VIRGINIA REGISTER OF REGULATIONS

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THE 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.virgina.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.

PUBLICATION SCHEDULE AND DEADLINES

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

January 2021 through January 2022

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37:11	December 28, 2020 **(Monday)**	January 18, 2021
37:12	January 13, 2021	February 1, 2021
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38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Lily Nejadian.

Nature of Petitioner's Request: The petitioner is requesting amendments to specify that dentists with appropriate training or certification can purchase and administer Botox and dermal filler injectables.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition was published on August 31, 2020, in the Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov with public comment accepted through September 30, 2020. The board received copies of all comments on the petition.

At its meeting on December 11, 2020, the board declined to initiate rulemaking based on the petition. There were concerns addressed about extraoral administration of Botox and fillers and the potential for complications with a patient. There were also concerns about the training and qualifications of general dentists and about a potential need to amend the Code of Virginia similar to the section that authorized certain procedures to be performed by oral and maxillofacial surgeons. The board encouraged the petitioner and other proponents to provide additional information about training and certification and to respond to the concerns expressed by those who opposed the petition.

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

VA.R. Doc. No. PFR21-15; Filed December 11, 2020, 11:14 a.m.

BOARD OF SOCIAL WORK

Agency Decision

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

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

Name of Petitioner: Michael Beattie.

Nature of Petitioner's Request: To pause the time limit or deadline for completion of supervised experience during an emergency declared by the Governor. The effective date would be retroactive to February 20, 2020.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on December 4, 2020, the board voted to take no action on the petition. Under current regulations, an individual who is unable to complete the supervision requirements within four consecutive years is able to request an extension of up to 12 months. In the past few months, the board has received 10 to 12 such requests and all have been granted. A supervisee should be able to complete supervision within two years, so the board believes the 12-month extension in addition to four years should be sufficient.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR21-13; Filed December 4, 2020, 10:50 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, as a citizen of the Commonwealth of Virginia, pursuant to Virginia Code § 2.2-4007, do humbly submit this petition for the following amendment, in the form of addition, to Virginia Administrative Code 24VAC35-30-150 (VASAP Policy and Procedures Manual).

The Virginia regulations state the following: Section 150, Paragraph A: "Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender."

A major problem facing innocent citizens accused of interlock violations is simply the lack of information presented to them by ASAP.

Currently, the offender is given an accusation sheet from an ASAP that generally includes the time of the high reading,

along with an accusation of not reaching zero, or "clearing out" within an allotted time. But the only way clients can obtain data-log readings from the machine is to proactively request them, or have an attorney obtain them, and most people don't know enough to do this.

VASAP consistently fails to understand that the vast majority of high IID readings are not due to consumed ethanol. You're just measuring biomarkers for disease and routine metabolic byproducts.

This is also a HIPAA violation, as the only, the ONLY substance the government should be analyzing someone's waste for is C_2H_6O. To invasively examine personal medical waste, and misconstrue ALL hydroxyl compounds as "ethanol" is criminal. This is why the offender must be presented with the facts of the accusation and the opportunity to review the entire data-log from each alleged violation event is necessary. If a non-ethanol specific device is now an acceptable standard in VA, and a warning indicator is not mandated between the .000 and .02 window, the potential for fraud is omnipresent.

Only when one is armed with their complete interlock data-logs can a person begin to understand what occurred. In many cases, ketogenesis, and other metabolic processes create internal hydroxyl compounds detectable on sober breath. The "fail" point then becomes a "pass" point, as people must wait for their bodies to cease alcohol production.

Several of my events took over 45 minutes to "clear out," but when presented with the full data logs, it's clear to see that if you start a car at zero, rise to .07 BrAC, then are back to zero in 24 minutes, the machine is not measuring ethanol. 7 of the 9 times I was accused, I actually started the car at .000 BAC, had high readings, then was back to .000 BAC in scientifically impossible spans of time. Each of these 9 days' worth of readings are published on the FaceBook page entitled Virginia Ignition Interlock Forum.

Since a warning indicator is now not required between .000 and .02, the client will get a green light and assume they're at zero. In this case only the data logs, and nothing else, can prove innocence by showing the readings were passing below .02. This is fraud and since the breath tests are unsupervised, the only evidence that can exonerate the client is the data shown in the full IID logs.

I propose the following language be added to amend this statute: "All clients shall be presented with full interlock log information, to include all data within 24 hours prior to and after the alleged violation."

Section 150, Paragraph A: "Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender. All clients shall be presented with full interlock log information, to include all data within 24 hours prior to and after the alleged violation."

Every reading during the 24 hour period must be included because many times data recorded hours prior to and subsequent can disprove ethanol use, as opposed to only showing readings immediately around the high BrAC.

This system should never have been adopted for use on sober individuals. The fuel cell does not solely measure ethanol, and most high readings are not liquor.

Due process is denied every single time someone is "restarted" without going to court. False confession is ignored, and the entire IID system is, for lack of a better term, absolutely "rigged" against the offender.

If you're going to totally abuse and misconstrue science, you must provide clients the exculpatory evidence to protect themselves.

Please amend the law to begin to protect Virginians from the unethical use of non-alcohol specific electrochemical fuel cell technology.

Sincerely,

Cynthia Hites"

Agency Decision: Request denied.

Statement of Reason for Decision: Dissemination of ignition interlock data warrants a more controlled approach than is requested by the petitioner. Ignition interlock datalogs contain confidential information to include photographs of passengers other than the driver, such as children. Also, many clients do not want records of violations mailed since they may be misrouted or opened by other residents.

VASAP will continue to make full datalogs available to clients upon their request for the purpose of rebutting alleged ignition interlock violations. To address the petitioner's concerns in the future, noncompliance reports containing summary information of alleged ignition interlock violations will also include a statement advising the accused of their entitlement to a more comprehensive datalog report if they request one.

Agency Contact: Richard L. Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA, 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. PFR21-14; Filed December 11, 2020, 12:11 p.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL 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, this regulation is undergoing a periodic review and a small business impact review: **12VAC35-115, Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 4, 2021, and ends January 25, 2021.

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: Ruth Anne Walker, Regulatory Affairs Director and State Board Liaison, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

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, these regulations are undergoing a periodic review and a small business impact review: **18VAC110-20, Regulations Governing the Practice of Pharmacy**; **18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**; **18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances**; **18VAC110-40, Regulations Governing Collaborative Practice Agreements; and 18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehousers**. The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 4, 2021, and ends January 25, 2021.

