24 hours of the failure. The results of all authentication attempts shall be recorded by the sports betting platform and maintained for a period of 90 days.

P. A sports betting platform shall have controls in place to review the accuracy and timeliness of any data feeds used to offer or settle wagers. If an incident or error occurs that results in a loss of communication with the data feeds used to offer or redeem wagers, such error shall be recorded in a log capturing the date and time of the error, the nature of the error, and a description of its impact on the system's performance. Such information shall be maintained for a minimum period of two years.

Q. A permit holder and a supplier providing a permit holder's sports betting platform shall grant the director access to wagering systems, transactions, and related data as deemed necessary and in the manner required by the director.

R. A sports betting platform shall provide a process for the director to query and export, in the format required by the director, all sports betting platform data.

S. Additional system specifications may be specified by the director through the issuance of a technical bulletin.

11VAC5-70-280. Geolocation systems.

A. A permit holder shall keep its geolocation system up to date, including integrating current solutions in real time that can detect the use of remote desktop software, rootkits,

virtualization, or any other programs identified by the director as having the ability to circumvent geolocation measures.

B. At least every 90 days, the integrity of the geolocation system shall be reviewed by the permit holder to ensure that the system detects and mitigates existing and emerging location fraud risks.

C. In order to prevent unauthorized placement of an internet sports betting wager by an individual not within the Commonwealth of Virginia, the sports betting platform must utilize a geofencing system to reasonably detect the physical location of an individual attempting to access the sports betting platform and place an internet sports betting wager and to monitor and block unauthorized attempts to place an internet sports betting wager when an individual is not within the permitted boundary.

D. The geofencing system must ensure that an individual is located within the permitted boundary when placing an internet sports betting wager and must be equipped to dynamically monitor the individual's location and block unauthorized attempts to place an internet sports betting wager when an individual is not within the permitted boundary.

E. The director may issue additional geolocation requirements in the form of a technical bulletin.

11VAC5-70-290. Player accounts.

A. Wagering on sporting events is permitted only by a player who has established a player account with an approved permit holder.

B. The information necessary to initiate a player account shall be recorded and maintained for a period of five years and shall include at least:

1. Player's legal name;
2. Player's date of birth;
3. Player's residential address (other than a post office box) and mailing address if different;
4. Player's phone number;
5. Player's active email address;
6. Player's social security number ("SSN") or equivalent for a foreign player who intends to place a wager within the Commonwealth of Virginia, such as a passport or taxpayer identification number. The player may enter only the last four digits of a SSN if other factors are sufficient to determine the entire nine-digit SSN within a reasonable time;
7. Verification that the player is not prohibited by the sports betting law or this chapter from participating in sports betting; and

8. Document number of the government-issued identification credentials entered, or other methodology for remote, multi-source authentication, which may include third-party and governmental databases, as approved by the director.

C. A permit holder shall record the player's acceptance of the terms and conditions and privacy policy and acknowledgment that the information provided is accurate and the player is prohibited from allowing any other person to access or use the player's player account.

D. If a permit holder determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification; fails to verify the identity of the player; or the player violates the policies and procedures of the permit holder, the permit holder shall, within 21 days, require the submission of additional information from the player that can be used to remedy any violation or failure to verify the identity or funds deposit or withdrawal information of the player. If such information is not provided or does not result in verification of the player's identity or deposit or withdrawal information, the permit holder shall:

1. Immediately suspend the player account and not allow the player to place wagers;
2. Submit any winnings attributable to the player to the director for distribution to the Commonwealth's Problem Gambling Treatment and Support Fund;
3. Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and
4. Deactivate the account.

E. A permit holder shall notify the player of the establishment of the player account by email, text message, or first-class mail. When a player account is created, a secure personal identification (e.g., a unique username and password) for the player authorized to use the player account shall be established that is reasonably designed to prevent unauthorized access to, or use of, the player account by any individual other than the player for whom the player account is established.

F. A player may have only one player account for each permit holder.

G. A player account may be funded using:

1. A debit card;
2. A credit card;
3. An electronic bank transfer, including a transfer through third parties;
4. An online or mobile payment systems that supports online money transfers;

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5. Winnings or payouts;

6. Bonuses and promotions;

7. Reloadable prepaid card, which has been verified as being issued to the player and is non-transferable; and

8. Any other means approved by the board.

H. Funds may be withdrawn from a player account through:

1. Wagers;

2. Cashier's check, wire transfer, or money order by the permit holder made payable to the player and issued directly or delivered to the player's address on file with the permit holder;

3. Credits to the player's debit card;

4. Credits to the player's credit card;

5. Electronic bank transfers, including transfers through third parties;

6. Online or mobile payment systems that support online money transfers;

7. Reloadable prepaid card, which has been verified as being issued to the player and is nontransferable; or

8. Any other means approved by the board.

I. A player's request for withdrawal of funds (i.e., deposited and cleared funds or funds won) in the individual's player account shall be completed within 10 days unless there is a pending unresolved player dispute or investigation prompted by a player dispute or the director. Funds for withdrawal may be withheld from withdrawal until the funding transaction clears or the chargeback period ends.

J. All adjustments to a player account for individual amounts of \$500 or less shall be periodically reviewed by the permit holder consistent with the permit holder's internal control standards. All other adjustments shall be authorized by the permit holder's management before being entered.

K. A permit holder shall not allow the transfer of funds or credits between players.

L. Each transaction with respect to a player account between a player and permit holder, except the placement or settlement of a wager, shall be confirmed by email, telephone, text message, or other means agreed upon by the player and permit holder.

M. A permit holder shall provide an account statement to a player on demand. An account statement shall include detailed account activity for at least six months preceding the 24-hour period before the request. In addition, permit holders shall, upon request, be capable of providing to a player a summary statement of all player activity during the previous 12 months.

N. A permit holder shall suspend wagers from being made and immediately reverify a player's identification upon reasonable suspicion that the player's identification or player account has been compromised.

O. A permit holder shall offer an easily accessible method for a player to close the player's account. Any balance remaining in an account closed by a player shall be refunded pursuant to the permit holder's internal control standards within 10 days of notice from the player.

P. A sports betting platform shall employ a mechanism that can detect and prevent any player-initiated wagering or withdrawal activity that would result in a negative balance of a player account.

Q. A player's account shall be disabled by the permit holder after three failed login attempts and require multi-source authentication to recover or reset a password or username.

R. A permit holder shall suspend a player account if:

1. The player asks for suspension for a specified period not less than 72 hours as a self-limiting measure;

2. Required by the director;

3. The permit holder determines that the player may be a prohibited individual; or

4. The permit holder knows or has reason to know of:

a. Illegal activity related to the account;

b. A negative account balance;

c. Five failed ACH deposit attempts within a 24-hour period; or

d. A violation of the terms and conditions that has taken place on the player's account.

S. When a sports betting account is suspended, the player shall be prevented from:

1. Wagering;

2. Depositing funds, unless the reason for the deposit is to clear a negative balance that resulted in the suspension;

3. Withdrawing funds, unless the reason for the suspension would not prohibit a withdrawal;

4. Making changes to the player account; or

5. Removing the player account from the sports betting platform.

T. A suspended player account may be restored:

1. Upon expiration of the time period established by the player;

2. When permission is granted by the director;

3. When the player is no longer a prohibited individual; or

4. When the permit holder has lifted the suspended status.

11VAC5-70-300. Internal control standards.

A. A permit holder and its sports betting platform supplier shall develop and maintain internal control standards that meet or exceed industry standards as approved by the director.

B. A permit holder's internal control standards shall address at a minimum:

1. Safeguarding assets and revenues;
2. Safeguarding player accounts;
3. Requirements for internal and independent audits of the permit holder and its sports betting platform supplier;
4. User access controls for all personnel;
5. Segregation of duties among personnel;
6. Automated and manual risk management procedures;
7. Procedures for identifying and reporting fraud, cheating, and suspicious or unusual wagering activity;
8. Procedures for identifying and preventing sports betting by prohibited individuals;
9. Description of its AML compliance standards;
10. Description of all types of wagers available to be offered by the permit holder;
11. Description of all integrated third-party hardware, software, or systems;
12. A monitoring system to identify irregularities in volume or odds and swings that could signal unusual or suspicious wagering activity that should require further investigation; and
13. A wager or attempt to wager above any maximum wager threshold set by the permit holder that qualifies as unusual or suspicious wagering.

11VAC5-70-310. Information security system.

A permit holder shall implement, maintain, regularly review and revise, and comply with a comprehensive information security system, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personal information of individuals who place a wager with the permit holder, and shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations and the sensitivity of the personal information owned, licensed, maintained, handled, or otherwise in the possession of the permit holder.

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

FORMS (11VAC5-70)

The following forms are available online only at <https://www.valottery.com/aboutus/casinosandsportsbetting> (eff. 10/15/2020)

Permit Holder Application

Supplier Application

Vendor Application

Principal Application

Principal Entity Application

Employee Application

**CHAPTER 80
SPORTS BETTING CONSUMER PROTECTION
PROGRAM**

11VAC5-80-10. Definitions.

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

"Board" means the Virginia Lottery Board established by the Virginia Lottery Law.

"Department" or "Virginia Lottery" means the Virginia Lottery Department, the independent department that pursuant to § 58.1-4031 of the Code of Virginia is responsible for the operation of the Commonwealth's sports betting program set forth in Articles 1 (§ 58.1-4000 et seq.) and 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Director" means the Executive Director of the Virginia Lottery or the director's designee.

"Individual" means a human being and not a corporation, company, partnership, association, trust, or other entity.

"Permit holder" means a person who has been issued a permit by the director to operate a sports betting platform.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

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"Player" or "sports bettor" means an individual physically located in Virginia who participates in sports betting.

"Sports betting" means placing wagers on professional sports, college sports, sporting events, and any portion thereof, and includes placing wagers related to the individual performance statistics of athletes in such sports and events. "Sports betting" includes any system or method of wagering approved by the director, including single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, and straight bets. "Sports betting" does not include (i) participating in charitable gaming authorized by Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia; (ii) participating in any lottery game authorized under Article 1 (§ 58.1-4000 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia; (iii) wagering on horse racing authorized by Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia; (iv) participating in fantasy contests authorized by Chapter 51 (§ 59.1-556 et seq.) of Title 59.1 of the Code of Virginia; (v) placing a wager on a college sports event in which a Virginia public or private institution of higher education is a participant; or (vi) placing a wager on sports events organized by the International Olympic Committee.

"Sports betting law" means Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Sports betting platform" means a website, mobile application, or other platform accessible via the internet or mobile, wireless, or similar communications technology that sports bettors use to participate in sports betting.

11VAC5-80-20. Sports bettors' bill of rights.

A. A permit holder shall make conspicuously available on its platform a link to the Virginia Sports Bettors' Bill of Rights on the department's website and afford its players the protections found in that document.

B. A permit holder may not, as a condition of use of the permit holder's sports betting platform, require any player to waive any right, forum, or procedure including the right to pursue legal action or to file a complaint with, or otherwise notify, any instrument of the state or federal government, including a Commonwealth's Attorney, law enforcement, courts, and state and federal agencies, of any alleged violation of the sports betting law, this chapter, or any other applicable law, regulation, or administrative policy.

11VAC5-80-30. Complaints.

A. A permit holder shall develop and publish procedures by which a sports bettor may file a complaint with the permit holder in person, in writing, online, or by other means about any aspect of the sports betting program.

B. A permit holder shall respond to any such complaint in writing, via email, or via live chat within 15 days of the filing

of the complaint. If a sports bettor requests relief in a complaint and the requested relief or part thereof will not be granted, the response to the complaint shall state with specificity the reasons for the denial of relief.

C. If the response to a complaint is that additional information is needed, the form and nature of the necessary information shall be specifically stated. When additional information is received, further response shall be required within seven days.

D. All complaints received by a permit holder from a sports bettor and the permit holder's responses to complaints, including email and live chat transcripts, shall be retained by the permit holder for at least four years and made available to the department within seven days of any request from the department.

11VAC5-80-40. Prohibition on out-of-state betting.

A permit holder shall ensure that only people physically located in Virginia are able to place bets through the permit holder's platform.

11VAC5-80-50. Underage betting.

A. A permit holder shall implement age-verification procedures to verify that no sports bet is placed by or on behalf of an individual younger than 21 years of age.

B. A permit holder shall promptly refund any money wagered by or on behalf of a minor and close the account. A permit holder may withhold and, if practicable and as approved by the department, redistribute to other winners any winnings won by a minor upon a good faith determination, following reasonable investigation, that the minor misrepresented his age in order to place a sports bet.

C. A permit holder shall make available, publish, and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any sports betting platform.

11VAC5-80-60. Compliance with tax laws; disclosure.

A permit holder shall comply with all applicable tax laws and regulations, including (i) laws and regulations applicable to tax reporting and (ii) laws and regulations applicable to providing information about winnings to taxing authorities and to sports bettors.

11VAC5-80-70. Excluded individuals.

A. A permit holder shall take such actions and establish such procedures as may be necessary to identify and report to the department any activity prohibited by the board's regulations and § 58.1-4041 of the Code of Virginia. Such actions and procedures include:

1. Making known to all affected individuals and corporate entities the prohibition against disclosure of proprietary or nonpublic information that may affect sports betting or the

outcome of sports betting to any individual permitted to participate in sports betting; and

2. Making commercially reasonable efforts to exclude individuals prohibited by the sports betting law from participating in sports betting. The department shall maintain and distribute the Virginia Lottery Exclusion List and a list of self-excluded individuals to permit holders for the purpose of monitoring for and excluding such individuals from platforms operated by the permit holder.

B. A permit holder, upon learning of a violation of § 58.1-4041 of the Code of Virginia, shall immediately bar an individual committing the violation from participating in or disclosing proprietary or nonpublic information about sports betting by:

1. Banning the individual committing the violation or disclosing or receiving prohibited information from all sports betting platforms operated by the permit holder;

2. Terminating any existing promotional agreements with the individual; and

3. Refusing to make any new promotional agreements that compensate the individual.

11VAC5-80-80. Corporate responsible gambling policies.

A. A permit holder's website or mobile application shall prominently publish a responsible gambling logo in a manner approved by the director and shall direct a player to the permit holder's responsible gambling page.

B. A permit holder's website or mobile application shall contain, at a minimum, the following:

1. A prominent message that provides a toll-free number approved by the director for individuals to use if the individuals suspect they or someone they know may have a gambling problem; and

2. A clear statement of the permit holder's commitment to responsible gaming and problem gambling prevention.

C. A permit holder shall maintain a corporate policy on responsible gambling that addresses the following:

1. Corporate commitment to responsible gambling and problem gambling prevention;

2. Responsible gambling strategy with defined goals;

3. Senior executive staff members are accountable for responsible gambling policies and programs;

4. Responsible gambling programs are embedded across all activities of the organization;

5. Methods for tracking levels of understanding and implementation of responsible gambling practices across its organization; and

6. Measures to ensure staff understand the importance of responsible gaming and are knowledgeable about their roles and the company's expectations of their actions. Such measures should include:

a. Corporate responsible gambling policies are explained to employees along with local (e.g., site-specific) codes of practice, self-ban procedures, and regulations;

b. Staff learn about problem gambling and its impact as well as key responsible gambling information;

c. Staff are taught skills and procedures required of them for assisting players who may have problems with gambling;

d. Staff are trained to avoid messages that reinforce misleading or false beliefs;

e. All staff are trained upon hiring and are retrained regularly;

f. Objectives are clear and accessible, training accommodates different learning styles, and material is tested or reviewed with staff;

g. A formal evaluation process is in place; and

h. Making reasonable efforts to ensure that the training program or evaluation is informed by evidence-based research.

11VAC5-80-90. Sports betting platform features.

A sports betting platform must possess the following features:

1. A prominent link to information about the permit holder's self-exclusion program;

2. A mechanism for a player to take note of the passage of time;

3. The ability to initiate a "cooling off" period such as breaks in play and avoidance of excessive play;

4. Practices and procedures on the site do not reinforce myths and misconceptions about gambling;

5. Information about the website's terms and conditions is readily accessible;

6. Promotional or free games do not mislead players;

7. Notification to players of age-verification procedures;

8. Access to credit is prohibited;

9. Fund transfers and automatic deposits are prohibited or restricted; and

10. Games display credits and spending as cash.

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11VAC5-80-100. Security of funds and data.

A. A permit holder shall comply with all applicable state and federal requirements for data security.

B. A permit holder shall not share information that could be used to personally identify a sports bettor with any third party other than the department, law enforcement with a warrant or subpoena, or a credit-reporting agency, except when a better provides consent. Information that could be used to personally identify a sports bettor includes gaming habits, except when this information has been anonymized.