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: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-12 through 4VAC20-510-30).**

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

Effective Date: January 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) establish a new recreational season and vessel limit for cobia to comply with Amendment 1 of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia and (ii) prohibit gaffing of cobia.

4VAC20-510-12. Definitions.

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

"Amberjack" means any fish of the species Seriola dumerili.

"Cobia" means any fish of the species Rachycentron canadum.

"Mandatory Harvest Reporting Program Web Application" means the online web-based resource provided by the commission to report commercial harvest of seafood at https://webapps.mrc.virginia.gov/harvest/.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat ~~vessel participating in the recreational cobia fishery~~ fishing recreationally.

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

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

"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.

4VAC20-510-15. Recreational cobia permit and mandatory reporting.

A. It shall be unlawful for any person to possess or land any cobia harvested from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Recreational Cobia Permit from the Marine Resources Commission (commission). The captain or operator shall be responsible for reporting for all anglers on the recreational vessel. Any captain or operator who did not ~~participate in any~~ take fishing trips to target cobia during the current recreational cobia season ~~shall be responsible for reporting that captain's or that operator's lack of participation~~ is still required to report lack of participation.

B. It shall be unlawful for any person to possess or land any cobia harvested recreationally from shore, a pier, or any other man-made structure without first having obtained a Recreational Cobia Permit from the Marine Resources Commission. Permittees shall be responsible for reporting all trips. Any permittee who did not ~~participate in any~~ take fishing trips to target cobia during the current recreational cobia season ~~shall be responsible for reporting that permittee's lack of participation~~ is still required to report lack of participation.

C. It shall be unlawful for any recreational cobia permittee to fail to report on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal. Reports shall include MRC ID number, the date of harvest, the mode of fishing, the number of cobia kept or released, and, if fishing from a vessel, the number of persons on board.

1. Any permittee who did not ~~participate in any~~ take any fishing trips to target cobia during the recreational cobia season shall report the permittee's lack of participation by ~~the 21st day after the close of the recreational cobia season~~ midnight on October 6 of that calendar year.

2. Any permittee shall report trips where cobia were targeted but not successfully caught by ~~the 21st day after the close of any recreational cobia fishery season~~ midnight on October 6 of that calendar year.

3. Any permittee shall report trips where cobia were caught, whether harvested, released, or possessed~~, within seven days after the trip occurred~~ by midnight on October 6 of that calendar year.

D. Following t~~he 21st day after the close of any recreational cobia season~~ October 6 of the current calendar year, any permittee who failed to report for any season shall be ineligible to receive a recreational cobia permit for the following calendar year but shall be eligible to reapply for that permit in subsequent years.

4VAC20-510-20. Recreational fishery possession limits, season, ~~and~~ vessel allowance, and prohibition on gaffing.

A. It shall be unlawful for any person fishing recreationally to possess more than one cobia at any time. When fishing from any ~~boat or~~ recreational vessel where the entire catch is held in a common hold or container, the possession limit for the ~~boat or~~ recreational vessel shall be equal to the number of persons on board legally eligible to fish multiplied by one, except there is a maximum recreational vessel limit of ~~three~~ two cobia per recreational vessel per day. The captain or operator of the ~~boat or~~ recreational vessel shall be responsible for any ~~boat or~~ recreational vessel possession limit. Any cobia caught after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing recreationally to harvest or possess any cobia before June ~~1~~ 15 or after September ~~30~~ 15 of the current calendar year.

C. It shall be unlawful for any person fishing recreationally to possess more than two amberjack at any time. When fishing from any ~~boat or~~ recreational vessel where the entire catch is held in a common hold or container, the possession limit for the ~~boat or~~ recreational vessel shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the ~~boat or~~ recreational vessel shall be responsible for any ~~boat or~~ recreational vessel possession limit. Any amberjack caught after the possession limit has been reached shall be returned to the water immediately.

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

4VAC20-510-25. Commercial fishery possession limits, season, and reporting requirements.

A. It shall be unlawful for any person fishing commercially to possess more than two cobia at any time. When fishing from any ~~boat or~~ vessel where the entire catch is held in a common hold or container, the possession limit for the ~~boat or~~ vessel shall be equal to the number of valid commercial fisherman registration licensees on board multiplied by two, except there is a maximum vessel limit of six cobia per vessel per day. The captain or operator of the ~~boat or~~ vessel shall be responsible for any ~~boat or~~ vessel possession limit. Any cobia caught after the possession limit has been reached shall be returned to the water immediately.

B. Any commercial harvest of cobia shall only be reported through the Mandatory Harvest Reporting Program Web Application. Such reports shall record daily harvests from Sunday through Saturday and be submitted on a weekly basis no later than Wednesday of the following week in accordance with 4VAC20-610.

C. It shall be unlawful for any person to take, harvest, land, or possess any cobia for commercial purposes once it has been announced by the commission that the commercial quota has been landed for the current calendar year.

D. It shall be unlawful for any person fishing commercially to possess more than two amberjack at any time. When fishing from any ~~boat or~~ vessel where the entire catch is held in a common hold or container, the possession limit for the ~~boat or~~ vessel shall be equal to the number of valid commercial fisherman registration licensees on board multiplied by two. The captain or operator of the ~~boat or~~ vessel shall be responsible for any ~~boat or~~ vessel possession limit. Any amberjack caught after the possession limit has been reached shall be returned to the water immediately.

E. The possession of amberjack or cobia by licensed seafood buyers or wholesale and retail seafood establishments when operating in their capacity as buyer, wholesaler, or retailer shall not be limited by the possession limits described in this section.

4VAC20-510-30. Size limits.

A. It shall be unlawful for any person to take, catch, or have in possession any amberjack less than 32 inches in total length.

B. It shall be unlawful for any person fishing commercially to take, harvest, or possess any cobia less than 37 inches in total length.

C. It shall be unlawful for any person to take, catch, or have in possession any recreationally harvested cobia less than 40 inches in total length.

D. When fishing from any ~~boat or~~ recreational vessel, it shall be unlawful to take, catch, or have in possession more than one recreationally harvested cobia greater than 50 inches in total length per vessel.

VA.R. Doc. No. R21-6600; Filed December 8, 2020, 1:42 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-30, 4VAC20-1270-35, 4VAC20-1270-50).**

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

Effective Date: January 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish the 2021 Total Allowable Catch per Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden and the Ecological Reference Point Benchmark Assessment and all associated fishery sector allocations.

4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, and state-to-state transfers.