C. Funds in a sports bettor's player's account shall be held either (i) in trust for the sports bettor in a segregated account or (ii) in a special-purpose segregated account that is maintained and controlled by a properly constituted corporate entity that is not the permit holder and whose governing board includes one or more corporate directors who are independent of the permit holder and of any corporation related to or controlled by the permit holder. A corporate entity that maintains a special purpose segregated account shall:

1. Require a unanimous vote of all corporate directors to file bankruptcy and have articles of incorporation that prohibit commingling of funds with those of the permit holder except as necessary to reconcile the accounts of sports bettors with sums owed by those sports bettors to the permit holder;

2. Be restricted from incurring debt other than to sports bettors pursuant to the rules that govern their user accounts;

3. Be restricted from taking on obligations of the permit holder other than obligations to sports bettors pursuant to the rules that govern their user accounts; and

4. Be prohibited from dissolving, merging, or consolidating with another company, other than a special-purpose corporate entity established by another permit holder that meets the requirements of this section, while there are unsatisfied obligations to sports bettors.

D. A permit holder shall maintain a reserve for bets that are settled, plus the amount of outstanding and unsettled bets.

E. A permit holder shall implement and prominently publish the following on its platform or within the terms and conditions inside the sports betting platform:

1. Policies that prevent unauthorized withdrawals from a sports bettor's account by a permit holder or others;

2. Notices that make clear that the funds in the segregated account do not belong to the permit holder and are not available to creditors other than the sports bettor whose funds are being held;

3. Policies that prevent commingling of funds in the segregated account with other funds, including funds of the permit holder;

4. Consistent with the provisions of § 58.1-4043 of the Code of Virginia, procedures for responding to and reporting on complaints by sports bettors that their accounts have been misallocated, compromised, or otherwise mishandled;

5. Procedures that allow a sports bettor to request withdrawal of funds from the sports bettor's user account whether such account is open or closed. The permit holder shall honor any sports bettor's request to withdraw funds by the later of five days after receipt of the request or 10 days after submission of any tax reporting paperwork required by law unless the permit holder believes in good faith that the sports bettor has engaged in either fraudulent conduct or other conduct that would put the permit holder in violation of this chapter, in which case the permit holder may decline to honor the request for withdrawal for a reasonable investigatory period until the permit holder's investigation is resolved if the permit holder provides notice of the nature of the investigation to the sports bettor. For the purposes of this subdivision, a request for withdrawal shall be considered honored if the request is processed by the permit holder but is delayed by a payment processor, a credit card issuer, or the custodian of a segregated account; and

6. Procedures that allow a sports bettor to permanently close a player account at any time and for any reason. The procedures shall allow for cancellation by any means, including by a sports bettor on any platform used by that sports bettor to make deposits into a segregated account.

F. If winnings are awarded to a sports bettor with a closed account, those winnings, to the extent that the winnings consist of funds, shall be distributed by the permit holder within seven days, provided, however, that if an account is closed on the basis of the permit holder's good faith belief after investigation that the sports bettor has engaged in fraud or has attempted to engage in behavior that would put the permit holder in violation of this chapter, such winnings may be withheld, provided that the winnings are redistributed in a manner that reflects the outcome that would have resulted had that sports bettor not participated.

G. If a sports bettor's segregated account remains unclaimed for five years after the balances are payable or deliverable to the sports bettor, the permit holder shall presume the account to be abandoned. The permit holder shall report and remit all segregated accounts presumed abandoned to the State Treasurer or his designee pursuant to Chapter 25 (§ 55.1-2500 et seq.) of Title 55.1 of the Code of Virginia. Before closing an account pursuant to this subsection, a permit holder shall attempt to contact the player by mail, phone, and email.

H. A permit holder shall prominently publish all contractual terms and conditions and rules of general applicability that affect a sports bettor's segregated account. Presentation of such terms, conditions, and rules at the time a sports bettor initially acquires a segregated account shall not be deemed sufficient to satisfy the provisions of this subsection.

11VAC5-80-110. Limitations on user accounts.

A. A permit holder shall not allow a sports bettor to establish more than one user name or more than one user account per sports betting platform.

B. A permit holder shall take commercially and technologically reasonable measures to verify a sports bettor's identity and shall use such information to enforce the provisions of this section.

C. A permit holder shall implement procedures to terminate all accounts of any sports bettor who establishes or seeks to establish more than one user name or more than one account whether directly or by use of another individual as proxy. Such procedures may allow a sports bettor who establishes or seeks to establish more than one user name or more than one account to retain one account, provided that the permit holder investigates and makes a good faith determination that the sports bettor's conduct was not intended to commit fraud or otherwise evade the requirements of this chapter.

D. A permit holder shall not allow a sports bettor to use a proxy server for the purpose of misrepresenting the sports bettor's location in order to engage in sports betting.

E. A permit holder shall take commercially and technologically reasonable measures to prevent one sports bettor from acting as a proxy for another. Such measures shall include use of geolocation technologies to prevent simultaneous logins to a single account from geographically inconsistent locations.

11VAC5-80-120. Protections for at-risk or problem bettors.

A. In accordance with 11VAC5-60, sports bettors have the right to self-exclude from and to self-impose restrictions on their participation in sports betting in the Commonwealth. Sports bettors may self-exclude through the voluntary exclusion program as provided in § 58.1-4015.1 of the Code of Virginia or directly with a permit holder. In addition to participation in the voluntary exclusion program as provided in § 58.1-4015.1, a permit holder shall honor requests from a sports bettor to self-exclude from all sports betting activities for a period of at least 72 hours, to set deposit limits, to set limits on the sports bettor's total betting activity, or to limit participation to bets below an established limit.

B. A permit holder shall institute and prominently publish procedures for sports bettors to implement the restrictions provided in subsection A of this section. Such procedures shall include, at a minimum:

1. Opportunities to self-exclude from or to set self-imposed limits on each permit holder's sports betting platform used by that sports bettor to make deposits into a segregated account;

2. Options to set pop-up warnings concerning sports betting activity; and

3. Options to implement limits and timeouts (e.g. cooling off periods). Sports bettors shall have the option to adjust self-imposed limits to make the limits more restrictive as often as the sports bettors like but shall not have the option to make limits less restrictive until the prior restriction has expired.

C. A permit holder shall not directly market sports betting by mail, phone, email, or social media or by knowingly directing any form of individually targeted advertisement or marketing material to a prohibited individual as defined in 11VAC5-70-100.

D. A permit holder shall prominently publish a description of opportunities for at-risk or problem bettors to receive assistance or that direct sports bettors to a reputable source accessible in the Commonwealth of such information.

E. A permit holder shall train employees on at-risk or problem betting. Such training shall include training on policies and best practices for identifying and assisting sports bettors who may be at-risk or problem sports bettors.

F. A permit holder shall establish clear protocols for staff to respond appropriately to:

1. A player in crisis or distress;

2. A player who discloses that he may have a problem with gambling; and

3. Third-party concerns.

G. A permit holder shall develop and prominently publish procedures for considering requests made by third parties to exclude or set limits for sports bettors.

H. A permit holder's platform shall have systems in place to identify players who may be at risk of having or developing problem gambling to enable staff to respond appropriately.

I. A permit holder shall maintain a database of interactions regarding gambling problems with players and a clear protocol for documenting and using the data to assist players.

11VAC5-80-130. Prohibition on the extension of credit.

A permit holder shall not extend credit to a sports bettor.

11VAC5-80-140. Promotional offers.

A. A permit holder shall fully and accurately disclose the material terms of all promotional offers involving sports betting at the time any such offer is advertised and provide full disclosure of the terms of and limitations on the offer

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before the sports bettor provides anything of value in exchange for the offer. If the material terms of a promotional offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium, the material terms and conditions shall be accessed by hyperlink that takes the individual directly to the material terms or directs the individual to the site to access the offer or bonus terms and in reasonably prominent size.

B. No promotional offer available to a sports bettor who sets up a new user account may contain terms that delay full implementation of the offer by the permit holder for a period of longer than 90 days, regardless of the number or amount of wagers in that period by the sports bettor.

11VAC5-80-150. Advertising in general.

A. An advertisement for sports betting shall disclose the identity of the permit holder.

B. An advertisement for sports betting may not depict:

1. Minors, other than professional athletes who may be minors;
2. Students;
3. Schools or colleges; or
4. School or college settings.

Incidental depiction of nonfeatured minors shall not be deemed a violation of this subsection.

C. An advertisement for sports betting shall not state or imply endorsement by:

1. Minors, other than professional athletes who may be minors;
2. Collegiate athletes;
3. Schools or colleges; or
4. School or college athletic associations.

D. A permit holder shall not intentionally use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.

E. An advertisement for sports betting in published media shall (i) include information concerning assistance available to at-risk or problem bettors or (ii) direct consumers to a reputable source for such information. If an advertisement is not of sufficient size or duration to reasonably permit inclusion of such information, that advertisement shall refer to a website, application, or telephone hotline that does prominently include such information.

F. Any representation concerning winnings:

1. Shall be accurate and capable of substantiation at the time the representation is made;

2. Shall not mislead bettors about the outcomes of gambling; and

3. Shall not misrepresent the odds of winning.

G. An advertisement is misleading if it makes representations about average winnings without representing with equal prominence the average net winnings of all sports bettors.

11VAC5-80-160. Restrictions on advertising to minors or at schools or school sporting events.

A. An advertisement for sports betting published, disseminated, circulated, broadcast, or placed before the public in the Commonwealth shall not be aimed exclusively or primarily at minors.

B. A permit holder shall not advertise or run promotional activities at elementary or secondary schools or on college campuses in the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE (11VAC5-80)

[Virginia Sports Bettors' Bill of Rights](#)

VA.R. Doc. No. R21-6450; Filed September 23, 2020, 9:01 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following changes are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which exempts minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia) made by the Virginia Code Commission pursuant to § 30-150 of the Code of Virginia.

Titles of Regulations: **14VAC5-45. Rules Governing Suitability in Annuity Transactions (amending 14VAC5-45-40).**

14VAC5-71. Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers (amending 14VAC5-71-31).

14VAC5-80. Rules Governing Variable Life Insurance (amending 14VAC5-80-60).

14VAC5-190. Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers (amending 14VAC5-190-50).

14VAC5-321. Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits (amending 14VAC5-321-20).

14VAC5-322. Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities (amending 14VAC5-322-20).

14VAC5-390. Rules Governing Insurance Premium Finance Companies (amending 14VAC5-390-70).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: October 12, 2020.

Agency Contact: Katie Johnson, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The amendments update (i) obsolete links to forms and websites, (ii) citations to the Code of Virginia due to the recodification of Title 55 to Title 55.1, and (iii) citations to a repealed Virginia Administrative Code (VAC) chapter to the current VAC chapter.

14VAC5-45-40. Duties of insurers and agents.

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;
2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;
3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole

is suitable) for the particular consumer based on the consumer's suitability information; and

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

- a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
- b. The consumer would benefit from product enhancements and improvements; and
- c. The consumer has had another annuity exchange or replacement, and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information.

C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

D. 1. Except as provided in subdivision 2 of this subsection, neither an agent, nor an insurer where no agent is involved, shall have any obligation to a consumer under subsection A or C of this section related to any annuity transaction if:

- a. No recommendation is made;
- b. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- c. A consumer refuses to provide relevant suitability information requested by the insurer or agent and the annuity transaction is not recommended;
- d. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or agent; or
- e. A consumer fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

E. An agent, or where no agent is involved the responsible insurer representative, shall at the time of sale:

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1. Make a record of any recommendation subject to subsection A of this section;
2. Obtain a customer signed statement, documenting a customer's refusal to provide suitability information, if any; and
3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.

F. 1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions 3 and 4 of this subsection or shall establish and maintain such a system, including the following:

- a. The insurer shall maintain reasonable procedures to inform its agents of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant agent training manuals;
- b. The insurer shall establish standards for agent product training and shall maintain reasonable procedures to require its agents to comply with the requirements of 14VAC5-45-45;
- c. The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its agents;
- d. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- e. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
- f. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions

found, and corrective action taken or recommended, if any.

2. An agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter or shall establish and maintain such a system, including, but not limited to:

- a. Maintaining written procedures; and
- b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

3. An insurer may contract with a third party, including an agent or independent agency, to establish and maintain a system of supervision as required by subdivision 1 of this subsection with respect to agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision 3 of this subsection is performing the functions required under subdivision 1 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
- b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision 3 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to subdivision 3 of this subsection and that complies with the requirements to supervise in subdivision 4 of this subsection shall have fulfilled its responsibilities under subdivision 1 of this subsection.

6. An insurer, agent, or independent agency is not required by subdivision 1 or 2 of this subsection to:

- a. Review, or provide for review of, all agent-solicited transactions; or
- b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

7. An agent or independent agency contracting with an insurer pursuant to subdivision 3 of this subsection, when requested by the insurer pursuant to subdivision 4 of this subsection, shall promptly give a certification as described in subdivision 4 or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under subdivision 4 a of this subsection unless:

- a. The person is a senior manager with responsibility for the delegated functions; and
- b. The person has a reasonable basis for making the certification.

G. An agent shall not dissuade or attempt to dissuade a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;
2. Filing a complaint; or
3. Cooperating with the investigation of a complaint.

H. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this chapter:

1. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commission's ability to enforce (including investigate) the provisions of this chapter.

2. For subdivision 1 of this subsection to apply, an insurer shall:

- a. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
- b. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

I. Compliance with FINRA Rule 2111 (http://finra.complinet.com/en/display/display_main.html?bid=2403&element_id=9859) (<https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111>) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14VAC5-71-31. License requirements for viatical settlement providers.

A. No person shall act as a viatical settlement provider with a resident of this Commonwealth without first obtaining a license from the commission.

B. The license issued to a viatical settlement provider shall allow the licensee to enter or effectuate a viatical settlement contract only by operating within the scope of its license as a viatical settlement provider.

1. No provision of this chapter shall be deemed to authorize any viatical settlement provider to transact any business other than that of a viatical settlement provider. A viatical settlement provider license shall not authorize the licensee to transact any business in this Commonwealth for which registration, certification or a license is required under any section of the Code of Virginia other than § 38.2-6002.

2. "Viatical settlement provider" does not include, and licensing as a viatical settlement provider shall not be required of, the following persons: (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy providing accelerated death benefits governed by 14VAC5-70 and pursuant to the contract; (iii) an authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, viatical settlement purchaser, financing entity, special purpose entity or related provider trust; (iv) a financing entity; (v) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; (vi) a special purpose entity; (vii) a related provider trust; (viii) a viatical settlement purchaser; or (ix) the accredited investor, qualified institutional buyer or qualified institutional purchaser under the Securities Act of 1933, as amended, provided the person is acting in the capacity of a person listed above and is neither entering into nor attempting to enter into, nor effectuating nor attempting to effectuate a viatical settlement contract in this Commonwealth or with any resident of this Commonwealth.

3. Except as provided in subdivision 2 (v) of this subsection, no person listed in subdivision 2 of this subsection shall attempt to enter into or effectuate a viatical settlement contract in this Commonwealth or with any resident of this Commonwealth without first becoming licensed as a viatical settlement provider in accordance with the provisions of this chapter. Notwithstanding the foregoing and in accordance with § 38.2-6002 F of the Code of Virginia, no licensed insurer shall be licensed as, or authorized to transact the business of, a viatical settlement provider in this Commonwealth.

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C. The licensee shall be a legal entity that enters into or effectuates, or seeks to enter into or effectuate, a viatical settlement contract. The license shall authorize the licensee's partners, officers, members, and designated employees to act on behalf of the viatical settlement provider provided such individual is named in the legal entity's application for license or the application's supplements.

D. A license issued prior to July 1, 2004, shall expire on June 30, 2004, unless the license is renewed in accordance with the provisions of this section or subject to actions of termination, suspension, or revocation prior to expiry.

E. 1. If at the time of renewal, a viatical settlement provider has viatical settlements where an insured, who is a resident of this Commonwealth, has not died, it shall do one of the following:

a. Renew or maintain its license until the earlier of: (i) the date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements; or (ii) the date that the last insured covered by a viatical settlement transaction has died; or

b. Appoint, in writing, a viatical settlement provider or viatical settlement broker that is licensed in this Commonwealth to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters. A copy of the appointment, acknowledged by the appointed provider or broker should be filed with the commission.

2. No viatical settlement provider shall fail to renew or seek to otherwise terminate its license without certifying to the commission that it has ceased doing business in this Commonwealth and is in compliance with the requirements of subdivision 1 of this subsection. The commission may require documentation supportive of the certification.

F. A license expiring on June 30 may be renewed effective July 1 for a one-year period ending on June 30 of the following year if the required renewal application and nonrefundable renewal fee have been received and the license is not terminated, suspended, or revoked at the time of renewal.

G. Initial and renewal applications shall be submitted to the Bureau of Insurance in a form acceptable to the commission. Forms are available through the website for the Bureau of Insurance, at <http://www.state.va.us/scc/division/boi> <https://scc.virginia.gov/pages/Company-Licensing-and-Registration-Procedures>.

H. Initial applications for licenses that are to be issued on or after July 1, 2003, shall be accompanied by a nonrefundable application fee of \$500. A licensee may request renewal by submitting a renewal application and renewal fee of \$300 on or before March 1 of the year in which the license shall

expire. A viatical settlement provider's failure to submit a renewal application and fee within the prescribed time shall result in the imposition of penalties or other appropriate regulatory action. Notice of the requirements for renewal will be mailed by the Bureau of Insurance to each licensee's mailing address as shown in the records of the Bureau of Insurance. Renewal forms may be posted on the website for the Bureau of Insurance, at <http://www.state.va.us/scc/division/boi> <https://scc.virginia.gov/pages/Company-Licensing-and-Registration-Procedures>.

I. Each application shall fully and clearly disclose the identity of the applicant by complying with the provisions of this subsection.

1. An application for initial licensure shall identify all of the applicant's affiliates, directors, partners, and officers, and also each stockholder, member or employee having, owning or holding a 10% or greater interest in the applicant or an affiliate of the applicant. A renewal application shall update or confirm the accuracy of the information filed with the initial application and any intervening renewal applications or 30-day reports required by 14VAC5-71-70.

2. The commission may require the applicant to disclose the identity of all stockholders, members, and employees.

3. The applicant shall name and fully identify any individual, including any director, partner, officer, member or designated employee, that is to be authorized to act on behalf of the applicant under the license.

4. The commission, in the exercise of its discretion, may refuse to issue a license in the name of a legal entity if not satisfied that all directors, officers, employees, stockholders, partners, members thereof, or other individuals who may materially influence the applicant's conduct meet the standards of this chapter and Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia.

J. Each application shall include evidence of the viatical settlement provider's financial accountability acceptable to the commission in accordance with the provisions of this subsection.

1. A surety bond in the amount of \$100,000, in a form approved by the commission, shall be acceptable evidence of the viatical settlement provider's financial accountability provided (i) the surety bond is for the use and benefit only of the Commonwealth of Virginia and any person having a cause of action against the principal arising out of breaches of laws set forth in this chapter or Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia; (ii) the surety bond is issued by an insurer licensed in this Commonwealth to transact the business of suretyship or approved by the commission to issue surplus lines coverage; (iii) the surety is neither directly nor indirectly

under the same ownership or management as the principal on the bond; and (iv) termination provisions acceptable to the commission provide that the bond and coverage thereunder shall not be terminated without 30 days' written notice to the commission.

2. The requirement of a surety bond may be waived for a licensee that (i) has and maintains an errors and omissions insurance policy, in the sum of not less than \$100,000 per occurrence and \$1 million for all occurrences within one year, issued by an insurer licensed in this Commonwealth or approved by the commission to issue surplus lines coverage or (ii) makes and maintains a deposit of not less than \$100,000 with the State Treasurer that complies in form and amount with the requirements of § 38.2-1045 A of the Code of Virginia.

3. No such policy or bond shall be terminated and no such deposit shall be withdrawn without 30 days' prior written notice to the licensee and the commission. Termination or withdrawal without the required notice and approval of the commission shall be grounds for suspension or revocation of, or refusal to renew, a license.

K. A nonresident applicant, as a condition precedent to receiving or holding a license and in addition to all other licensing requirements, shall designate a resident of this Commonwealth as the person upon whom any process, notice, or order required or permitted by law to be served upon such nonresident viatical settlement provider may be served.

1. The licensee shall promptly notify the clerk of the commission in writing of every change in its designated agent for service of process.

2. Whenever a nonresident viatical settlement provider transacting business in this Commonwealth fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, the clerk of the commission shall be an agent of the nonresident upon whom service may be made in accordance with § 12.1-19.1 of the Code of Virginia.

L. The commission may require such additional information as is necessary to make the findings required by subsection M of this section and to otherwise determine whether the applicant complies with the requirements of § 38.2-6002 of the Code of Virginia.

M. Upon the filing of the initial application for licensure and the payment of the nonrefundable application fee, the commission shall make such investigation of each applicant as the commission may determine to be appropriate and issue a license if it finds that the applicant: (i) has provided a detailed plan of operation; (ii) is competent and trustworthy; (iii) indicates its intention to act in good faith within the confines of the license; (iv) has a good business reputation;

(v) if an individual, has had experience, training or education that qualifies him for licensure; (vi) if a resident partnership, limited liability company, or corporation, has recorded the existence of the partnership, limited liability company, or corporation pursuant to law; (vii) if a corporation, has specific authority to act as a viatical settlement provider in its charter; (viii) if a nonresident partnership, limited liability company, or corporation, has furnished proof of its authority to transact business in Virginia; and (ix) has provided an anti-fraud plan that meets the requirements of § 38.2-6011 E 2 of the Code of Virginia.

N. The commission may suspend, revoke, refuse to issue, or refuse to renew the license of a viatical settlement provider if the commission finds that the applicant or licensee has (i) made any material misrepresentation in the application; (ii) been guilty of fraudulent or dishonest practices; (iii) been subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to viators; (v) been convicted of a felony or any misdemeanor involving fraud or moral turpitude; (vi) entered into any viatical settlement contract that has not been approved pursuant to this chapter; (vii) failed to honor contractual obligations set out in a viatical settlement contract; (viii) demonstrated or represented that it no longer meets the requirements for initial licensure; (ix) assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this Commonwealth, a viatical settlement purchaser, a financing entity, a special purpose entity, a related provider trust, or an accredited investor or a qualified institutional buyer as described in Regulation D (17 CFR 230.501 through 17 CFR 230.508) and defined, respectively, in Rule 501 (17 CFR 230.501) and Rule 144A (17 CFR 230.144A) under the Securities Act of 1933, as amended; (x) violated any provisions of this chapter, Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia or other applicable provisions of Title 38.2 or rules promulgated thereunder; or has in its employ any officer, partner, member, or key management personnel who has violated provisions of this chapter, Chapter 60 of Title 38.2 or other applicable provisions of Title 38.2 or is affiliated with any person who has in its employ any such officer, partner, member, or key management personnel; or (xi) renewed or requested renewal of its license before implementing the anti-fraud initiatives required by § 38.2-6011 E of the Code of Virginia.

O. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall apply again for a license under this chapter until after the expiration of a period of five years from the date of the commission's order, or such other period of time as the commission may specify in its order.

P. A licensed insurer shall be prohibited from transacting the business of a viatical settlement provider.

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14VAC5-80-60. Use of sales materials.

An insurer authorized to transact variable life insurance business in this Commonwealth shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this Commonwealth which is false, misleading, deceptive, or inaccurate.

Variable life insurance marketing communications shall be subject to the additional requirements of ~~Rules Governing Life Insurance and Annuity Marketing Practices adopted, Chapter 40 (14VAC5-40-10 et seq.) of this Title by the Commission in Case No. INS810107~~ Rules Governing Advertisement of Life Insurance and Annuities (14VAC5-41-10).

14VAC5-190-50. Reporting and filing requirements.

A. Beginning May 1, 2018, and every other year thereafter, any health insurance issuer licensed to issue an applicable policy or contract in the Commonwealth of Virginia who reported greater than 5,000 covered lives in Virginia during either of the individual calendar years comprising the reporting period shall file with the Bureau of Insurance a separate Form 190-A report for each calendar year in the reporting period.

B. The Form 190-A report may be obtained on the Bureau of Insurance's webpage at <http://www.scc.virginia.gov/boi/co/health/mandben.aspx>, <https://scc.virginia.gov/pages/Mandated-Benefits-and-Mandated-Offers> and shall be filed electronically in accordance with the instructions that appear on the Bureau of Insurance's webpage.

14VAC5-321-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, which is included in the Proceedings of the NAIC (2nd Quarter 2002), consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. The 2001 CSO Mortality Table may be accessed via the ~~American Academy Society~~ Society of Actuaries' website,

http://www.actuary.org/life/cso/appendix_a_jun02.xls
<https://mort.soa.org/>.

"2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

"2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

"Commission" means the State Corporation Commission.

"Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

"NAIC" means the National Association of Insurance Commissioners.

"Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

14VAC5-322-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. The 2001 CSO Mortality Table may be accessed via the ~~American Academy Society~~ American Academy Society of Actuaries' website, http://www.actuary.org/life/cso/appendix_a_jun02.xls <https://mort.soa.org/>. Mortality tables in the 2001 CSO Mortality Table include the following:

1. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
2. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

3. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

4. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables adopted by the NAIC in September 2006. The 2001 CSO Preferred Class Structure Mortality Table is included in the Proceedings of the NAIC (3rd Quarter 2006). Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table. The 2001 CSO Preferred Class Structure Mortality Table may be accessed via the Society of Actuaries website, <http://www.soa.org/research/individual-life/intl-2001-cso-preferred-class-structure-mortality-tables.aspx> <https://www.soa.org/globalassets/assets/files/xls/2001-cso-preferred-class-structure-mortality-tables.xls>.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Insurance in Virginia unless specific reference is made to another state, in which case "commissioner" means the insurance commissioner, director, superintendent or other supervising regulatory official of a given state who is responsible for administering the insurance laws of that state.

"NAIC" means the National Association of Insurance Commissioners.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

14VAC5-390-70. Miscellaneous.

A. Any insurance agent or broker or any person who, with the authorization or consent of a licensee, shall take any action on behalf on such licensee shall be deemed to be an agent of such licensee as to such action. This supersedes any contrary language in the insurance premium finance contract.

B. Any licensee having knowledge of any violations of law or irregularities committed by an insurance agent or agency shall promptly report such violations or irregularities to the Commission. Violations and irregularities required to be reported shall include, but not be limited to, issuance of dishonored checks, failure to promptly refund unearned premiums and failure to promptly deliver any monies or documents required to be delivered to a licensee.

C. In the event of prepayment of an insurance premium finance contract, interest shall be refunded to the insured on either a short-rate or a pro-rata basis. Upon receipt from an insurer of the gross unearned premium, a licensee shall refund to the insured within 10 business days of such receipt any premium that is due the insured.

D. All refund checks payable to an insured shall be mailed to the insured's last known address. If a refund check is returned to a licensee unclaimed, the licensee shall make a diligent effort to locate the insured. Each licensee shall maintain a separate account for unclaimed refunds due insureds, and the balance of such account, together with a list of the names of such insureds, shall be reported in the licensee's annual report to the Commission. Whenever funds from such an account are disbursed, the licensee shall retain proof of payment to the insureds. The requirements of this section are in addition to the requirements of ~~§ 55-210.12~~ § 55.1-2524 of the Code of Virginia relating to disposition of unclaimed property.

E. Any company or person violating any provisions of this chapter shall be subject to the penalties provided in §§ 38.2-218, 38.2-219, 38.2-4704, and 38.2-4710 of the Code of Virginia to the extent that they are applicable to such company or person.

VA.R. Doc. No. R21-6460; Filed September 22, 2020, 12:03 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Cemetery 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 Cemetery Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulations

Title of Regulation: **18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-190).**

Statutory Authority: §§ 54.1-201, 54.1-2312.01, and 54.1-2313 of the Code of Virginia.

Effective Date: December 1, 2020.

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

Summary:

The amendment specifies that the board may discipline a licensee or registrant for permitting the interment of an uncremated pet in the same grave, crypt, or niche as the remains of a human.

18VAC47-20-190. Prohibited activities.

In addition to the acts set forth in §§ 54.1-2314, 54.1-2315, and 54.1-2316 of the Code of Virginia, the board may discipline a licensee or registrant for the following acts:

1. Employing or affiliating with by independent contract, sales personnel not registered with the board.
2. Unless otherwise addressed in this chapter, failing to retain for a period of three years all records required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia at the place of business in Virginia of the licensed cemetery company.
3. Failing to produce to the board or any of its agents, upon request, any document, book, or record required by this chapter or Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.
4. Failing to respond to an inquiry by the board or any of its agents within 21 days.
5. Advertising in any name other than the name in which licensed or registered.
6. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or registration.
7. Allowing a cemetery company license or sales personnel registration to be used by an unlicensed cemetery company or unregistered sales personnel.
8. 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.
9. Having failed to inform the board in writing, within 30 days, that the company, an officer, director, or compliance agent has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or any crime involving moral turpitude.

10. Having failed to inform the board in writing, within 30 days, of a disciplinary action in a jurisdiction where licensed, including suspension, revocation, or surrender in connection with a disciplinary action.

11. Failing to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.

12. Failing to file any report required by Chapter 23.1 of Title 54.1 of the Code of Virginia.

13. Engaging in negligent, improper, fraudulent, or dishonest conduct.

14. Failing to segregate entirely the section of the cemetery dedicated to the interment of pets or the interment of human remains and the pets of such deceased humans by means such as hedge, wall, tree line, fence, roadway, or other similar physical barrier or boundary.

15. Permitting the interment of a an uncremated pet in the same grave, crypt, or niche as the remains of a human.

16. If a cemetery company has a section devoted to the interment of pets or the interment of human remains and the pets of such deceased humans, any advertisements failing to clearly state the cemetery company has such section or sections in its cemetery.

17. Failing to clearly mark the section or sections devoted to the interment of pets or the interment of human remains and the pets of such deceased humans with signage that is reasonably apparent to the general public.

V.A.R. Doc. No. R21-6504; Filed September 21, 2020, 1:30 p.m.

BOARD OF OPTOMETRY

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 14 of the Code of Virginia, which exempts the Board of Optometry from the Administrative Process Act when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

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

Public Hearing Information:

October 16, 2020 - 10:35 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 4, Henrico, VA

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendment adds alpha-adrenergic agonists to the therapeutic pharmaceutical agent formulary in the category of a topically administered Schedule VI medication.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV, and VI narcotic and nonnarcotic agents.
2. Topically administered Schedule VI agents:
 - a. Alpha-adrenergic blocking agents;
 - b. Alpha-adrenergic agonists;
 - c. Anesthetic (including esters and amides);
 - ~~e.~~ d. Anti-allergy (including antihistamines and mast cell stabilizers);
 - ~~d.~~ e. Anti-fungal;
 - ~~e.~~ f. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - ~~f.~~ g. Anti-infective (including antibiotics and antivirals);
 - ~~g.~~ h. Anti-inflammatory;
 - ~~h.~~ i. Cycloplegics and mydriatics;
 - ~~i.~~ j. Decongestants; and
 - ~~j.~~ k. Immunosuppressive agents.
3. Orally administered Schedule VI agents:
 - a. Aminocaproic acids (including antifibrinolytic agents);
 - b. Anti-allergy (including antihistamines and leukotriene inhibitors);
 - c. Anti-fungal;
 - d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - e. Anti-infective (including antibiotics and antivirals);

- f. Anti-inflammatory (including steroidal and nonsteroidal);
- g. Decongestants; and
- h. Immunosuppressive agents.

B. Schedule I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances in Schedule II consisting of hydrocodone in combination with acetaminophen and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed, or dispensed.

VA.R. Doc. No. R21-6523; Filed September 28, 2020, 11:07 a.m.

**BOARD OF PHARMACY
Emergency Regulation**

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-271).**

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

Effective Dates: September 22, 2020, through March 21, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

The emergency regulation adds 18VAC110-20-271, which requires a pharmacist who administers an immunization or directs a pharmacy intern to administer an immunization under his supervision to a person aged three through eighteen years during the federally declared COVID-19 public health emergency to report such immunization to the Virginia Immunization Information System.

18VAC110-20-271. Reporting to the Virginia Immunization Information System.

Any pharmacist who administers an immunization or directs a pharmacy intern to administer an immunization under his supervision to a person aged three through eighteen years in accordance with the U.S. Department of Health and Human Services declaration under the Public Readiness and

Regulations

Emergency Preparedness Act during the COVID-19 public health emergency shall report such immunization to and provide all information required by the Virginia Immunization Information System.

VA.R. Doc. No. R21-6519; Filed September 22, 2020, 9:25 a.m.

Withdrawal of Proposed Regulation

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-275).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Notice is hereby given that the Board of Pharmacy has WITHDRAWN the proposed regulatory action for 18VAC110-20, Regulations Governing the Practice of Pharmacy, that was published in [36:12 VA.R. 1770-1773 February 2, 2020](#). The board received comment that indicated concern about the proposed amendment. Therefore, the board decided to withdraw the action rather than trying to amend and clarify.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R18-08; Filed September 11, 2020, 4:16 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 20VAC5-335. Regulations Governing the Deployment of Energy Storage (adding 20VAC5-335-10 through 20VAC5-335-130).

Statutory Authority: §§ 12.1-13 and 56-585.5 of the Code of Virginia.

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

Public Comment Deadline: November 2, 2020.

Agency Contact: Michael Cizenski, Principle Utilities Engineer, Public Utilities Regulation, State Corporation

Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441 or email mike.cizenski@scc.virginia.gov.