A. Total allowable commercial landings for menhaden in ~~2020~~ 2021 shall be equivalent to ~~372,443,990~~ 335,206,390 pounds (~~168,937.75~~ 152,047.06 metric tons) or 78.66% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission.

B. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivisions 1, 2, and 3 of this subsection.

1. The purse seine menhaden reduction sector shall be allocated a quota of ~~335,348,569~~ 301,819,834 pounds or 90.04% of allowable commercial menhaden landings.

2. The purse seine menhaden bait sector shall be allocated a quota of ~~31,210,806~~ 28,090,295 pounds or 8.38% of allowable commercial menhaden landings.

3. The non-purse seine menhaden bait sector shall be allocated a quota of ~~5,884,615~~ 5,296,261 pounds or 1.58% of allowable commercial menhaden landings.

C. If the total allowable commercial landings specified in subsection A of this section are exceeded in any calendar year, the total allowable commercial landings for the subsequent calendar year shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in subsection B of this section, with the exception of the non-purse seine menhaden bait sector, which shall move into the incidental catch provision outlined in subdivision F 3 of this section.

D. Any portion of the 1.0% of the coastwide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coastwide total allowable catch to Virginia shall increase the total allowable commercial landings for that year.

E. It shall be unlawful for any person to take or catch menhaden using a purse seine net except in accordance with the seasons, areas, and gear restrictions as set forth in §§ 28.2-409 and 28.2-410 of the Code of Virginia.

F. It shall be unlawful to harvest or land in Virginia any menhaden after the commissioner projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4VAC20-1270-60 have been received, the portion of the total allowable catch has not been harvested by that sector.

1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.

2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.

3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the Atlantic States Marine Fisheries Commission incidental catch provision.

G. The commissioner may request a transfer of menhaden quota from any other state that is a member of the Atlantic States Marine Fisheries Commission. If Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable ~~catch~~ commercial landings for that calendar year shall increase by the amount of transferred quota. It shall be unlawful for this quota transfer to be applied to the Bay Cap quota as described in 4VAC20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota at the end of the calendar year.

4VAC20-1270-35. Chesapeake Bay purse seine menhaden reduction fishery.

A. The annual total allowable Bay Cap landings from the Chesapeake Bay by the purse seine menhaden reduction sector in ~~2020~~ 2021 shall not exceed ~~36,196~~ 51,000 metric tons (~~79,798,520~~ 112,435,754 pounds) and shall be subject to annual adjustment for any overages as specified in subdivision 3 of this subsection.

1. It shall be unlawful for any transfers of quota from other states to be applied to the Bay Cap to reduce any overages.

2. It shall be unlawful for any amount of unlanded menhaden quota under the Bay Cap each calendar year to be rolled over or applied as credit for any subsequent calendar years.

3. Any annual menhaden landings in excess of the current calendar year Bay Cap shall be deducted from only the subsequent calendar year Bay Cap.

B. When it is projected that the purse seine menhaden reduction sector has met the annual menhaden Bay Cap in the Chesapeake Bay, based on mandatory daily landings reports, the commissioner shall promptly notify the industry announcing the date of closure.

C. It shall be unlawful for any person to harvest menhaden by purse seine for reduction purposes from the Chesapeake Bay for the remainder of that calendar year after the commissioner has announced the date of closure.

4VAC20-1270-50. Non-purse seine menhaden bait sector quota allocation.

The non-purse seine menhaden bait sector's quota allocation shall be in proportion to share for each gear type of average landings from 2002 through 2011 and are as follows:

1. Cast net: 0.04% or ~~2,354~~ 2,119 pounds.

2. Dredge: 0.06% or ~~3,531~~ 3,178 pounds.

3. Fyke net: 0.04% or ~~2,354~~ 2,119 pounds.

4. Gill net: 30.31% or ~~1,783,627~~ 1,605,297 pounds.

5. Pound net: 67.98% or ~~4,000,361~~ 3,600,398 pounds.

6. Haul seine: 0.4% or ~~23,538~~ 21,185 pounds.

7. Trawl: 1.17% or ~~68,850~~ 61,966 pounds.

VA.R. Doc. No. R21-6601; Filed December 9, 2020, 9:27 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

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

Title of Regulation: **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities.**

Agency Contact: Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4178, or email debra.harris@deq.virginia.gov.

FORMS (9VAC25-880)

Annual Standards & Specification (AS&S) Entity Information Sheet (rev. 4/2019)

Construction Activity Operator Permit Fee Form 2019 (rev. 4/2019)

Notice of Termination 2019 (rev. 4/2019)

~~Registration Statement 2019 (rev. 4/2019)~~

Registration Statement 2019 (rev. 11/2020)

Transfer of Ownership Agreement 2019 (rev. 4/2019)

VA.R. Doc. No. R21-6534; Filed December 2, 2020, 1:04 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final 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.

Effective Date: January 1, 2021.

Agency Contact: Michael Cizenski, Principle Utilities Engineer, Public Utilities Regulation, State Corporation Commission, Tyler Building, 1300 East Main Street P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

The action establishes Regulations Governing the Deployment of Energy Storage (20VAC5-335) to set minimum interim targets for Phase I and Phase II Utilities to conduct annual competitive procurement for energy

storage and 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 new chapter also establishes processes for the permitting of non-utility energy storage facilities and licensing and registration of energy storage aggregators. Several changes to the proposed regulation have been made, including (i) raising the size threshold requiring energy storage facilities to obtain a permit from 100 kilowatts to one megawatt, (ii) removing language that would prevent a utility-affiliated company from qualifying as "persons other than a public utility," and (iii) extending the notice period for requests for proposals from at least 45 calendar days to at least 60 calendar days.

AT RICHMOND, DECEMBER 18, 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 ADOPTING REGULATIONS

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. In response, comments were filed by Dominion and APCo (collectively, "Joint Commenters") as well as by various other interested persons and entities. Proposed regulations were filed by Joint Commenters; the U.S. Energy Storage Association ("ESA"); and Delorean Power LLC ("Delorean").