Summary:

The proposed action establishes Regulations Governing the Deployment of Energy Storage (20VAC5-335) to (i) set minimum interim targets for Phase I and Phase II Utilities to conduct annual competitive procurement for energy storage and (ii) require each Phase I or Phase II Utility to propose behind-the-meter incentives, non-wires alternative programs, and peak demand reduction programs related to energy storage. The proposed chapter also establishes processes for the permitting of non-utility energy storage facilities and licensing and registration of energy storage aggregators.

AT RICHMOND, SEPTEMBER 11, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00120

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 E 5 of the Code of Virginia related to the deployment of energy storage

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted the Virginia Clean Economy Act ("VCEA").¹ Among other things, the VCEA, in Code § 56-585.5 E, requires Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to petition the State Corporation Commission ("Commission") for approval to construct or acquire 400 megawatts ("MW") and 2,700 MW, respectively, of new utility-owned energy storage resources by 2035. Section 56-585.5 E 5 further provides in part that:

By January 1, 2021, the Commission shall adopt regulations to achieve the deployment of energy storage for the Commonwealth required in subdivisions 1 and 2, including regulations that set interim targets and update existing utility planning and procurement rules. The regulations shall include programs and mechanisms to deploy energy storage, including competitive solicitations, behind-the-meter incentives, non-wires alternatives programs, and peak demand reduction programs.

On June 29, 2020, the Commission established this proceeding for the purpose of complying with this statutory requirement and sought comment on several questions raised by § 56-585.5 E 5 of the Code. The Commission directed APCo and Dominion to submit comments and permitted any other interested person or entity to submit comments. In addition to answering specific questions, commenters were also permitted to propose specific regulations.²

Comments were filed in this proceeding by: Dominion and APCo; the Virginia Office of the Attorney General, Division of Consumer Counsel; esVolta, LP; Delorean Power LLC ("Delorean"); the U.S. Energy Storage Association ("ESA"); Able Grid Energy Services, Inc.; Virginia Advanced Energy Economy ("AEE"); the Maryland-DC-Delaware-Virginia Solar Energy Industries Association ("MDV SEIA") and the Solar Energy Industries Association ("SEIA"); GRID Alternatives Mid-Atlantic; the Virginia Department of Mines, Minerals and Energy; Highland Electric Transportation, Inc.; the Virginia, Maryland and Delaware Association of Electric Cooperatives; the Sierra Club; the Southern Environmental Law Center, Appalachian Voices, the Virginia Conservation Network, the Chesapeake Climate Action Network, the Virginia League of Conservation Voters, the Piedmont Environmental Council, the Rappahannock League for Environmental Protection, and the National Parks Conservation Association; the Institute for Policy Integrity at New York University School of Law; LS Power Development LLC ("LS Power"); the Virginia Oil and Gas Association ("VOGA"); Solar United Neighbors; and an individual.³

Proposed regulations were filed by APCo and Dominion; ESA; and Delorean.⁴

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds as follows. Based on comments and draft regulations filed in this proceeding, the Commission's Staff ("Staff") has prepared Proposed Rules which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.⁵ The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.⁶ Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) All filings in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and Format, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁷ For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or

other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁸

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of the Proposed Rules may be obtained by submitting a request to Michael Cizenski in the Commission's Division of Public Utility Regulation at the following email address: Mike.Cizenski@scc.virginia.gov. An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website: <https://scc.virginia.gov/pages/Rulemaking>. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(4) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to: individuals, organizations, and companies who have been identified by the Staff as interested in the development of energy storage in the Commonwealth, including those entities and individuals previously filing comments in this proceeding.

(5) On or before November 2, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Such comments may also include proposals and hearing requests. All comments shall refer to Case No. PUR-2020-00120. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(6) On or before November 16, 2020, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(7) This matter is continued.

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

¹Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

²On July 20, 2020, Dominion and APCo filed a Motion for Limited Extension of Time to File Proposed Regulations and for Expedited

Regulations

Consideration requesting an extension of the deadline to propose specific regulations implementing Code § 56-585.5 E 5 from July 29, 2020 to August 14, 2020. The Commission subsequently granted the motion and extended the deadline for the filing of proposed regulations in this proceeding to August 14, 2020.

³LS Power, VOGA and Solar United Neighbors filed comments after the deadline for submission; the Commission exercises its discretion herein to accept those comments out of time.

⁴MDV SEIA, SEIA, and AEE filed joint comments supportive of the draft regulations filed by ESA.

⁵See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

⁶See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

⁷5 VAC 5-20-10 et seq.

⁸As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period due to the COVID-19 emergency.

CHAPTER 335

REGULATIONS GOVERNING THE DEPLOYMENT OF ENERGY STORAGE

20VAC5-335-10. Purpose and applicability.

This chapter is promulgated pursuant to § 56-585.5 E 5 of the Code of Virginia to achieve the deployment of energy storage for the Commonwealth. Each Phase I or Phase II Utility is subject to 20VAC5-335-30 through 20VAC5-335-70, 20VAC5-335-120, and 20VAC5-335-130. Non-utility developers, owners, operators, and aggregators of energy storage are subject to 20VAC5-335-80 through 20VAC5-335-130. Electric cooperatives are not subject to this chapter.

20VAC5-335-20. Definitions.

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

"Behind the meter" means any system that is on the customer side of the utility service meter.

"Behind-the-meter incentive" means any incentive that encourages an end-use electric customer to implement energy storage systems that are connected to the customer side of the utility service meter, regardless of who actually owns the energy storage equipment.

"Commission" means the Virginia State Corporation Commission.

"Demand-side management program" means energy efficiency, demand response, or peak shaving programs approved by the commission that a utility may offer to customers pursuant to § 56-585.1 A 5 of the Code of Virginia.

"Energy storage" means any technology that is capable of absorbing energy, storing that energy for a period of time, and re-delivering that energy after storage.

"Energy storage aggregator" means a person or entity that, as an agent or intermediary, (i) offers to purchase or purchases energy storage system capabilities; or (ii) offers to arrange for or arranges for the purchase of energy storage system capabilities for the purposes of combining or aggregating those capabilities to enable the participation of multiple energy storage systems in electricity markets where such individual systems could not participate individually.

"Energy storage capacity" means the maximum amount of stored energy of the energy storage system in kilowatt-hours or megawatt-hours that can be delivered to the grid.

"Energy storage facility" or "energy storage system" means an energy storage resource and any equipment, other than a transmission or distribution line, needed to interconnect the energy storage resource to the utility's electric system. This additional equipment can include switchgear, transformers, inverters, switches, cables, wires, conductors, bus work, protection devices and systems, communication and control devices and systems, fire protection systems, and environmental protection systems.

"Energy storage power rating" means the total possible instantaneous discharge capability in kilowatts or megawatts of the energy storage system, or the maximum sustained rate of discharge that the energy storage system can achieve starting from a fully charged state to a fully discharged state.

"Energy storage project" means an energy storage facility with a specified location and an associated nameplate capacity.

"Energy storage resource" means (i) a resource capable of collecting energy from the electric power grid or a power generation facility and then discharging the energy at a future point in time to provide electricity or other grid services, or (ii) a resource capable of the active or dynamic exchange of energy.

"Non-wires alternative" means any electricity grid investment, project, or program that uses nontraditional transmission or distribution solutions, such as distributed generation, energy storage, energy efficiency, demand response, and grid software and controls, to delay or remove the need for traditional system upgrades of equipment, such as transmission or distribution lines or transformers, without impacting the safety or overall performance of the electric power system.

"Peak demand reduction program" means any project or program aimed at shifting time of use of electricity from one period to another for the overall economic and reliability benefit of the electric power grid.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Storage duration" means the amount of time an energy storage system can discharge at its energy storage power rating before depleting the stored usable energy when the system is at maximum energy capacity.

20VAC5-335-30. Minimum interim targets for energy storage deployment by Phase I and Phase II Utilities.

A. A Phase I Utility shall petition the commission for any necessary approvals to construct or acquire the level of energy storage capacity by the following dates:

1. By December 31, 2025, 25 megawatts;
2. By December 31, 2030, an additional 125 megawatts for a total of 150 megawatts; and
3. By December 31, 2035, an additional 250 megawatts for a total of 400 megawatts.

B. A Phase II Utility shall petition the commission for any necessary approvals to construct or acquire the level of energy storage capacity by the following dates:

1. By December 31, 2025, 250 megawatts;
2. By December 31, 2030, an additional 950 megawatts for a total of 1,200 megawatts; and

3. By December 31, 2035, an additional 1,500 megawatts for a total of 2,700 megawatts.

C. At least 35% of energy storage facilities placed into service by a Phase I or Phase II Utility shall be (i) purchased by the Phase I or Phase II Utility from a party other than the utility, or (ii) owned by a party other than the Phase I or Phase II Utility with the capacity from such facilities sold to the utility. The 35% threshold shall also apply to each interim targets period identified in this section and a Phase I or Phase II Utility's acquisition of energy storage facilities, and purchases of capacity from its own utility-affiliated interests shall not count toward this 35% threshold.

D. Any type of energy storage technology shall count toward the interim targets set forth in subsections A and B of this section.

E. Each Phase I or Phase II Utility shall report on its plan to meet these interim targets and its progress toward meeting these interim targets in the proceedings established by § 56-585.5 D 4 and §§ 56-597 through 56-599 of the Code of Virginia, consistent with the requirements of each respective statute.

20VAC5-335-40. Procurement of energy storage projects by Phase I and Phase II Utilities.

A. In procuring energy storage projects, each Phase I or Phase II Utility shall use competitive bidding to the extent practicable, consistent with § 56-233.1 of the Code of Virginia.

B. Beginning in 2021 and ending in 2035 or when the storage targets are met, whichever is sooner, each Phase I or Phase II Utility shall sponsor at least one competitive solicitation for energy storage projects per calendar year, consistent with the following requirements:

1. The request for proposals shall quantify and describe the utility's need for energy or capacity.
2. The request for proposals shall be publicly announced and made available for public review on the utility's website at least 45 calendar days prior to the closing of such request for proposals.
3. The request for proposals shall provide, at a minimum, the following information: (i) the size, type, and timing of energy storage resources for which the utility anticipates contracting; (ii) any minimum thresholds that must be met by respondents; (iii) major assumptions to be used by the utility in the bid evaluation process, including environmental emission standards; (iv) detailed instructions for preparing bids so that bids can be evaluated on a consistent basis; (v) the preferred general location of additional energy storage capacity; and (vi) specific information concerning the factors involved in determining the price and non-price criteria used for selecting winning bids.

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4. A utility may evaluate responses to the request for proposals based on any criteria that it deems reasonable but shall at a minimum consider the following in its selection process: (i) the status of a particular project's development; (ii) the age of existing facilities; (iii) the demonstrated financial viability of a project and the developer; (iv) a developer's prior experience in the field; (v) the location and effect on the transmission grid of an energy storage facility; (vi) the benefits to the Commonwealth that are associated with particular projects, including regional economic development and the use of goods and services from Virginia businesses; (vii) the environmental impacts of particular resources, including impacts on air quality within the Commonwealth and the carbon intensity of the utility's generation portfolio; and (viii) how any project impacts the goals established by the Virginia Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia).

5. A utility shall maintain documentation of its reasoning for rejecting any specific response.

C. Each utility shall report on any competitive solicitations for energy storage resources as part of the annual plan required by § 56-585.5 D 4 of the Code of Virginia.

20VAC5-335-50. Behind-the-meter incentives by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I or Phase II Utility shall address behind-the-meter incentives related to energy storage. Each Phase I or Phase II Utility shall file with the commission applications for approval of behind-the-meter incentives related to energy storage. If the utility proposes to offer any such behind-the-meter incentives to customers through a demand-side management program, the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-60. Non-wires alternative programs by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I or Phase II Utility shall address non-wires alternative programs related to energy storage. Each Phase I or Phase II Utility shall file with the commission applications for approval of non-wires alternative programs related to energy storage. If the utility proposes to offer non-wires alternative programs to customers through a demand-side management program, the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-70. Peak demand reduction programs by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I or Phase II Utility shall address peak demand reduction programs related to energy storage. Each Phase I or Phase II Utility shall file with the commission applications for approval of peak demand reduction programs related to energy storage. If the utility proposes to offer any such peak demand reduction programs to customers through a demand-side management program, the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-80. Permitting of non-utility energy storage facilities.

A. Other than a Phase I or Phase II Utility, each person seeking to construct and operate an energy storage facility in the Commonwealth with an energy storage power rating of 100 kilowatts or greater, either on a stand-alone basis or on an aggregated basis facilitated by an energy storage aggregator, shall either (i) obtain a permit from the commission pursuant to this section, or (ii) apply for and receive a certificate of public convenience and necessity from the commission pursuant to § 56-580 of the Code of Virginia for the energy storage facility, prior to commencing construction or operation. If such person applies for and receives a certificate of public convenience and necessity from the commission, a permit shall not be required.

B. In evaluating a permit application, the commission shall make a determination for approval based upon a finding that the energy storage facility (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; (ii) does not adversely impact any goal established by the Virginia Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia); and (iii) is not otherwise contrary to the public interest.

C. Other than a Phase I or Phase II Utility, each person applying for a permit to construct and operate an energy storage facility with an energy storage power rating of 100 kilowatts or greater shall file an application with the clerk of the commission. If the applicant becomes aware of any material changes to any information while the application is pending, the applicant shall inform the commission of such changes within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the

state issuing the certificate of organization and the date of issuance).

3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.

4. Financial information for the applicant or principal participant in the project. If the applicant or principal participant is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years. If the applicant or principal participant is a public company, financial information should include a copy or a link to where a copy can be found on the internet of the entity's most recent stockholder report and most recent Securities and Exchange Commission Form 10 K. If such information is unavailable, provide evidence that applicant has the financial resources or access to capital necessary to complete the proposed project.

5. A discussion of the applicant's qualifications, including:

a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.

b. A description of any affiliation with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.

c. A disclosure of any affiliate relationship with any other permit holder.

6. Specific information about the site for the proposed facility, including:

a. A written description of the location, including identification of the city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and sufficiently identify any affected areas.

b. A description of the site and a topographical map depiction of the proposed site.

c. The status of site acquisition (e.g., purchase option, ownership).

d. A description of any applicable local zoning or land use approvals required and the status of such approvals.

7. Specific information about the proposed facility, including:

a. Description of all major systems, including energy storage technology type and battery storage chemistry type, if applicable; intended uses; intended facility useful life; facility configuration; and expected suppliers of major components.

b. Energy storage power rating, energy capacity, and storage duration.

c. Estimated costs and schedule for construction, testing, and commercialization.

d. Site layouts that provide for integration of energy storage systems with adequate spacing and property setback requirements incorporated.

e. Codes and standards to which the proposed facility will be constructed.

f. Where applicable, the manner and location of the facility's interconnection to the transmission or distribution grid.

8. A general discussion of the selection process for the energy storage technology, including a description of any competitive procurement processes used.

9. A general discussion of economic development impacts of the project.

10. A list of other local, state, or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

11. An analysis of the environmental impact of the project. This analysis shall include the impacts on the environment and natural resources, analysis of alternatives considered, unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the commission, for coordination and review by state agencies responsible for environmental and natural resource protection. The information shall identify:

a. Required air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances.

b. Required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a backup source of water, if any, and identification of any facilities that need to be constructed to provide such water.

c. Required permits for water discharge and potential impacts on regional water flows.

d. Required permits related to the wetlands and an identification of any tidal and nontidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.

e. Impact of solid and hazardous wastes on local water resources.

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f. Impact on natural heritage resources and on threatened and endangered species.

g. Erosion and sediment control measures.

h. Archaeological, historic, scenic, cultural, or architectural resources in the area.

i. Chesapeake Bay Preservation Areas designated by the locality.

j. Wildlife resources.

k. Agricultural and forest resources and federal, local, state, or private parks and recreation areas.

l. Use of pesticides and herbicides.

m. Geology and mineral resources, caves, and sinkholes.

n. Transportation infrastructure.

12. An analysis of the social impact of the project, including a general discussion of why the facility will not have a disproportionate adverse impact on "historically economically disadvantaged communities" as defined in § 56-576 of the Code of Virginia.

13. A general discussion of how the project will promote environmental justice in environmental justice communities and fenceline communities consistent with the Virginia Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia).

14. A general discussion of reliability impacts, including:

a. A description of interconnection requirements and needed interconnection facilities. Any such facilities shall be depicted on a topographic map.

b. A description of the potential impact of the proposed facility on the interconnected system. Discussion should identify and summarize any system impact studies or proposed studies.

c. A description of anticipated services that may be provided to any transmission service provider or local distribution company, including associated costs and benefits.

d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

15. A discussion of safety measures the applicant will implement, including fire and explosion protection, detection and mitigation measures, and an emergency response plan, as well as a discussion of whether such measures are compliant with all applicable codes and standards.