On September 11, 2020, the Commission issued an Order for Notice and Comment ("Procedural Order") in this docket. Draft proposed Rules Governing the Deployment of Energy Storage ("Proposed Rules" or "Rules") prepared by the Commission Staff ("Staff") were appended to the Procedural Order. The Procedural Order permitted interested persons to submit comments on or before November 2, 2020, which could include proposals and hearing requests. The Procedural Order further required Staff to file, on or before November 16, 2020, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules. Comments concerning the Proposed Rules were filed by: Joint Commenters; Energy Storage Stakeholders ("ES Stakeholders");[2] Solar Stakeholders;[3] Data Center Coalition;[4] Office of the Attorney General's Division of Consumer Counsel; Environmental Advocates;[5] Delorean; Mitsubishi Power Americas, Inc. ("Mitsubishi"); Sierra Club; Virginia Department of Mines, Minerals And Energy ("DMME"); and GlidePath Development LLC ("GlidePath"). Comments were also received jointly from the following members of the Virginia General Assembly: Senator Jennifer McClellan, Senator Scott Surovell, Delegate Rip Sullivan, Delegate Jay Jones, Delegate Mark Keam, and Delegate Alfonso Lopez ("Virginia Legislators"). No requests for hearing were received.

On November 16, 2020, Staff filed a Staff Report including certain revisions to the Proposed Rules proposed by Staff after reviewing the comments provided.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the Rules appended hereto as Attachment A effective January 1, 2021. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration. We have carefully reviewed and considered all comments filed in this matter. The VCEA envisions significant increased deployment of energy storage resources in Virginia through 2035. The Rules adopted today are intended to support this increased deployment, while also protecting the electric system and Virginia consumers. As experience is gained and lessons are learned, the Commission intends to update and revise these Rules as needed. In this regard, we further note that the Rules, as modified herein, permit requests for waiver.[6]

The Rules we adopt herein contain a number of modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on October 12, 2020. These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report and the comments filed in this proceeding. Although we will not comment on

each Rule in detail, there are several issues that we will address further herein.

Task Force, Annual Renewable Portfolio Standard ("RPS") Plans, and Order 2222

Before discussing specific Rules adopted today, the Commission recognizes that this rulemaking is not happening in a vacuum and our decision herein is impacted and informed by other legislation and developments on the national level, which will be discussed further herein.

First, we note that legislation (House Bill 1183)[7] passed by the 2020 Virginia General Assembly directs the Commission to:

> create a task force ["Task Force"][8] to evaluate and analyze the regulatory, market, and local barriers to the deployment of distribution and transmission-connected bulk energy storage resources to help integrate renewable energy into the electrical grid, reduce costs for the electricity system, allow customers to deploy storage technologies to reduce their energy costs, and allow customers to participate in electricity markets for energy, capacity, and ancillary services. . . . The [Commission] shall submit a copy of the task force's evaluation and analysis to the General Assembly no later than October 1, 2021.

As discussed further below, we find that many of the issues raised by commenters in this proceeding should be further addressed and evaluated by the Task Force,[9] given the limited timeframe for finalization of the Rules.[10] The Task Force's report, which must be submitted to the General Assembly by October 1, 2021, may include any recommended changes or additions to the Rules that we adopt today, as well as any supporting analysis.

Second, we also note that Dominion and APCo are required to file annual RPS Plans that address each utility's progress and plans towards reaching the energy storage targets. Specifically, the VCEA requires the utilities to:

> submit annually a plan and petition for approval for the development of new solar and onshore wind generation capacity. . . . Such plan shall also include the utility's plan to meet the energy storage project targets of subsection E, including the goal of installing at least 10 percent of such energy storage projects behind the meter.[11]

As discussed further below, utility specific issues related to energy storage deployment may be raised in the utilities' annual RPS Plan proceedings.[12] The statute requires that the utilities must include information on the progress toward meeting energy storage deployment interim targets to obtain the necessary approvals to construct or acquire, new utility-owned energy storage resources outlined in the VCEA.

Third the Federal Energy Regulatory Commission ("FERC") issued an Order ("Order 2222") earlier this year.[13] As described by Joint Commenters:

> [i]n Order No. 2222, FERC adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets (RTO/ISO markets). FERC's definition of distributed energy resources includes electric storage resources.
>
> ***
>
> Order No. 2222 also requires . . . coordination between aggregators, ISO/RTOs, distribution utilities, and state and local regulatory authorities. In so doing, FERC sought to avoid creating undue barriers to entry for distributed energy resource aggregations while also considering the substantial role of distribution utilities and state and local regulators in ensuring the safety and reliability of the distribution system.[14]

In adopting the Rules, we are cognizant that Order 2222 may impact the deployment of energy storage and participation of Virginia-sited energy storage in the wholesale markets, including through aggregation of smaller resources and behind-the-meter incentives.

20 VAC 5-335-20

Turning to specific Rules, we adopt the definitions section as proposed in the Staff Report. We find those clarifications and refinements reasonable for purposes of the Rules. Among other things, we adopt a definition for "energy storage" that is technology neutral, so long as the technology is capable of absorbing energy, storing that energy for a period of time, and re-delivering that energy after storage.[15]

20 VAC 5-335-30

The comments filed in this case reflect disagreement concerning the specific interim targets for energy storage deployment that should be adopted by the Commission. For example, the Joint Commenters argue "by back-end loading interim targets, customers will likely benefit from any advancements in rapidly-evolving energy storage technology and from projected decreases in costs."[16] The ES Stakeholders disagree, arguing that "by delaying the deployment of energy storage, the Commission will delay anticipated cost declines and miss important benefits of early deployment of energy storage."[17] Among other things, ES Stakeholders reason that "[a] limited storage deployment in early years will prevent Virginia from gaining experience with a diversity of customer benefits, interconnection types, technologies, ownership models, and customer benefits to determine the best long-term path forward as the Commonwealth concurrently pursues 100 percent clean electricity."[18]

We adopt the interim targets as originally proposed. In so doing, we are mindful of the current nascent stage of energy storage deployment in Virginia. Earlier this year, for example, we approved Dominion's first energy storage pilot program, which includes 16 MW of new Company-owned energy storage projects.[19] As approved herein, the interim targets

require Dominion and APCo to seek approval of 250 MW and 25 MW, respectively, of new energy storage by December 31, 2025. We find this level, as well as the other interim targets, to be reasonable at this time. These interim targets are designed to provide steady continuous development in energy storage complementary to the VCEA. We urge the utilities to make steady progress toward the 2035 mandate, and these interim targets reflect this goal. The Task Force may, in its discretion, address and report on the costs and benefits of more aggressive interim targets. Dominion and APCo are also required to report on their progress towards meeting these particular targets in their annual RPS Plan filings. Should circumstances warrant, the Commission may adjust the interim targets in a future proceeding to amend the Rules. Moreover, nothing prevents Dominion and APCo from seeking Commission approval of amounts of energy storage above the interim targets.

Several commenters request that the Commission establish certain additional requirements associated with the interim targets. For example, GlidePath recommends that 100 percent of non-utility projects be procured via long-term power purchase agreement ("PPA") style mechanisms.[20] Environmental Advocates propose to add the legislatively set goal of 10 percent behind-the-meter energy storage to the regulations.[21] Delorean suggests that the interim targets have individual requirements for distribution-connected, behind-the-meter, and standalone energy storage.[22] ES Stakeholders suggest that energy storage located in the service territory of a municipal utility that purchases electricity primarily from Dominion or APCo should count towards the interim targets for that utility.[23]

The Commission finds that these additional requirements need not be included in the Rules at this time. As noted by Staff, the VCEA establishes a goal of installing 10 percent of energy storage behind-the-meter, and there is no need to repeat that provision in the Rules.[24] The Task Force may make recommendations related to the need for specific requirements for distribution-connected and stand-alone storage and whether energy storage of a municipal utility should count towards a utility's interim targets.

Finally in regard to 20 VAC 5-335-30, the VCEA requires that "[a]fter July 1, 2020, at least 35 percent of the energy storage facilities placed into service shall be (i) purchased by the public utility from a party other than the public utility or (ii) owned by a party other than a public utility, with the capacity from such facilities sold to the public utility."[25] As initially proposed, Section 30 included language that would prevent a utility-affiliated company from qualifying as "persons other than a public utility" and counting towards the 35 percent threshold. We agree with Joint Commenters and Staff that this language can be removed.[26] We note that any contract or arrangement between a utility and an affiliated interest is subject to approval by this Commission under the Affiliates Act,[27] as acknowledged by the Joint Commenters.[28]

20 VAC 5-335-40

Pursuant to 20 VAC 5-335-40, utilities will be required to competitively procure energy storage resources, including at least one competitive solicitation per calendar year, subject to the provisions of the Rule. Some commenters recommend that utilities be required to provide bidders with access to relevant electric system data with appropriate confidentiality safeguards in place for privacy, system security, and public safety.[29] Staff agrees with this recommendation and included proposed new language in Section 40 to address this issue.[30] We agree with this change and have included it in the Rules.

Delorean and ES Stakeholders recommend that the notice period for requests for proposals ("RFPs") be extended from at least 45 days to at least 90 days.[31] In the Staff Report, Staff recommends extending the notice period to at least 60 days.[32] Given that distributed energy storage use on the electric system represents a largely new technology, we find it reasonable to adopt a 60-day minimum notice period for RFPs. This additional time will benefit energy storage developers by providing additional time to prepare their responses to utility RFPs.

Several parties recommend the Commission explore use of a third-party administrator to evaluate bids to ensure all energy storage projects are competitively procured in a fair, impartial, and transparent manner.[33] Staff agrees with the idea in concept but states that several questions remain unanswered about how this process would be run in practice, including cost responsibilities.[34] We will not require use of a third-party administrator at this time; however, this may be an appropriate topic for further consideration by the Task Force. Similarly, we decline to expand the Rules to:

• Require cost-benefit analyses and identify compliance and Commission oversight procedures;[35]

• Require utilities to report on the results of completed RFPs;[36]

• Identify procedures for evaluating the outcome of completed RFPs to determine whether the anticipated benefits to specific storage system performance were achieved and whether there are any lessons learned that might inform future RFPs;[37] and

• Provide an opportunity for interested parties to comment on or petition to hold proceedings to further shape future RFPs.[38]

We find inclusion of these proposed requirements in the Rules to be premature at this time. These topics, however, may be appropriate for further consideration by the Task Force or as part of evaluating Dominion's and APCo's annual RPS Plan filings.

20 VAC 5-335-50, 20 VAC 5-335-60, and 20 VAC 5-335-70

Rules 50, 60, and 70 address behind-the-meter incentives, non-wires alternatives programs and peak demand reduction programs, respectively. Generally, these Rules require the utility to address these incentives and programs in each utility's

annual RPS Plan proceeding discussed above. If a proposed incentive or program is offered as a part of a demand-side management program, the Rules also permit a utility to seek approval through existing processes for demand-side programs under Code § 56-585.1 A 5.

Certain commenters request that language be added to require utilities to describe how a proposed program would enable the utility to meet the energy storage targets, including the 10 percent behind-the-meter goal.[39] Other recommendations include making program approval under these sections contingent on whether the program supports meeting the statutory goal of installing at least 10 percent of energy storage behind-the-meter.[40] Staff does not support these recommendations, expressing concern they would unduly limit deployment of energy storage at its current nascent stage.[41] We share this concern and will not include these requirements in the Rules. Notwithstanding our decision in this regard, issues related to meeting the behind-the-meter goals may be raised as part of the Task Force or in cases for approval of specific programs, which could be part of the annual RPS Plan proceeding, part of a demand-side management filing, or a stand-alone filing. We also note that, given the lack of experience in Virginia with behind-the-meter storage programs, it is currently unknown how receptive customers will be to such programs.

ES Stakeholders recommend including deadlines for proposing an initial set of programs to ensure near-term implementation of behind-the-meter incentives, non-wires alternative programs and peak demand reductions programs.[42] We do not find this requirement necessary at this time. Should the Commission find at a later point that Dominion and APCo have unreasonably delayed filing programs for Commission approval, we can address such in each utility's annual RPS Plan proceeding or other appropriate proceeding.

ES Stakeholders also recommend the Commission direct utilities to specifically propose "Bring Your Own Device Programs" to incentivize behind-the-meter storage systems.[43] Staff recommends this topic be explored by the Task Force.[44] We agree with Staff that inclusion of this specific program in the Rules is not necessary at this time and that the Task Force may want to address this program further.[45]

Environmental Advocates recommend the Commission limit a utility's ability to seek approval of energy storage through existing demand-side management programs by requiring the utility to demonstrate energy storage is cost competitive with other solutions available to the utility.[46] We find this recommendation unnecessary at this time and agree with Staff that such a requirement could unduly limit energy storage deployment development.[47] We decline to limit energy storage in this manner through a rulemaking. This determination, however, in no way limits the evidence the Commission might consider relevant in approving a specific program.