16. A discussion of the projected useful life of the energy storage facility, including known or projected performance degradation, roundtrip efficiency, and the proposed plan

for and cost of decommissioning at the end of the facility's useful life.

17. A discussion of whether the proposed facility is not contrary to the public interest. The discussion shall include an analysis of any reasonably known impacts the proposed facility may have upon reliability of service to and rates paid by customers of any regulated public utility providing electric service in the Commonwealth.

Any application that fails to conform to the requirements shall be incomplete. No action shall be taken on any application until deemed complete and filed.

Upon receipt of a complete permit application pursuant to this section, the commission shall enter an order providing notice to appropriate persons and an opportunity to comment on the application. The commission shall issue a permit for construction and operation of the energy storage facility upon finding the applicant satisfies the requirements established by this section.

D. Construction and operation of an energy storage facility in the Commonwealth with an energy storage power rating of less than 100 kilowatts may be undertaken without complying with the filing requirements established by this section. Persons desiring to construct and operate such facilities shall (i) submit a letter stating the location, size, and technology of the energy storage facility to (a) the Director of the commission's Division of Public Utility Regulation and (b) the utility in whose certificated service territory the energy storage facility is located; and (ii) comply with all other requirements of federal, state, and local law.

E. In addition to the requirements of this section, each person seeking to operate an energy storage facility must complete either the interconnection process required by the commission's Regulations Governing Interconnection of Small Electrical Generators and Storage (20VAC5-314) or any federally approved process established by the regional transmission organization.

F. Within 30 days of any transfer or assignment of an energy storage facility for which a permit was granted by the commission, the permit holder shall notify the commission and the utility in whose certificated service territory the energy storage facility is located of such transfer or assignment. The notice shall include (i) the date of transfer or assignment; (ii) the information required in subdivisions C 1 through C 5 of this section for the new permit holder; and (iii) a declaration by the new permit holder that it agrees to abide by all initial and continuing requirements of the permit.

G. Any person receiving a permit to operate an energy storage facility in the Commonwealth pursuant to this section shall comply with all initial and continuing requirements of the commission's permitting process. Should the commission determine, upon complaint of any interested person or the Attorney General or upon staff motion or its own motion that

a permitted operator of an energy storage facility has failed to comply with any of the requirements of this section or a commission order, the commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the permit or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

20VAC5-335-90. Licensing of energy storage aggregators.

A. Other than a Phase I or Phase II Utility, each person seeking to conduct business as an energy storage aggregator shall obtain a license from the commission prior to commencing operations.

B. Each person applying for a license to conduct business as an energy storage aggregator shall file an application with the clerk of the commission. If the applicant becomes aware of any material changes to any information while the application is pending, the applicant shall inform the commission of such changes within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).
3. Name and business addresses of all principal corporate officers and directors, partners, and limited liability corporation (LLC) members, as appropriate.
4. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location.
5. Whether the applicant is an affiliate of a Phase I or Phase II Utility. If so, the application shall further provide a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation systems, or (ii) customer service, sales, marketing, metering, accounting, or billing functions do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated energy storage aggregator an undue advantage over nonaffiliated energy storage aggregators.
6. A list of states in which the applicant or an affiliate conducts business as an energy storage aggregator, the names under which such business is conducted, and a description of the businesses conducted.

7. Toll-free telephone number of the applicant's customer service department.

8. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

9. Name, title, and address of the applicant's registered agent in Virginia for service of process.

10. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

11. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. If available, applicant's audited balance sheet and income statement for the most recent fiscal year and published financial information, such as the most recent Securities and Exchange Commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant.

b. If available, proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.

12. The name of the utility certificated to provide service in the area in which the applicant proposes to provide service, the type of services the applicant proposes to provide, and the class of customers to which the applicant proposes to provide such services.

13. The following information related to the applicant's fitness to operate as an energy storage aggregator:

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates pursuant to any state or federal law or regulation; and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied, whether any license or authority issued to it or an affiliate has ever been suspended or revoked, and whether other sanctions have been imposed.

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c. If the applicant has engaged in the provision of energy storage aggregation in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: (i) a description of the event; (ii) its duration; (iii) its cause; (iv) the number of customers affected; (v) any reports, findings, or issuances by regulators or electric and natural gas system reliability organizations relating to the instance; (vi) any penalties imposed; and (vii) whether and how the problem has been remedied.

14. A \$250 registration fee payable to the commission.

15. A discussion of the proposed uses of the aggregated resources, including the nature of the intended participation in wholesale electric markets, if any.

16. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. The applicant's experience.

b. Identity of applicant's officers and key managers with direct responsibility for the business operations conducted in Virginia and their experience in the provision of storage aggregation.

c. Documentation of the applicant's membership or participation in regional reliability councils or regional transmission organizations, if any.

d. Billing service options the applicant intends to offer and a description of the applicant's billing capability, including a description of any related experience.

17. A copy of the applicant's dispute resolution procedure.

18. The standards of conduct to which the applicant adheres or agrees to adhere to.

An officer with appropriate authority, under penalty of perjury, shall attest that all information supplied on the application for licensure form is true and correct and that, if licensed, the applicant will abide by all applicable regulations of the commission.

C. Any application that fails to conform to the requirements of this section shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as an energy storage aggregator, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as an energy storage aggregator upon finding the applicant satisfies the requirements established by this section.

E. A license to conduct business as an energy storage aggregator granted under this section is valid until revoked or suspended by the commission after providing due notice and an opportunity for a hearing or until the energy storage aggregators abandons its license.

F. An energy storage aggregator shall comply with all initial and continuing requirements of the commission's licensure process and any reasonable registration processes required by the utility in whose certificated service territory the energy storage aggregator intends to operate. Should the commission determine, upon complaint of any interested person or the Attorney General or upon staff motion or its own motion that an energy storage aggregator has failed to comply with any of the requirements of this section or a commission order, the commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the energy storage aggregator's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

20VAC5-335-100. Energy storage aggregator registration with utility.

A. An energy storage aggregator shall submit to the utility in whose certificated service territory it intends to operate proof of licensure from the commission to provide energy storage aggregation services in the Commonwealth. An energy storage aggregator shall provide notice of any suspension or revocation of its license to the utility upon issuance of the suspension or revocation by the commission.

B. An energy storage aggregator and the utility shall exchange the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational and business coordination issues and the names and addresses of their registered agents in Virginia.

20VAC5-335-110. Marketing by energy storage aggregators.

A. An energy storage aggregator shall provide accurate, understandable information in any advertisements, solicitations, marketing materials, or customer service contracts in a manner that is not misleading. Marketing material found misleading by the commission will be withdrawn.

B. Customer service contracts shall include:

1. Explanations of the price for the energy storage aggregator's services or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;

2. Explanations of how the customer will be compensated for the value of their energy storage;

3. Length of the service contract, including any provisions for automatic contract renewal;

4. Provisions for termination by the customer and by the energy storage aggregator;

5. A statement of any minimum contract terms, minimum or maximum storage requirements, minimum or fixed charges, and any other charges;

6. Applicable fees including start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;

7. A notice of any billing terms and conditions;

8. A toll-free telephone number and an address for inquiries and complaints;

9. In a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service shall commence;

10. A notice that, upon request by the customer, the energy storage aggregator shall provide a copy of its dispute resolution procedure; and

11. A notice that, upon any change in the terms and conditions of the contract, including any provisions governing price or pricing methodology or assignment of the contract to another energy storage aggregator, the energy storage aggregator shall communicate such changes to the customer at least 30 days in advance of implementing such changes.

20VAC5-335-120. Confidentiality.

Where any application filed under this chapter, including any supporting documents or pre-filed testimony, contains information that the applicant asserts is confidential, the filing may be made under seal and accompanied by a motion for a protective order or other confidential treatment in accordance with 5VAC5-20-170.

20VAC5-335-130. Waiver.

A. Any request for a waiver of any provision in this chapter may be granted upon such terms and conditions as the commission may impose.

B. For good cause shown, any Phase I or Phase II Utility may request a waiver of the commission's Rules Governing Utility Promotional Allowances (20VAC5-313) for any proposed programs or incentives related to energy storage set forth in 20VAC5-335-50, 20VAC335-60, and 20VAC5-335-70.

C. For good cause shown, any Phase I or Phase II Utility may request a waiver of the commission's Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act (20VAC5-202).

VA.R. Doc. No. R21-6401; Filed September 12, 2020, 5:10 p.m.

Proposed Regulation

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

Title of Regulation: **20VAC5-340. Regulations Governing Shared Solar Program (adding 20VAC5-340-10 through 20VAC5-340-90).**

Statutory Authority: §§ 12.1-13 and 56-594.3 of the Code of Virginia.

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

Public Comment Deadline: November 2, 2020.

Agency Contact: David Eichenlaub, Deputy Director, Public Utilities Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9350, or email david.eichenlaub@scc.virginia.gov.

Summary

The proposed action implements the provisions of Chapters 1238 and 1264 of the 2020 Acts of Assembly and establishes Rules Governing Shared Solar Program (20VAC5-340), a program that affords customers of a Phase II Utility the opportunity to participate in shared solar projects. The proposed regulation governs the development of shared solar facilities and participation in the shared solar program and contains requirements for licensing, registration, marketing and enrollment, billing and payment, annual proceeding, disputes, and recordkeeping and reporting.

AT RICHMOND, SEPTEMBER 21, 2020

COMMONWEALTH OF VIRGINIA, ex rel:

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00125

Ex Parte: In the matter of establishing regulations for a shared solar program pursuant to § 56-594.3 of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapters 1238 (HB 1634) and 1264 (SB 629) of the 2020 Virginia Acts of Assembly. These Acts of Assembly amend the Code of Virginia ("Code") by adding a section numbered 56-594.3, effective July 1, 2020. Code § 56-594.3 requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a

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program affording Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") customers the opportunity to participate in shared solar projects.

On July 1, 2020, the Commission entered an Order Directing Comment in this proceeding that sought comments on the shared solar program and associated regulations. The Commission's Order Directing Comment directed Dominion, and invited interested persons or entities, to file comments by July 24, 2020. The Order Directing Comment also permitted commenters to propose specific regulations by July 24, 2020.

On July 20, 2020, Dominion filed a Motion for Limited Extension of Time to File Proposed Regulations and for Expedited Consideration ("Motion"). Through its Motion, Dominion requested that the Commission extend the deadline for submitting proposed regulations by three weeks to August 14, 2020. The Commission granted Dominion's Motion on July 22, 2020.

The following parties filed comments: the Coalition for Community Solar Access and the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (collectively, "CCSA/MDV-SEIA"); the Virginia Department of Mines, Minerals and Energy; Health E Community Enterprises of Virginia, Inc.; the Virginia Clean Energy Advisory Board; the Sierra Club; the Southern Environmental Law Center and Appalachian Voices; Dominion; GRID Alternatives Mid-Atlantic; Vote Solar and Solar United Neighbors; Arcadia; Senator Scott A. Surovell; Virginia Advanced Energy Economy; and SynerGen Solar.¹ On August 14, 2020, Dominion and CCSA/MDV-SEIA filed proposed regulations.

Based on input received from the filings in this docket, the Commission's Staff ("Staff") has prepared proposed rules ("Proposed Rules"), which are attached to this Order for Notice and Comment ("Order").

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Staff's Proposed Rules should be considered for adoption, that notice of the Proposed Rules be given to the public, and that interested persons have an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

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

(2) An electronic copy of the Proposed Rules may be obtained by submitting a request to David R. Eichenlaub in the Commission's Division of Public Utility Regulation at the following email address: David.Eichenlaub@scc.virginia.gov.

An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website: <https://scc.virginia.gov/pages/Rulemaking>. Interested persons may also download unofficial copies of this Order and the Proposed Rules from the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(3) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies who have been identified by Staff as interested in this matter, including those entities and individuals that previously filed comments in this proceeding.

(4) On or before November 2, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Such comments also may include proposals and hearing requests. All comments shall refer to Case No. PUR-2020-00125. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(5) On or before November 16, 2020, the Staff shall file with the Clerk of the Commission a report on or response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(6) This matter is continued.

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

¹Any of these comments submitted after the July 24, 2020 deadline hereby are accepted into the record despite their being filed out of time.

CHAPTER 340

RULES GOVERNING SHARED SOLAR PROGRAM

20VAC5-340-10. Applicability.

A. This chapter is promulgated pursuant to § 56-594.3 of the Code of Virginia. The provisions of this chapter apply to Phase II Utilities, subscriber organizations, and subscribers. The provisions of this chapter govern the development of shared solar facilities and participation in the shared solar program.

B. The maximum cumulative size of the shared solar program initially shall not exceed 150 megawatts, at least 30% of which must be comprised of low-income customers.

C. Any shared solar facility may collocate on the same parcel of land as another shared solar facility only if such facilities are owned by the same entity and do not exceed an accumulative maximum capacity of 5,000 kilowatts among all such facilities. Such facilities will also be responsible for any special interconnection arrangements with the utility.

D. Customers participating in this program shall remain in their present customer class but may not participate in the multi-family solar program, pursuant to Chapters 1187, 1188, 1189, and 1239 of the 2020 Acts of Assembly, or the net metering program, pursuant to 20VAC5-315, while participating in this program.

E. Implementation of the shared solar program shall not commence until the earlier of July 1, 2023, or within 60 days of the Phase II Utility's full implementation of a new customer information platform.

F. The provisions of this chapter shall be deemed not to prohibit the Phase II Utility, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

G. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon such terms and conditions as the State Corporation Commission may impose.

20VAC5-340-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate used to calculate the subscriber's bill credit.

"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.

"Low-income customer" means any person or household whose income is no more than 80% of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.

"Low-income service organization" means a nonresidential customer of an investor-owned utility whose primary purpose is to serve low-income individuals and households.

"Low-income shared solar facility" means a shared solar facility at least 30% of the capacity of which is subscribed by low-income customers or low-income service organizations.

"Minimum bill" means an amount determined by the commission as described in 20VAC-340-80 that subscribers are required to, at a minimum, pay on their utility bill each month after accounting for any bill credits.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 5,000 kilowatts of alternating current;
2. Is located in the service territory of an investor-owned electric utility;
3. Is connected to the electric distribution grid serving the Commonwealth;
4. Has at least three subscribers;
5. Has at least 40% of its capacity subscribed by customers with subscriptions of 25 kilowatts or less; and
6. Is located on a single parcel of land.

"Shared solar program" or "program" means the program created through this chapter to allow for the development of shared solar facilities.

"Subscriber" means a retail customer of a utility that (i) owns one or more subscriptions of a shared solar facility that is interconnected with the utility and (ii) receives service in the service territory of the same utility in whose service territory the shared solar facility is located.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility.

"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill for the customer account to which the subscription is attributed.

"Utility" means a Phase II Utility.

20VAC5-340-30. Licensing of subscriber organizations.

A. Other than a utility, each entity seeking to conduct business as a subscriber organization shall obtain a license from the commission prior to commencing business operations. Each entity applying for a license to conduct business as a subscriber organization shall file an application

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with the clerk of the commission and contemporaneously provide a copy of the application to the utility. If the applicant becomes aware of any material changes to any information while the application is still pending, the applicant shall inform the commission within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant, as well as any trade names.
2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.
3. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).
4. Name and business address of all principal corporate officers and directors, partners, and limited liability company (LLC) members, as appropriate.
5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.
6. A list of the states in which the applicant and the applicant's affiliates conduct business related to participation in a shared solar program, the names under which such business is conducted, and a description of the business conducted.
7. The applicant shall disclose if it is an affiliate of the incumbent utility. If it is, it shall further provide a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation systems; or (ii) customer service, sales, marketing, metering, accounting, or billing functions, do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated subscriber organization an undue advantage over nonaffiliated subscriber organizations.
8. Name, title, and address of the applicant's registered agent in Virginia for service of process.
9. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.
10. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. Proof of a minimum bond rating or other senior debt of at least "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility;

b. The applicant's audited balance sheet, income and cash flow statements for the most recent fiscal year, or published financial information such as the most recent Securities and Exchange Commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provide financial resources to the applicant may be provided; or

c. A continuous or renewable performance or surety bond, an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant in a minimum amount of \$50,000 in a form to be prescribed by the commission staff. A certified copy of the bond, letter of credit, or guaranty shall be provided to the State Corporation Commission's Division of Utility Accounting and Finance within 30 days of the issuance of a license to the applicant by the commission.

11. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. A description of the applicant's experience developing solar facilities and engaging as a subscriber organization or other relevant services. Provide a discussion of the applicant's qualifications, including a summary of other projects developed and managed by the applicant with location, status, and operational history.

b. The names and a description of the managerial and technical experience of each principal officer and appropriate senior management person with direct responsibility for the business operations conducted in Virginia. Include a description of their experience related to developing solar facilities and providing shared solar services.

c. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

12. A copy of the applicant's dispute resolution procedure, including the toll-free number for the customer service department.

13. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

14. A \$250 registration fee payable to the commission.

15. An attestation that at least 30% of the shared solar facility's capacity will serve low-income customers.

16. The following information related to the applicant's fitness to operate as a subscriber organization:

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal law or regulation; and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct a similar type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

B. An officer with appropriate authority shall attest that all information supplied on the application for licensure is true and correct and that, if a license is granted, the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Any application that fails to provide all required information in this section shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as a subscriber organization, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as a subscriber organization upon finding the applicant satisfies the requirements established by this chapter.

E. A license granted pursuant to this chapter is valid until revoked or suspended by the commission after providing due notice and an opportunity for a hearing, or until the subscriber organization abandons its license.

F. Commission approval is required for transfer or assignment of a license issued under this section to any third party. The commission may condition its approval on any terms it determines appropriate to protect customers.

20VAC5-340-40. Registration with the utility.

A. Licensed subscriber organizations shall register with the utility by entering into an agreement containing information as prescribed in this section.

B. A subscriber organization shall provide proof of licensure by the commission.

C. A subscriber organization shall submit to the utility the full name of the subscriber organization, address, and type of entity (e.g. partnership, corporation, etc.).

D. Subscriber organizations shall provide the identity of the shared solar facility participating in the shared solar program,

including an address of record and a copy of the executed interconnection agreement for the shared solar facility.

E. Subscriber organizations and the utility shall exchange the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues, and the names and addresses of their registered agents in Virginia.

F. In the event a license granted under 20VAC5-340-30 is transferred to another entity with approval from the commission, the subscriber organization must notify the utility within five business days of approval by the commission.

G. The utility may require reasonable financial security from the subscriber organization to safeguard the utility and its customers from the reasonably expected net financial impact due to the nonperformance of the subscriber organization. The amount of such financial security shall be commensurate with the level of risk assumed by the utility. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the utility and the subscriber organization.

H. The utility shall notify the subscriber organization within 30 days of the commission's issuance of a subscriber organization's licensure whether the shared solar facility has been awarded capacity in the program queue or placed on a waiting list. When awarded capacity in the program queue, the subscriber organization shall pay to the utility a security deposit in the amount of \$50 per kilowatt (kW) of alternating-current rated capacity of the shared solar facility within 10 days. This deposit shall be held by the utility in an interest-bearing account. Deposits shall be returned in full, including interest, upon commercial operation of the shared solar facility.

I. If a project fails to reach mechanical completion within 24 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of \$25 per kW to maintain its position within the program queue. If, after paying the additional deposit, the project still fails to reach mechanical completion within an additional 12 months, the utility shall remove the project from the program queue.

J. The utility shall maintain, on a publicly available website, a list of projects accepted into the program queue and those projects that are on the wait list. This project list shall rank projects primarily by the date of the awarded capacity and secondarily by the date of a fully executed interconnection agreement. The utility shall update the list within two business days of any change to the projects in the program queue. The list shall include project applicant name, project location, the alternating current capacity rating of the project,

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the date the application was accepted into the program queue, and whether the project is a low-income shared solar facility.

K. Any project on the wait list that is moved off the wait list and receives a capacity award in the program queue shall have 10 business days to make the required deposit of \$50 per kW of alternating-current rated capacity to retain the project's award.

L. As part of its public program queue, the utility shall monitor and report the amount of capacity that has been allocated to low-income customers. Upon qualification of 45 megawatts (MW) of alternating current (AC) of capacity committed to low-income subscribers as demonstrated by the approved low-income subscription plans of projects that have secured capacity in the program, the utility shall submit a request to the commission to release an additional 50 MW of capacity for the program and address how the expansion shall be allocated.

20VAC5-340-50. Marketing and enrollment.

A. A subscriber organization shall not conduct any marketing activities related to participation in the shared solar program until after the subscriber organization (i) receives a license from the commission; (ii) has begun the interconnection process with the utility pursuant to Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314); and (iii) completed registration with the utility, as set forth in 20VAC5-340-40.

B. A subscriber organization shall not enroll customers until after it receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70 and any other applicable local and state permits for the shared solar facility.

C. A subscriber organization shall not use credit checks as a means to establish the eligibility of a residential customer to become a subscriber.

D. A subscriber organization shall maintain adequate records allowing it to verify the customer's enrollment authorization. Authorization shall be in the form of a written contract with affirmed written signature, electronic signature, or recorded verbal affirmation. The subscriber organization shall maintain a copy of the contract for at least one year after the date of expiration. Such enrollment contracts shall be provided within five business days to the customer, the utility, or the commission staff upon request.

E. A subscriber organization shall provide accurate and understandable information in any advertisements, solicitations, marketing materials, or customer service contracts. All such materials shall, in a manner that is not misleading, include a statement that price for the subscription does not include charges to be billed by the utility.

F. A subscriber organization shall provide to prospective subscribers, prior to executing a written contract, a

description of how the shared solar program will function. Such description shall include explanations of the respective roles of the subscriber organization and the utility, and a detailed description of how customers will be billed.

G. Subscriber contracts shall include, at a minimum, the following information:

1. Contract price expressed in per kilowatt-hour, or if price is not easily specified, an explanation of how the subscription price will be calculated.

2. Size of the subscriber subscription in kilowatt hours. The contract must address modification of subscriptions in the event a shared solar facility underperforms during a period.

3. Length of the contract.

4. Provisions for terminating the contract, including any termination fees.

5. Location of the shared solar facility.

6. Size of the shared solar facility.

7. Description of billing terms and conditions.

8. List of applicable fees, including start up fees, cancellation fees, late payment fees, and fees for returned payments for insufficient funds.

9. Clear descriptions of the responsibilities of the subscriber organization and the utility, consistent with this chapter.

10. Toll-free number and address for complaints and inquiries.

11. A clear statement that (i) the maximum size of the subscriber's subscription shall not exceed their estimated annual usage; (ii) each customer may only participate in one shared solar facility or one multi-family solar facility; and (iii) a net metering customer may not participate in this program.

12. In a conspicuous location, confirmation of the customer's authorization for the utility and subscriber organization to exchange, at a minimum, the following billing information:

a. Customer name;

b. Billing address and premise address;

c. Utility account number; and

d. Share solar subscription information, including, at a minimum:

(1) Pricing;

(2) Subscription size;

(3) Contract start date and length; and

(4) Terms of subscription.

13. In a conspicuous location, signatures confirming the customer's request to enroll and the approximate date the enrollment will be effective.

H. Upon a customer's request, the subscriber organization may reenroll a subscriber at a new address under the existing contract without the need to acquire a new authorization record, but the subscriber organization must provide the utility with updated billing information set forth in subdivision F 12 of this section.

I. At least 60 days prior to the commercial operation of a shared solar facility, the subscriber organization shall provide to the utility, in a format acceptable to the utility, a list of subscribers enrolled in the shared solar facility and their subscription information.

J. In the event multiple enrollment requests are submitted for the same customer, the utility shall process the request with the earliest dated contract and shall notify the customer within five business days of receipt of the enrollment request of such enrollment. The utility shall only terminate enrollment with sufficient proof of termination presented by either the customer or the subscriber organization.

K. At least 60 days prior to the termination or abandonment of a shared solar facility, a subscriber organization must provide advanced written notice to the customer, the utility, and the commission.

L. A subscriber organization shall safeguard adequately all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as permitted currently or required by federal and state statutes.

20VAC5-340-60. Billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.
2. Subscriber lists must be updated monthly to reflect canceling subscribers and to add new subscribers.
3. Monthly information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

- a. Data components;
- b. Data format;
- c. Timing of monthly data exchanges;
- d. Encryption level; and
- e. Channel of data submission.

B. A subscriber organization may offer separate billing or consolidated billing service (net crediting) in which the utility will be the billing party to the customer.

1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.
2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.
3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.

C. Credits to subscriber's bills shall occur within two billing cycles following the cycle during which energy was generated by the shared solar facility.

D. Each utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

E. Failure of subscriber to pay any regulated charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including the potential requirement to post a security or disconnection of service. The utility shall advise the subscriber directly of any pending disconnection action for nonpayment consistent with current practice, separate from the customer bill. Such notice shall identify clearly the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges.

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F. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.
2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill, minus the minimum bill, shall be carried over and applied to the next month's bill. Such carry-over plus the next month's credit cannot exceed the next month's bill, minus the minimum bill.
3. In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.
4. In an annual proceeding, the commission shall set the applicable bill credit based upon the subscriber's class of either residential, commercial or industrial.
5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.
6. The bill credits associated with the shared solar program shall be applied through the utility's fuel factor.

G. Minimum bill.

1. In an annual proceeding, as prescribed in 20VAC5-340-80, the commission will set a minimum bill for program participants.
2. Low-income customers shall be exempt from the minimum bill. Costs associated with such customers' participation shall be recovered by the utility in a manner to be determined by the commission in the annual proceeding set forth in 20VAC5-340-80.

H. Net crediting.

1. Net crediting functionality shall be part of any new customer information platform approved by the commission.
2. Under net crediting, the utility shall include the shared solar subscription fee on the customer's utility bill and provide the customer with a net credit equivalent to the total bill credit value for that generation period minus the shared solar subscription fee as set by the subscriber organization.
3. The net crediting fee shall not exceed 1.0% of the bill credit value.

4. Net crediting shall be optional for subscriber organizations, and any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

I. Shared solar facility requirements.

1. Regardless of whether a subscriber organization uses net crediting, a utility may bill the subscriber organization a monthly administrative charge, as approved by the commission in the annual proceeding set forth in 20VAC5-340-80, for the costs attributed to the interconnection of the shared solar facility to the utility grid to cover the costs of providing electric services to the facility.
2. A shared solar facility must have a utility-provided meter capable of measuring output of the facility on a 30-minute interval basis.
 - a. The shared solar facility's meter shall not be located behind another utility customer account.
 - b. Costs of installation, maintenance, and reading of the meter shall be part of the administrative costs of the shared solar program billed to the subscriber organization.

20VAC5-340-70. Disputes.

- A. The parties agree to attempt to resolve all disputes arising out of the shared solar program process according to the provisions of this section.
- B. A subscriber organization shall establish an explicit dispute resolution procedure that identifies clearly the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the commission upon request.
- C. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.
- D. A subscriber organization shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the subscriber organization. The 24-hour toll-free telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.
- E. A subscriber organization shall direct a customer to contact the utility immediately if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.

F. A subscriber organization shall retain customer billing and account records and complaint records for at least three years and provide copies of such records to a customer or the commission upon request.

G. In the event that a customer has been referred to the utility by a subscriber organization, or to a subscriber organization by the utility, for response to an inquiry or a complaint, the party that is contacted second shall (i) resolve the inquiry or complaint in a timely fashion or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

H. In the event a subscriber organization and customer cannot resolve a dispute, the subscriber organization shall provide the customer with the toll-free number and address of the commission.

20VAC5-340-80. Annual proceeding.

A. The commission shall convene a proceeding annually to determine the monthly administrative charge to subscriber organizations, the minimum bill components and the calculation of each customer class's applicable bill credit rate for the following year.

With respect to the minimum bill:

1. Each subscriber shall pay a minimum monthly bill, which shall, as approved by the commission, include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program. The commission may modify the minimum bill over time. In establishing the minimum bill, the commission shall (i) consider further costs the commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers, and (ii) minimize the costs shifted to customers not in a shared solar program.

2. The minimum bill established annually as set forth in subdivision 1 of this subsection must include, at a minimum, the following four general categories of costs, to be demonstrated by the utility:

- a. Transmission and distribution costs;
- b. Standby generation and balancing costs;
- c. Non-bypassable charges established by the commission or otherwise by law; and
- d. Administrative costs.

3. As part of the annual proceeding, the commission shall also determine how the utility will recover the minimum bill charges for exempt low-income customers.

4. Certain of these costs, including transmission and distribution costs, as well as non-bypassable charges, shall be determined by reference to rates approved in parallel rate proceedings before the commission and shall be

updated automatically for shared solar customers when those rates are adjusted for the broader customer population. Other charges, including those in the standby generation and balancing costs category and the administrative costs category, shall be evaluated and determined by the commission in the annual proceeding convened pursuant to this section.

B. The bill credit shall be calculated in accordance with 20VAC5-340-60 F.

20VAC5-340-90. Recordkeeping and reporting requirements.

A. Subscriber organizations. Prior to commercial operation of any shared solar facility, each subscriber organization shall report to the commission and the applicable utility its achievement of contracting with low-income customers. Thereafter, this report shall be updated and filed semi-annually with the commission by January 31 and July 31, respectively, of each calendar year for the previous calendar year, commencing in 2024. When making the annual report, the subscriber organization shall provide the following information:

- 1. Total number of subscribers and the amount of kilowatts subscribed to by each subscriber;
- 2. Total number of low-income customers and the amount of kilowatts subscribed to by each low-income customer;
- 3. Detailed plan for meeting its low-income customer target in the upcoming year if the target was not met for the annual period covered by the report; and
- 4. Certification that there is no subscriber whose subscription size exceeds the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

The utility shall maintain a consolidated list of active subscriber organizations, including the number of low-income customers for each organization.

Each subscriber organization shall retain a record of all disclosure forms, low-income customer proof of eligibility, and subscriber allocation lists for a period of at least three years. Each subscriber organization shall retain copies of subscriber contracts for a period of at least one year from the date of their expiration. Each of these documents must be made available immediately upon request from the commission or commission staff.

A subscriber organization shall retain customer billing and account records and complaint records for at least three years.

B. Affordable housing providers. Affordable housing providers subscribing on behalf of their low-income tenants shall annually, on or before January 31, commencing in 2024, submit a written report for the shared solar program to the commission staff describing how bill savings or other

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tangible benefits were provided to the tenants in the last year. The report shall include a detailed accounting and expense report for the bill savings achieved.

C. Utility. In accordance with the commission's Regulations Governing Interconnection of Small Electric Generators (20VAC5-314), and specifically, 20VAC5-314-130:

1. The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

2. Each utility shall annually, on or before January 31, submit a written report to the commission staff that includes the utility's shared solar facility queue and a listing of those facilities interconnected during the preceding calendar year. This report shall include the following data for each shared solar facility:

- a. Queue number.
- b. The physical address or geographic coordinates (latitude and longitude) of the shared solar facility.
- c. The capacity of the shared solar facility in terms of megawatts.
- d. The substation and transformer to which the project will be interconnected.
- e. The feeder or circuit to which the project will be interconnected.
- f. The date of submission of final completed Interconnection Request Form, as provided in 20VAC5-314-170.
- g. Interdependency status (e.g., Project A or Project B).
- h. Status of the request in the interconnection process (e.g., interconnection agreement executed, connected, canceled).
- i. The date of final completed signed interconnection agreement.

VA.R. Doc. No. R21-6400; Filed September 21, 2020, 11:52 a.m.

Proposed Regulation

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

Title of Regulation: 20VAC5-342. Regulations Governing Multi-Family Shared Solar Program (adding 20VAC5-342-10 through 20VAC5-342-90).

Statutory Authority: §§ 12.1-13 and 56-585.1:12 of the Code of Virginia.

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

Public Comment Deadline: November 2, 2020.

Agency Contact: David Eichenlaub, Deputy Director, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9350, or email david.eichenlaub@scc.virginia.gov.

Summary:

The proposed action implements Chapters 1187, 1188, 1189, and 1239 of the 2020 Acts of Assembly, which require the State Corporation Commission to establish a program that affords eligible multi-family customers of investor-owned utilities the opportunity to participate in shared solar projects. The proposed regulation governs the development of shared solar facilities and participation in the multi-family shared solar program and contains licensing, registration, marketing and enrollment, billing and payment, annual proceeding, disputes, and recordkeeping and reporting requirements.

AT RICHMOND, SEPTEMBER 21, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00124

Ex Parte: In the matter of establishing regulations for a multi-family shared solar program pursuant to § 56-585.1:12 of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapters 1188 (HB 572), 1189 (HB 1184), 1239 (HB 1647), and 1187 (SB 710) of the 2020 Virginia Acts of Assembly. These Acts of Assembly amend the Code of Virginia ("Code") by adding a section numbered 56-585.1:12,¹ effective July 1, 2020. Code § 56-585.1:12 requires that by January 1, 2021, the State Corporation Commission ("Commission") establish by regulation a program affording eligible multi-family customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") and Kentucky Utilities Company d/b/a Old Dominion Power Company ("ODP") the opportunity to participate in shared solar projects.

On July 1, 2020, the Commission entered an Order Directing Comment in this proceeding that sought comments

on the multi-family shared solar program and associated regulations. The Commission's Order Directing Comment directed Dominion and ODP, and invited interested persons or entities, to file comments by July 24, 2020. The Order also permitted commenters to propose specific regulations by July 24, 2020.