20 VAC 5-335-80 – Applicability and Burden of Permitting Requirements

Many commenters address the permitting of non-utility energy storage facilities set forth in 20 VAC 5-335-80. Several commenters take issue with the permitting requirements of the Rules applying only to non-utility owned storage.[48] As explained by the Staff Report, utility construction of electrical facilities is already encompassed in other statutes that need not be incorporated into the Rules.[49] For example, under Code § 56-265.2, a public utility must obtain a certificate of public convenience and necessity "to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business." Similarly, under Code § 56-580 D,

> [t]he Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest.[50]

Several commenters also take issue with the potential burden of the permitting process set forth in 20 VAC 5-335-80.[51] The Commission has no desire to impose unnecessary regulatory burdens; however, the Commission has the duty to protect the reliability and safety of the electric system to which these non-utility energy storage assets will interconnect. The Rules are intended to ensure developers seeking to operate within the Commonwealth will operate safely, will not negatively impact the reliability of the electric power system, and will be ethically responsible in their interactions with Virginia consumers. The Rules are not intended to curtail private development of energy storage. Like generating units, energy storage facilities will inject power onto the electric grid and it is logical that the permitting process be similar to that of generating units.[52] As set forth in the Staff Report, the permitting process set forth in the Rules is structured similar to (i) the Commission's rules applicable to non-storage generating facilities certificated by the Commission[53] and (ii) guidelines applicable to solar and wind facilities participating in the Commission's pilot program for third party PPAs.[54] Energy storage deployment is only beginning to develop in Virginia, but once additional experience is gained in the deployment of energy storage, the Commission may find streamlining the permitting requirements to be reasonable.[55]

Finally, there is significant disagreement about the appropriate size threshold for triggering the permitting requirements of 20 VAC 5-335-80. As originally proposed, the threshold would be triggered by an energy storage power rating of 100 kilowatts or larger. Environmental Advocates and ES

Stakeholders recommend the Commission increase the threshold size to 20 MW, and Delorean recommends the Commission increase the threshold size to 25 MW.[56] Recognizing that the Commission's Generation Rules have a threshold of 5 MW to trigger permitting requirements, the Staff Report recommends the Commission increase the size threshold to 1 MW given the early stage of energy storage deployment in Virginia.[57] We agree with Staff's proposal to increase the threshold to 1 MW. In reaching this determination, we find persuasive that broad deployment of distributed energy storage across Virginia's electric system represents a new use of this technology and warrants a cautious approach. We find a 1 MW threshold appropriately balances the burden of compliance with the need to determine and monitor the full impacts of these resources on the electric system. Once additional experience is gained, the Commission may consider adjusting the threshold further.

20 VAC 5-335-80 Notice Requirements

Commenters take issue with the proposed public notice requirements in 20 VAC 5-335-80.[58] The Staff Report argues that public notice is needed to address environmental justice policies, among other things.[59] We agree that public notice should be required by the Rules for facilities exceeding the size to trigger permitting requirements. The Commission requires public notice in numerous proceedings brought before it, particularly those involving new generation facilities.[60] Notably, the Commission also required public notice of Dominion's energy storage pilot program.[61] The Commission recognizes that public notice may involve additional costs for applicants and would consider recommendations from the Task Force on ways to minimize these costs while still ensuring adequate public notice.

20 VAC 5-335-80 Requisite Commission Findings

Pursuant to subsection B of 20 VAC 5-335-80, in order to approve an energy storage facility, the Commission must find it (i) will have no material adverse effect upon the reliability of electric service provided by any regulated public utility; (ii) does not adversely impact any goal established by the Virginia Environmental Justice Act; and (iii) is not otherwise contrary to the public interest. One or more commenters request the Commission consider excluding each of these required findings. As discussed further below, we find these minimum determinations necessary at this time to protect the electric system as well as utility customers.

With respect to the finding of "no material adverse effect on the reliability of electric service," we note that this requirement is also found in Code § 56-580 D, quoted above, which is applicable to generation facilities. We see no valid reason to treat energy storage facilities differently in this regard. As previously mentioned, like generation facilities, energy storage facilities will inject energy onto the electric grid. In addition, they will also be a source of new incremental load. While we appreciate that other entities such as PJM Interconnection, L.L.C. ("PJM"),[62] and the North American Electric Reliability Corporation ("NERC") may also have responsibilities to safeguard the reliability of the electric grid, those entities are concerned primarily with the bulk electric (i.e., transmission) system. The States have near complete responsibility over the safety, reliability and adequacy of the distribution grid that delivers power to end use customers; we will not abdicate our responsibility in this regard. We note that certified compliance with the reliability requirements of PJM, NERC, or other relevant authority, could be of evidentiary value to a finding of compliance with the Rule's "no material adverse effect" requirement.

Next, regarding environmental justice, we do not find compliance with this requirement to be unduly burdensome for developers at this time. The General Assembly has made it the Commonwealth's policy to pursue environmental justice, and the Commission finds it reasonable to recognize this requirement in our Rules.

Finally, certain commenters request that the Commission remove the required finding that a facility is "not otherwise contrary to the public interest."[63] In addition to being included in Code § 56-580 D, this requirement is also part of the Commission's Generation Rules.[64] We see no reason to treat energy storage facilities differently at this time.

20 VAC 5-335-80 Filing Requirements

Commenters also take issue with certain filing requirements included in 20 VAC 5-335-80. Delorean proposes to add language permitting applicants to indicate instances where any environmental information required is not applicable to a particular project or technology.[65] We agree with this recommended change and have included it in the Rules.

ES Stakeholders recommend that the Commission remove the requirement for an applicant to provide financial information, reasoning that it is duplicative of requirements of the PJM interconnection process and localities.[66] The Commission agrees with Staff that proof of financial viability is an important consumer protection and finds the Rules should include this requirement.[67] The VCEA provides that "at least 35 percent of the energy storage facilities placed into service shall be (i) purchased by the public utility from a party other than the public utility or (ii) owned by a party other than a public utility, with the capacity from such facilities sold to the public utility."[68] Particularly given this large carve-out, it is important that non-utility energy storage be provided in a reliable manner by reputable, financially secure entities. If an energy storage provider were to default on a PPA with a utility, for example, the utility may have to obtain a replacement resource that could be at a higher cost to customers. Environmental concerns could also be raised if an energy storage provider were to go bankrupt and abandon a resource without providing for its continued maintenance and upkeep. Finally, we note that comparable information is also required of other entities licensed by the Commission, including

competitive service providers, competitive local exchange carriers, and electric and natural gas aggregators.[69]

20 VAC 5-335-90, 20 VAC 5-335-100, and 20 VAC 5-335-110

Pursuant to 20 VAC 5-335-90, aggregators of energy storage facilities are required to obtain a license from the Commission. Several commenters urge the Commission not to require such licensure, or to only require limited licensure for aggregators offering certain services.[70] We will include the required licensure of energy storage aggregators in the Rules. In doing so, we recognize that similar licensure is required of aggregators of competitive electric and natural gas services under the Commission's Rules Governing Retail Access to Competitive Energy Services.[71] We also recognize there may likely be an increased number of entities seeking to provide aggregation services related to energy storage as a result of Order 2222, as discussed above. We note that the Commission currently has 82 active aggregator licenses in Virginia involving aggregation of electric and natural gas services. The Commission is not aware of any complaints by licensees that the Commission's oversight has suppressed the market for these aggregators.