On July 20, 2020, Dominion filed a Motion for Limited Extension of Time to File Proposed Regulations and for Expedited Consideration ("Motion"). Through its Motion, Dominion requested that the Commission extend the deadline for submitting proposed regulations by three weeks to August 14, 2020. The Commission granted Dominion's Motion on July 22, 2020.

On July 24, 2020, the following parties filed comments: the Coalition for Community Solar Access and the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (collectively, "CCSA/MDV-SEIA"); the Virginia Department of Mines, Minerals and Energy; the Virginia Clean Energy Advisory Board; the Sierra Club; the Southern Environmental Law Center and Appalachian Voices; Dominion; ODP and GRID Alternatives Mid-Atlantic. On August 14, 2020, Dominion and CCSA/MDV-SEIA filed proposed regulations.

Based on input received from the filings in this docket, the Commission's Staff ("Staff") has prepared proposed rules ("Proposed Rules"), which are attached to this Order for Notice and Comment ("Order").

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Staff's Proposed Rules should be considered for adoption, that notice of the Proposed Rules be given to the public, and that interested persons have an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

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

(2) An electronic copy of the Proposed Rules may be obtained by submitting a request to David R. Eichenlaub in the Commission's Division of Public Utility Regulation at the following email address: David.Eichenlaub@scc.virginia.gov. An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website: <https://scc.virginia.gov/pages/Rulemaking>. Interested persons may also download unofficial copies of this Order and the Proposed Rules from the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(3) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies who have been identified by Staff as interested in this matter, including those entities and individuals that previously filed comments in this proceeding.

(4) On or before November 2, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Such comments also may include proposals and hearing requests. All comments shall refer to Case No. PUR-2020-00124. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(5) On or before November 16, 2020, the Staff shall file with the Clerk of the Commission a report on or response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(6) This matter is continued.

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

¹This section was added as § 56-585.1:11 but was renumbered pursuant to the direction of the Virginia Code Commission.

CHAPTER 342
RULES GOVERNING MULTI-FAMILY SHARED SOLAR PROGRAM

20VAC5-342-10. Applicability.

A. This chapter is promulgated pursuant to the provisions of § 56-585.1:12 of the Code of Virginia. The provisions of this chapter apply to Phase II Utilities, including, notwithstanding subsection G of § 56-580 of the Code of Virginia, any investor-owned utility whose service territory assigned to it by the commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott, and Wise, subscriber organizations, and subscribers, and govern the development of shared solar facilities and participation in the multi-family shared solar program.

B. Customers participating in this program shall remain in their present customer class but may not participate in the shared solar program, pursuant to Chapters 1238 and 1264 of the 2020 Acts of Assembly, or the net metering program, pursuant to 20VAC5-315-10, while participating in this program.

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C. Any shared solar facility may colocate on the same parcel of land as another shared solar facility only if such facilities are owned by the same entity and do not exceed an accumulative maximum capacity of 5,000 kW alternating current in the aggregate. Such facilities will also be responsible for any special interconnection arrangements with the utility.

D. The provisions of this chapter shall not be deemed to prohibit the utility, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

E. Any request for a waiver of any provision in this chapter shall be considered by the commission on a case-by-case basis and may be granted upon such terms and conditions as the commission may impose.

20VAC5-342-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative charge" is the total cost to the investor-owned utility to administer the program that is assessed to the subscriber organization.

"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate (effective retail rate of the customer's rate class, expressed in dollars or cents per kilowatt-hour) inclusive of all supply charges, delivery charges, demand charges, fixed charges, and any applicable riders or other charges to the customer. The applicable bill credit rate shall be set such that the shared solar program results in robust project development and shared solar program access for all customer classes.

"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.

"Investor-owned utility" or "utility" means each investor-owned utility in the Commonwealth including, notwithstanding subsection G of § 56-580 of the Code of Virginia, any investor-owned utility whose service territory assigned to it by the commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott, and Wise. "Investor-owned utility" does not include a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Multi-family customer" means an investor-owned utility customer residing in an apartment or condominium complex with at least three individually metered residences.

"Multi-family shared solar program" or "program" means the program created through this chapter to allow for the development of shared solar facilities described in subsection C of § 56-585.1:12 of the Code of Virginia.

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 3,000 kW alternating current at any single location or that does not exceed 5,000 kW alternating current at contiguous locations owned by the same entity or affiliated entities;

2. Is operated pursuant to a program whereby at least three subscribers receive a bill credit for the electricity generated from the facility in proportion to the size of their subscription;

3. Is located in the service territory of an investor-owned utility;

4. Is connected to the electric distribution grid serving the Commonwealth; and

5. Is located on a parcel of land on the premises of the multi-family utility customer or adjacent thereto.

"Subscriber" means a multi-family customer of an investor-owned electric utility that owns one or more subscriptions of a shared solar facility that is interconnected with the utility.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A "subscriber organization" shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility.

"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

20VAC5-342-30. Licensing of subscriber organizations.

A. Other than an investor-owned utility, each entity seeking to conduct business as a subscriber organization shall obtain a license from the commission prior to commencing business operations. Each entity applying for a license to conduct business as a subscriber organization shall file an application with the clerk of the commission and contemporaneously provide a copy of the application to the investor-owned utility. If the applicant becomes aware of any material changes to any information within the application, the applicant shall inform the commission within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant, as well as any trade names.

2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.

3. A description of the applicant's authorized business structure, identifying the state authorizing such structure and date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).

4. Name and business address of all principal corporate officers and directors, partners, and limited liability company (LLC) members, as appropriate.

5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states in which the applicant and the applicant's affiliates conduct business related to participation in a shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. The applicant shall disclose if it is an affiliate of the incumbent utility. If it is, it shall further provide a description of internal controls the applicant has designed to ensure that the applicant and the applicant's employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation systems; or (ii) customer service, sales, marketing, metering, accounting, or billing functions do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated subscriber organization an undue advantage over nonaffiliated subscriber organizations.

8. Name, title, and address of the applicant's registered agent in Virginia for service of process.

9. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

10. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. Proof of a minimum bond rating or other senior debt of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility;

b. The applicant's audited balance sheet, income, and cash flow statements for the most recent fiscal year or

published financial information such as the most recent Securities and Exchange commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant may be provided; or

c. A continuous or renewable performance or surety bond, an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant in a minimum amount of \$50,000 in a form to be prescribed by the commission staff. A certified copy of the bond, letter of credit, or guaranty shall be provided to the State Corporation Commission's Division of Utility Accounting and Finance within 30 days of the issuance of a license to the applicant by the commission.

11. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. A description of the applicant's experience developing solar facilities and engaging as a subscriber organization or other relevant services. Provide a discussion of the applicant's qualifications, including a summary of other projects developed and managed by the applicant with location, status, and operational history.

b. The names and a description of the managerial and technical experience of each principal officer and appropriate senior management person with direct responsibility for the business operations conducted in Virginia. Include a description of their experience related to developing solar facilities and providing shared solar services.

c. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

12. A copy of the applicant's dispute resolution procedure, including the toll-free number for the customer service department.

13. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

14. A \$250 registration fee payable to the commission.

15. The following information related to the applicant's fitness to operate as a subscriber organization:

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

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b. Disclosure of whether any application for license or authority to conduct a similar type of business as it proposes to offer in Virginia has ever been denied, whether any license or authority issued to it or an affiliate has ever been suspended or revoked, and whether other sanctions have been imposed.

B. An officer with appropriate authority shall attest that all information supplied on the application for licensure is true and correct and that, if a license is granted, the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Any application that fails to provide all required information in this section, shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as a subscriber organization, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as a subscriber organization upon finding the applicant satisfies the requirements established by this chapter.

E. A license granted pursuant to this chapter is valid until revoked or suspended by the commission or until the subscriber organization abandons its license.

F. Commission approval is required for transfer or assignment of a license issued under this section to any third party. The commission may condition its approval on any terms it determines are appropriate to protect customers.

20VAC5-342-40. Registration with the utility.

A. Licensed subscriber organizations shall register with the utility by entering into an agreement containing information as prescribed in this section.

B. A subscriber organization shall provide proof of licensure by the commission.

C. A subscriber organization shall submit to the utility the full name of the subscriber organization, address, and type of entity (e.g., partnership, corporation, etc.).

D. Subscriber organizations shall provide the identity of the shared solar facility participating in the multi-family shared solar program, including an address of record and a copy of the executed interconnection agreement for the shared solar facility.

E. Subscriber organizations and the utility shall exchange the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues, and the names and addresses of their registered agents in Virginia.

F. In the event a license granted under 20VAC5-342-30 is transferred to another entity with approval from the commission, the subscriber organization must notify the utility within five business days of approval by the commission.

G. The utility may require reasonable financial security from the subscriber organization to safeguard the utility and its customers from the reasonably expected net financial impact due to the nonperformance of the subscriber organization. The amount of such financial security shall be commensurate with the level of risk assumed by the utility. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the utility and the subscriber organization.

20VAC5-342-50. Marketing and enrollment.

A. A subscriber organization shall not conduct any marketing activities related to participation in the multi-family shared solar program until after the subscriber organization (i) receives a license from the commission; (ii) has begun the interconnection process with the utility pursuant to Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314); and (iii) completed registration with the utility, as set forth in 20VAC5-342-40.

B. A subscriber organization shall not enroll customers until after it receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70, and any other applicable local and state permits for the shared solar facility.

C. A subscriber organization shall maintain adequate records allowing it to verify the customer's enrollment authorization. Authorization shall be in the form of a written contract with affirmed written signature, electronic signature, or recorded verbal affirmation. The subscriber organization shall maintain a copy of the contract for at least one year after the date of expiration. Such enrollment contracts shall be provided within five business days to the customer, the utility, or the commission staff upon request.

D. A subscriber organization shall provide accurate and understandable information in any advertisements, solicitations, marketing materials, or customer service contracts. All such materials shall, in a manner that is not misleading, include a statement that the price for the subscription does not include charges to be billed by the utility.

E. A subscriber organization shall provide to prospective subscribers, prior to executing a written contract, a description of how the multi-family shared solar program will function. Such description shall include explanations of the respective roles of the subscriber organization and the utility, and a detailed description of how customers will be billed.

F. Subscriber contracts shall include, at a minimum, the following information:

1. Contract price expressed in per-kilowatt-hours, or if price is not easily specified, an explanation of how the subscription price will be calculated.

2. Size of the subscriber subscription in kilowatt-hours. The contract must address modification of subscriptions in the event a shared solar facility underperforms during a period.

3. Length of the contract.

4. Provisions for terminating the contract, including any termination fees.

5. Location of the shared solar facility.

6. Size of the shared solar facility.

7. Description of billing terms and conditions.

8. List of applicable fees, including start up fees, cancellation fees, late payment fees, and fees for returned payments for insufficient funds.

9. Clear descriptions of the responsibilities of the subscriber organization and the utility, consistent with this chapter.

10. Toll-free number and address for complaints and inquiries.

11. A clear statement that (i) the maximum size of the subscriber's subscription shall not exceed their estimated annual usage, (ii) each customer may only participate in one shared solar facility or one multi-family solar facility, and (iii) a net metering customer may not participate in this program.

12. In a conspicuous location, confirmation of the customer's authorization for the utility and subscriber organization to exchange, at a minimum, the following billing information:

a. Customer name;

b. Billing address and premise address;

c. Utility account number; and

d. Share solar subscription information, including, at a minimum:

(1) Pricing;

(2) Subscription size;

(3) Contract start date and length; and

(4) Terms of subscription.

13. In a conspicuous location, signatures confirming the customer's request to enroll and the approximate date the enrollment will be effective.

G. Upon a customer's request, the subscriber organization may reenroll a subscriber at a new address under the existing contract without the need to acquire a new authorization record, but the subscriber organization must provide the utility with updated billing information set forth in subdivision F 12 of this section.

H. At least 60 days prior to the commercial operation of a shared solar facility, the subscriber organization shall provide to the utility, in a format acceptable to the utility, a list of subscribers enrolled in the shared solar facility and their subscription information.

I. In the event multiple enrollment requests are submitted for the same customer, the utility shall process the request with the earliest dated contract and shall send notification to the customer within five business days of receipt of the enrollment request of such enrollment. The utility shall terminate enrollment only with sufficient proof of termination presented by either the customer or the subscriber organization.

J. At least 60 days prior to the termination or abandonment of a shared solar facility, a subscriber organization must provide advanced written notice to the customer, the utility, and the commission.

K. A subscriber organization shall safeguard adequately all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

20VAC5-342-60. Billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.

2. Subscriber lists must be updated monthly to reflect canceling subscribers and to add new subscribers.

3. Monthly information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

a. Data components;

b. Data format;

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c. Timing of monthly data exchanges;

d. Encryption level; and

e. Channel of data submission.

B. A subscriber organization may offer separate billing or consolidated billing service (net crediting) in which the utility will be the billing party to the customer.

1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.

2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.

C. Credits to subscriber's bills shall occur within one billing cycle following the cycle during which energy was generated by the shared solar facility.

D. Each utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

E. Failure of subscriber to pay any regulated balance charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including potential requirement to post security deposit or disconnection of service. The utility shall advise the subscriber directly of any pending disconnection action for nonpayment consistent with current practice, separate from the customer bill. Such notice shall identify clearly the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges.

F. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.

2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill shall be

carried over and applied to the next month's bill. Such carry-over plus the next month's credit cannot exceed the next month's bill.

3. In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.

4. In an annual proceeding, the commission shall set the applicable bill credit based upon the subscriber's class of either residential, commercial, or industrial.

5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.

6. The bill credits associated with the multi-family shared solar program shall be applied through the utility's fuel factor.

G. Administrative charge. In an annual proceeding, as prescribed in 20VAC5-342-80, the commission will set an administrative charge to be assessed to subscriber organizations.

H. Shared solar facility requirements.

1. Regardless of whether a subscriber organization uses net crediting, a utility may bill the subscriber organization a monthly administrative charge, as approved by the commission in the annual proceeding, set forth in 20VAC5-342-80, for the costs attributed to the interconnection of the shared solar facility to the utility grid to cover the costs of providing electric services to the facility.

2. A shared solar facility must have a utility-provided meter capable of measuring output of the facility on a 30-minute interval basis.

a. The shared solar facility's meter shall not be located behind another utility customer account.

b. Costs of installation, maintenance, and reading of the meter shall be part of the administrative costs of the shared solar program billed to the subscriber organization.

20VAC5-342-70. Disputes.

A. The parties agree to resolve all disputes arising out of the shared solar program process according to the provisions of this section.

B. A subscriber organization shall establish an explicit dispute resolution procedure that identifies clearly the process that shall be followed when resolving customer disputes. A

copy of such dispute resolution procedure shall be provided to a customer or the commission upon request.

C. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

D. A subscriber organization shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the subscriber organization. The 24-hour toll-free telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.

E. A subscriber organization shall immediately direct a customer to contact the utility if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.

F. A subscriber organization shall retain customer billing and account records and complaint records for at least three years and provide copies of such records to a customer or the commission upon request.

G. In the event that a customer has been referred to the utility by a subscriber organization, or to a subscriber organization by the utility, for response to an inquiry or a complaint, the party that is contacted second shall (i) resolve the inquiry or complaint in a timely fashion, or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

H. In the event a subscriber organization and customer cannot resolve a dispute, the subscriber organization shall provide the customer with the toll-free number and address of the commission.

20VAC5-342-80. Annual proceeding.

A. The commission shall convene a proceeding annually to determine (i) the monthly administrative charge to subscriber organizations and (ii) the calculation of applicable bill credit rate of each customer class for the following year.

With respect to the administrative charge:

1. The administrative charge established annually described in this subsection must include, at a minimum, the following four general categories of costs, to be demonstrated by the utility:

- a. Transmission and distribution costs;
- b. Standby generation and balancing costs;
- c. Non-bypassable charges established by the commission or otherwise by law; and

d. Other administrative costs, including such as any banking, balancing, and storing fees related to the utility's processing and handling of the excess bill credits.

2. Certain of these costs, including transmission and distribution costs, as well as non-bypassable charges, will be determined by reference to rates approved in parallel rate proceedings before the commission and shall be updated automatically for subscriber organizations when those rates are adjusted for the utility's customer population. Other components of the administrative charge, including those in the standby generation and balancing costs category and the other administrative costs category, will be evaluated and determined by the commission in the annual proceeding convened pursuant to this section.

B. The bill credit shall be calculated in accordance with 20VAC5-342-70 F.

20VAC5-342-90. Recordkeeping and reporting requirements.

A. Subscriber organizations. Each subscriber organization shall file a report annually with the commission by January 31 of each calendar year for the previous calendar year. When making the annual report, the subscriber organization shall provide the following information:

- 1. Total number of subscribers and the amount of kilowatts subscribed to by each subscriber; and
- 2. Certification that there is no subscriber whose subscription size exceeds the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

Each subscriber organization shall retain a record of all disclosure forms and subscriber allocation lists for a period of at least three years. Each subscriber organization shall retain copies of subscriber contracts for a period of at least one year from the date of their expiration. Each of these documents must be made available immediately upon request from the commission or commission staff.

A subscriber organization shall retain customer billing and account records and complaint records for at least three years.

B. Utility. In accordance with the commission's Regulations Governing Interconnection of Small Electric Generators (20VAC5-314) and specifically, 20VAC5-314-130:

1. The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

2. Each utility shall annually, on or before January 31, submit a written report to the commission staff that includes the utility's shared solar facility queue and a

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listing of those facilities interconnected during the preceding calendar year. This report shall include the following data for each shared solar facility:

- a. Queue number.
- b. The physical address or geographic coordinates (latitude and longitude) of the shared solar facility.
- c. The capacity of the shared solar facility, in terms of megawatts.
- d. The substation and transformer to which the project will be interconnected.
- e. The feeder or circuit to which the project will be interconnected.
- f. The date of submission of final completed Interconnection Request Form, as provided in 20VAC5-314-170.
- g. Interdependency status (e.g., Project A or Project B).
- h. Status of the request in the interconnection process (e.g., interconnection agreement executed, connected, canceled).
- i. The date of final completed signed interconnection agreement.

VA.R. Doc. No. R21-6402; Filed September 21, 2020, 11:08 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department for Aging and Rehabilitative Services 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 Department for Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-40. Protections of Participants in Human Research (amending 22VAC30-40-10, 22VAC30-40-30, 22VAC30-40-50).**

Statutory Authority: §§ 51.5-131 and 51.5-132 of the Code of Virginia.

Effective Date: November 12, 2020.

Agency Contact: Charlotte Arbogast, Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TTY (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

Summary:

Pursuant to Chapter 728 of the 2020 Acts of Assembly, the amendments add area agencies on aging to the list of entities subject to the department's human research review committee.

22VAC30-40-10. Definitions.

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

"Affiliated with the covered entity" means employed by the covered entity or a member of a household containing an employee of the covered entity.

"Agent" means an individual performing department-designated activities or exercising department-delegated authority or responsibility.

"Area agency on aging" means the government-sponsored or private nonprofit agency created pursuant to the federal Older Americans Act of 1965 (42 USC § 3001 et seq.), which has submitted a department-approved Area Plan for Aging Services and is designated by contract with the Department for Aging and Rehabilitative Services to develop and administer its Area Plan for Aging Services as approved for a comprehensive and coordinated system of services for older persons.

"Assent" means a child's affirmative agreement to participate in research. Mere failure to object, absent affirmative agreement, shall not be construed as assent.

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services or the commissioner's designee.

"Covered entity" means the Department for Aging and Rehabilitative Services, the Wilson Workforce and Rehabilitation Center, area agencies on aging, sheltered workshops, or independent living centers.

"Department" means the Department for Aging and Rehabilitative Services.

"Guardian" means an individual who is authorized under applicable state or local law to consent on behalf of a minor to general medical care.

"Human Research Review Committee" or "HRRC" means the committee established in accordance with and for the purposes expressed in this chapter.

"HRRC approval" means the determination of the HRRC that the research has been reviewed and may be conducted within the constraints set forth by the HRRC and by other department, state, and federal requirements.

"Human participant" or "human subject" means a living individual about whom an investigator, whether professional or student, conducting research obtains:

1. Data through intervention or interaction with the individual; or
2. Identifiable private information.

"Human subject research" means a systematic investigation, experiment, study, evaluation, demonstration, or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in which a living individual about whom an investigator, whether professional or student, conducting research obtains data through intervention or interaction with the individual or obtains identifiable private information.

"Identifiable private information" means private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

"Independent living center" means a consumer-controlled, community-based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and
2. Provides an array of independent living services.

"Informed consent" means a process by which the investigator fully explains the research activities and ensures that the prospective subject has sufficient opportunity to ask questions and has sufficient time to make a decision whether or not to participate in the research prior to signing the HRRC-approved written consent document. Informed consent shall be prospectively obtained without coercion and in accordance with 22VAC30-40-100.

"Institution" means any public or private entity or agency, including federal, state, and other agencies.

"Interaction" means communication or interpersonal contact between investigator and subject.

"Intervention" means both physical procedures by which data are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

"Investigator" means the person, whether professional or student, who conducts the research.

"IRB" means an institutional review board.

"Legally authorized representative," as defined in § 32.1-162.16 of the Code of Virginia, means, in the following specified order of priority:

1. The parent or parents having custody of a prospective subject who is a minor;
2. The agent appointed under an advance directive, as defined in § 54.1-2982 of the Code of Virginia, executed by the prospective subject, provided the advance directive authorizes the agent to make decisions regarding the prospective subject's participation in human research;
3. The legal guardian of a prospective subject;
4. The spouse of the prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final;
5. An adult child of the prospective subject;
6. A parent of the prospective subject, when the subject is an adult;
7. An adult sibling of the prospective subject; or
8. Any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective subject to the subject's participation in the particular human research.

For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective subject to the subject's participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution, or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Minor," as defined in § 1-207 of the Code of Virginia, means an individual who is younger than 18 years of age.

"Nontherapeutic research" means human subject research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the subject.

"Parent" means a minor's biological or adoptive parent.

"Permission" means the agreement of a parent or parents or a legally authorized representative to the participation of their minor or ward in research.

"Private information" means information about behavior that occurs in a context in which an individual can reasonably

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expect that no observation or recording is taking place, or information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).

"Research" means a systematic investigation designed to develop or contribute to generalizable knowledge (basic research) or specific knowledge (applied research). Activities that meet this definition constitute research for purposes of this chapter, whether or not they are supported or funded under a program that is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Sheltered workshop" means a program that (i) provides directly or facilitates the provision of one or more vocational rehabilitation services enumerated in 34 CFR 361.5(c)(7)(i) to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement; (ii) has a vendor relationship with the department; and (iii) is not operated by a community services board.

"Written" or "in writing" means text or other human communication on a tangible medium (e.g., paper) or in an electronic format.

22VAC30-40-30. Applicability.

This chapter shall apply to the Department for Aging and Rehabilitative Services, the Wilson Workforce and Rehabilitation Center, area agencies on aging, sheltered workshops, and independent living centers, known as covered entities.

22VAC30-40-50. Certification process.

A. No later than 45 days after the end of each state fiscal year, the Wilson Workforce and Rehabilitation Center, area agencies on aging, sheltered workshops, and independent living centers shall send a written report to the commissioner giving assurance that either all human subjects research conducted during the fiscal year was reviewed and approved by the department's HRRC prior to implementation of that research or that no human subjects research was conducted during that state fiscal year.

B. At the time that the research is approved by the HRRC, the HRRC chairperson shall send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of prospective human subjects in the research project, a description of what will be done to prospective human subjects, and the type of review performed by the HRRC.

C. The commissioner may inspect the records of the department's HRRC.

D. The HRRC shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the HRRC's requirements or that has been

associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the HRRC's action and shall be reported promptly to the research investigator, the commissioner, the heads of other appropriate covered entities, and in the case of cooperative research, the institutional officials responsible for human subjects research.

E. Research covered by this chapter that has been approved by the HRRC may be subject to further appropriate review and approval or disapproval by officials of the covered entities. However, those officials shall not approve the research if the research has not been approved by the HRRC.

VA.R. Doc. No. R21-6376; Filed September 18, 2020, 10:15 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

STATE AIR POLLUTION CONTROL BOARD

Titles of Documents:

[Air Permit Guidance for Condensable Emissions in Particulate Pollutants.](#)

[Air Permit Guidance for Control Technology Standards.](#)

[Article 6 - Minor New Source Review Permit Program Manual, Draft.](#)

[New Source Review Permits Program Manual.](#)

[Revised Article 6 Regulation.](#)

Public Comment Deadline: November 11, 2020.

Effective Date: November 12, 2020.

Agency Contact: Patrick Corbett, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4016, or email patrick.corbett@deq.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Titles of Documents:

[Bylaws of the Board of Long-Term Care Administrators.](#)

[Guidance on Completion of Continuing Education.](#)

Public Comment Deadline: November 11, 2020.

Effective Date: November 12, 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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Patient Driven Payment Model \(PDPM\) Data Collection Effective 10/17/2020.](#)

Public Comment Deadline: November 11, 2020.

Effective Date: November 12, 2020.

Agency Contact: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

BOARD OF PHARMACY

Title of Document: [Bylaws of the Virginia Board of Pharmacy.](#)

Public Comment Deadline: November 11, 2020.

Effective Date: November 12, 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.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

North Ridge Powhatan Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Powhatan County

North Ridge Powhatan Solar LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Powhatan County. The project is located on 197 acres off Anderson Highway/Route 60 West in Powhatan. The project will have a rated capacity of 20 megawatts alternating current and include approximately 65,000 photovoltaic solar panels.

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, or email mary.major@deq.virginia.gov.

Shockoe Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Pittsylvania County

Shockoe Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Shockoe. The project is located south of Java Road, north of Brownville Heights Lane, and northeast of the town of Shockoe in Pittsylvania County. The project will be sited on roughly 885 acres across multiple parcels and will connect up to 60 megawatts alternating current to Dominion Virginia Power's grid.

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, or email mary.major@deq.virginia.gov.

Spring Grove Solar II LLC Revised Notice of Intent for Small Renewable Energy Project (Solar) - Surry County

Spring Grove Solar II LLC has provided the Department of Environmental Quality the necessary documentation for a permit by rule for a small renewable energy project (solar) in Surry County. This is an update of the acreage and general location of project. The proposed project is approximately 1,650 acres and is located east of Spring Grove. The proposed project spans Colonial Trail West and is generally bound by Hollybush Road (Route 618) and Swanns Point Road (Route 610) in Surry County. The project will have a maximum generating capacity of 150 megawatts alternating current and consist of approximately 346,710 photovoltaic panels. The project will connect to the grid through transmission lines that bisect the property.

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, or email mary.major@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Durable Medical Equipment Provider Manual Chapter IV

Comment period: September 16, 2020, through October 16, 2020.

The Draft Durable Medical Equipment Manual Chapter IV is now available on the Department of Medical Assistance Services website at <http://dmas.virginia.gov/#/manualdraft> for public comment until October 16, 2020.

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

STATE WATER CONTROL BOARD

Proposed Enforcement Action for the Town of Dungannon

An enforcement action has been proposed for the Town of Dungannon for violations of the State Water Control Law at the Dungannon sewage treatment plant in Scott County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jonathan Chapman will accept comments by email at jonathan.chapman@deq.virginia.gov or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from October 13, 2020, through November 12, 2020.

Proposed Enforcement Action for Schneider National Bulk Carriers Inc.

An enforcement action has been proposed for Schneider National Bulk Carriers Inc. for violations of the State Water Control Law on Interstate 77 Southbound, south of Mile Marker 40, within the interchange ramp from Interstate 77 South to Interstate 81 North, located in Wytheville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from October 13, 2020, through November 12, 2020.

Total Maximum Daily Load Study for Lynch Creek and Reed Creek

Description of public meeting: The Department of Environmental Quality (DEQ) will virtually host the first public meeting for the Lynch Creek and Reed Creek total maximum daily load (TMDL) Project on Thursday, October 27, 2020, from 6 p.m. until 8 p.m. To register and gain access to the meeting, use the following link at <https://attendee.gotowebinar.com/register/4344247816492556299>. The webinar ID is: 496-521-571. Please register ahead of the meeting. Given the current State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. A computer or a telephone are necessary to participate virtually. All participants are encouraged to access the meeting using a computer to view presentations or visual displays, although audio only participation using a phone is also an option.

This meeting will be open to the public and all are welcome. A 30-day public comment period will follow this meeting, from October 27, 2020, through November 30, 2020. The goal of this meeting is to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, provide information on biological monitoring efforts, invite participation, and solicit input. During this meeting participants will be invited to serve on the technical advisory committee (TAC), which consists of representatives from local governments, Virginia Pollutant Discharge Elimination System permittees, riparian landowners, and recreational and conservation groups in the watershed. The first TAC meeting will be held on Monday, November 2, 2020, from 1 p.m. until 3 p.m. To register and gain access to the meeting, use the following link at <https://attendee.gotowebinar.com/register/8010754057264988171>. The webinar ID is: 610-365-115. Both meetings will be recorded.

For technical help registering for either meeting or during the meeting, please contact Kevin Vaughan by telephone at (804) 698-4470 or email at kevin.vaughan@deq.virginia.gov. For more information, please contact Lucy Baker by email at lucy.baker@deq.virginia.gov or telephone at (540) 562-6718.

Purpose of notice: The DEQ and its contractors, 3E, and James Madison University will discuss the process and data used to develop a water quality study, known as a TMDL for Lynch Creek and Reed Creek in Pittsylvania and Campbell Counties. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for the General Standard (Benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. This meeting is an opportunity for local residents to learn about the condition of these streams, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meetings on October 10, 2020, beginning October 27, 2020, and ending November 30, 2020.

Description of study: In Pittsylvania and Campbell Counties, the entirety of Lynch Creek and Reed Creek are impaired for the "General Use" water quality standard, meaning the macroinvertebrates or "water bugs" are not healthy and diverse and subsequently do not meet the "aquatic life" water quality standard. DEQ and its contractors are working to identify the pollutant cause for the benthic impairment through a weight of evidence approach. After the pollutant has been identified, a water quality study will report on the sources of the pollutant and recommend reductions to meet TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, the pollutant levels need to be reduced to the TMDL amount.

Stream Name	County	NWBD	Impaired Assessment Units	Cause Group Code	First listed	Length of impairment (miles)
Lynch Creek	Campbell County	RU48	VAW-L19R_LYH01A02	L19R-02-BEN	2010	0.37
		RU48	VAW-L19R_LYH02A02	L19R-02-BEN	2010	3.53
Reed Creek	Pittsylvania County	RU48	VAW-L19R_RAB01A00	L19R-03-BEN	2010	8.90

General Notices/Errata

How to comment and participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. A TAC will be formed to assist in the development of this TMDL. The first meeting of this group will be on November 2, 2020, from 1 p.m. until 3 p.m. at the link listed in this notice. Written comments will be accepted through November 30, 2020, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit comments, please contact Lucy Baker, Department of Environmental Quality, Blue Ridge Regional Office, telephone at (540) 562-6718, or email at lucy.baker@deq.virginia.gov. For technical help registering for either meeting or signing on to the meeting, please contact Kevin Vaughan by at telephone (804) 698-4470 or email at kevin.vaughan@deq.virginia.gov.

In the event the Governor's State of Emergency is lifted, the meeting will be held on the same date and time at the Department of Environmental Quality, Blue Ridge Regional Office, Training Room, 901 Russell Drive, Salem, VA 24153.

Total Maximum Daily Load for Sand Branch

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Sand Branch in Loudoun and Fairfax Counties. The following stream segment is listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the State's water quality standards for General Standard (Benthics).

Stream Name	Location	Impairment Length (miles)	Upstream Limit	Downstream Limit
Sand Branch	Loudoun/Fairfax	1.54 mi	Headwaters	Confluence with Cub Run

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. A component of a TMDL is the waste load allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs.

Given the existing State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. A computer or a telephone is necessary to participate virtually. All meeting attendees are encouraged to access the meeting using a computer to view the meeting visuals. Attendees may also use a phone for audio and a computer for visual to avoid possible interruptions in computer audio. Although the use of a phone for audio only participation is possible, since the meeting will rely on visuals, audio only participation is discouraged. The webinar link to register for the virtual meeting is provided at the end of this notice. Once registered for the meeting, registrants will receive an email with the

URL and telephone information to participate in the meeting. If meeting attendees experience any interruption in the meeting broadcast, they should call the technical support line that is also provided at the end of this notice.

The first public meeting and technical advisory committee (TAC) on the development of the TMDL to address the General Standard (Benthics) for this segment will be held: Thursday, October 29, 2020, from 3:30 p.m. until 5 p.m.

To register for this virtual meeting and to receive access information, sign up at <https://attendee.gotowebinar.com/register/1016104185026444812>. For technical assistance during the meeting call (703) 583-3906.

In the event that the Governor's State of Emergency is lifted, the meeting will be held on the same date and time at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

The public comment period begins October 30, 2020, and ends November 30, 2020. A TAC to assist in development of this TMDL is being convened concurrent with the public meeting. Persons interested in being a member of the TAC should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address, and the organization being represented (if any). Notification of the composition of the panel will be sent to all applicants.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to the DEQ contact person: Sarah Sivers, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3898, or email sarah.sivers@deq.virginia.gov.

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.

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the

regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

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