Also with respect to this Rule, Joint Commenters request clarification regarding the requirement of subsection B 18 of 20 VAC 5-335-90, which requires an applicant to include information related to the standards of conduct.[72] We do not find additional clarification necessary at this time and note that similar requirements have been adopted recently for other applicants in similar situations.[73]

Other matters

Delorean provides additional proposed rules to be applicable to APCo's and Dominion's annual RPS Plan filings. While we appreciate the intent behind Delorean's proposal, we decline to adopt those rules as part of the Rules Governing the Deployment of Energy Storage. In the future, we may consider adopting rules applicable to the Annual RPS Plan filings once the Commission has gained some experience with those proceedings, which have just recently begun. Such consideration would be through a separate docketed proceeding with appropriate notice and opportunity for comment.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing the Deployment of Energy Storage, 20 VAC 5-335-10 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking

(4) This docket is dismissed.

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

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[1]Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

[2]The ES Stakeholders include the ESA, Virginia Advanced Energy Economy, the Maryland, D.C., and Virginia Solar Energy Industries Association ("MDV SEIA") and the Solar Energy Industries Association ("SEIA").

[3]The Solar Stakeholders include MDV SEIA and SEIA. The Solar Stakeholders state they "are providing supplemental comments to the Energy Storage Stakeholders, specifically to focus on distributed energy resources, behind-the-meter storage and environmental justice considerations." Solar Stakeholders Comments at 1.

[4]The Data Center Coalition represents that it is the national trade association for the data center industry.

[5]Environmental Advocates include the Southern Environmental Law Center, Appalachian Voices, and the Piedmont Environmental Council.

[6]20 VAC 5-335-130.

[7]2020 Va. Acts of Assembly ch. 863.

[8]The legislation provides that the Task Force shall include "representatives of municipalities, the Virginia Solar Energy Development and Energy Storage Authority, the Department of Mines, Minerals and Energy, the Office of the Attorney General, and at least one representative each from the following sectors: regulated electric service providers, competitive electric service providers, rural utility consumer services cooperatives, commercial or industrial energy customers or an association representing such customers, and energy storage companies or an association representing such companies."

[9]The Task Force is directed by the VCEA to: "(i) assess the potential costs and benefits, including impacts to the transmission and distribution systems, of such energy storage resources and (ii) assess how electric utilities, competitive service providers, customers, and other third parties are able to deploy energy storage resources in the bulk market, in the utility system, and in behind-the-meter applications."

[10]As quoted above, the VCEA requires the Commission to adopt the Rules by January 1, 2021.

[11]Code § 56-585.5 D 4.

[12]Dominion filed its 2020 RPS Filing on October 30, 2020, in Case No. PUR-2020-00134. APCo filed its 2020 RPS Filing on November 2, 2020, in Case No. PUR-2020-00135.

[13]Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, 172 FERC ¶ 61,247 (2020).

[14]Joint Commenters Comments at 6 (internal quotation marks and footnotes omitted).

[15]We agree with certain commenters that the Rules should be technology neutral, and the Commission declines to incorporate references in the Rules to specific types of storage technology such as hydrogen-based technology, as also requested by some commenters. See Mitsubishi Comments at 6.

[16]Joint Commenters Comments at 1.

[17]ES Stakeholders Comments at 4.

[18]Id. at 5-6.

[19]Application of Virginia Electric and Power Company, To participate in the pilot program for electric power storage batteries pursuant to § 56-585.1:6 of the Code of Virginia, and for certification of a proposed battery energy storage system pursuant to § 56-580 D of the Code of Virginia, PUR-2019-00124, Doc. Con. Cen. No. 200220170, Final Order (Feb. 14, 2020) ("Storage Pilot Order").

[20]GlidePath Comments at 3.

[21]Environmental Advocates Comments at 18.

[22]Delorean Comments at 3-4.

[23]ES Stakeholders Comments at 20.

[24]Staff Report at 8-9.

[25]Code § 56-585.5 E 5.

[26]Staff Report at 7-8; Joint Commenters Comments at 2-5.

[27]Code § 56-76 et seq.

[28]Joint Commenters Comments at 4-5. The Environmental Advocates recommend independent management of competitive procurements involving utility affiliates. Environmental Advocates Comments at 16. We find such requirement premature at this time, but we note that this issue may be evaluated further by the Task Force.

[29]Data Center Coalition Comments at 6; ES Stakeholders Comments at 8.

[30]Staff Report at 9.

[31]Delorean Comments at 6; ES Stakeholders Comments at 20.

[32]Staff Report at 9.

[33]See, e.g., Virginia Legislators Comments at 2; ES Stakeholders Comments at 8; Delorean Comments at 6.

[34]Staff Report at 10.

[35]See, e.g., Data Center Coalition Comments at 4-5; Solar Stakeholders Comments at 4; Delorean Comments at 7.

[36]Data Center Coalition Comments at 5-6.

[37]Id. at 5.

[38]Id.

[39]See, e.g., ES Stakeholders Comments at 10.

[40]Id.

[41]Staff Report at 11-12.

[42]ES Stakeholders Comments at 10-11.

[43]Id. at 11.

[44]Staff Report at 10.

[45]Similarly, we decline to limit further the parameters of proposed non-wires alternatives programs and peak reduction programs as part of this rulemaking. See, e.g., Delorean Comments at 10 (recommending limitations on peak demand reduction programs); Environmental Advocates Comments at 20 (recommending limits on non-wires alternative plans). If deemed appropriate, the Task Force may consider and recommend changes related to these recommendations.

[46]Environmental Advocates Comments at 18.

[47]See Staff Report at 12.

[48]Delorean Comments at 11; ES Stakeholders Comments at 13; GlidePath Comments at 3.

[49]Staff Report at 13.

[50]As part of approving Dominion's energy storage pilot program, the Commission approved an amended certificate of public convenience and necessity for the Company's Scott solar generating facility pursuant to Code § 56-580 D. Storage Pilot Order at 5.

[51]See, e.g., ES Stakeholders Comments at 11-12; Delorean Comments at 2; Virginia Legislators Comments at 2; DMME Comments at 1-2.

[52]In addition, when charging, energy storage resources are a source of new load.

[53]Rules Governing the Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility, 20 VAC 5-302-10 et seq. ("Generation Rules").

[54]Commonwealth of Virginia, ex rel. State Corporation Commission, Concerning the establishment of a renewable energy pilot program for third party power purchase agreements, Case No. PUE-2013-00045, 2013 S.C.C. Ann. Rept. 405, Order Establishing Guidelines (Nov. 14, 2013).

[55]Several commenters raised the possibility of applying in various ways the Permit-by-Rule ("PBR") process used by the Department of Environmental Quality ("DEQ") to permit certain small renewable facilities. See, e.g., ES Stakeholders Comments at 12; GlidePath Comments at 4. As noted in the Staff Report, the DEQ's permitting authority does not apply to energy storage. Staff Report at 19. See Code § 10.1-1197.5 et seq.

[56]See, e.g., Environmental Advocates Comments at 23; ES Stakeholders Comments at 12; Delorean Comments at 12.

[57]Staff Report at 15-16.

[58]See, e.g., Delorean Comments at 14; ES Stakeholders Comments at 13-14.

[59]Staff Report at 18. The 2020 General Assembly passed legislation that formally adopted the following as the policy of the Commonwealth: "to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities." Code § 2.2-235.

[60]See, e.g., Petition of Virginia Electric and Power Company, For approval and certification of the proposed US-4 Solar Project pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider US-4, under § 56-585.1 A 6 of the Code of Virginia, Case No. PUR-2019-00105, Doc. Con. Cen. No. 190750095, Order for Notice and Hearing at 10-16 (July 31, 2019); Application of C4GT, L.L.C., For certification of an electric generating facility in Charles City County pursuant to § 56-580 D of the Code of Virginia, Case No. PUE-2016-00104, Doc. Con. Cen. No. 161020267, Order for Notice and Hearing at 6-9 (Oct. 18, 2016).

[61]Application of Virginia Electric and Power Company to participate in the pilot program for electric power storage batteries pursuant to § 56-585.1:6 of the Code of Virginia, and for certification of a proposed battery energy storage system pursuant to § 56-580 D of the Code of Virginia, PUR-2019-00124, Doc. Con. Cen. No. 190830034, Order for Notice and Hearing at 7-10 (Aug. 16, 2019). The Commission further notes that pursuant to Code § 10.1-1197.6, applicants for a DEQ PBR must also comply with certain notice requirements.

[62]PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

[63]See, e.g., Delorean Comments at 12; GlidePath Comments at 4.

[64]See 20 VAC 5-302-10.

[65]Delorean Comments at 13.

[66]ES Stakeholders Comments at 13.

[67]See Staff Report at 18.

[68]Code § 56-585.1 E 5.

[69]See e.g., 20 VAC 5-312-40; 20 VAC 5-417-20.

[70]Sierra Club Comments at 4; ES Stakeholders Comments at 14-15; Solar Stakeholders Comments at 5; Environmental Advocates Comments at 24.

[71]20 VAC 5-312-10 et seq.

[72]Joint Commenters Comments at 7.

[73]See, e.g., 20 VAC 5-315-77 (effective March 1, 2020).

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 [or pilots] 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" [or "stored usable energy"] 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. [Other costs associated with the construction and operation of an energy storage facility or energy storage system may include property acquisition costs, development and study costs, or other costs necessary to complete an operative facility or system.]

"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~~ energy storage] capacity [and energy storage power rating].

"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 [program]" 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 [storage] capacity. [Energy storage resources can de-rate their maximum output in order to increase energy storage duration.]

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~~ power rating] 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~~ power rating] 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~~ target] 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 [either] 2035 or when the storage targets [set forth in 20VAC5-335-30] 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~~ 60] 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~~ projects] for which the utility anticipates contracting; (ii) any minimum thresholds that must be met by respondents [, consistent with established codes and standards]; (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~~ projects]; and (vi) specific information concerning the factors involved in determining the price and non-price criteria used for selecting winning bids.

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~~ project]; (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 [to the request for proposals].

C. [Each utility shall provide, upon request, equitable access to relevant electric system data, with appropriate confidentiality safeguards in place for privacy, system security, and public safety. Access shall be provided in a timely manner such that third parties may reasonably utilize the data to inform responses to the request for proposal.

D.] Each utility shall report on any competitive solicitations for energy storage [~~resources~~ projects] 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~~ one megawatt] 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 [under this section] 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~~ one megawatt] 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. [To the extent any of the following information is not applicable to a particular project or technology, the applicant shall indicate it is not applicable.] 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.

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 [subsection B of] 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~~ one megawatt] 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 [interconnection] 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.

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 [~~aggregators~~ 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 [by the energy storage aggregator from its published materials].

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~~ 20VAC5-335-60], 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 December 18, 2020, 2:47 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: **20VAC5-360. Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects (adding 20VAC5-360-10 through 20VAC5-360-50).**

Statutory Authority: §§ 12.1-13 and 56-257.2:1 of the Code of Virginia

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

Public Comment Deadline: February 2, 2021.

Agency Contact: Lauren Govoni, Deputy Director, Utility and Railroad Safety Division, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9590, FAX (804) 371-9734, or email lauren.govoni@scc.virginia.gov.

Summary:

The proposed regulatory action establishes a new chapter, 20VAC5-360, Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects. The new regulation requires that licensed professional engineers exercise responsible charge over certain pipeline projects undertaken by natural gas companies jurisdictional to the State Corporation Commission where such projects, among other things, present a material risk to public safety.

AT RICHMOND, DECEMBER 9, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2020-00052

Ex Parte: In the matter
concerning regulations required by Chapter 822
of the 2020 Acts of Assembly

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapter 822 (SB 385) of the 2020 Virginia Acts of Assembly ("Act"). The rulemaking provision of the Act became effective on July 1, 2020.[1] The Act, inter alia, amended the Code of Virginia ("Code") by adding § 56-257.2:1 (the "Statute"), directing the State Corporation Commission ("Commission") to promulgate regulations requiring that a licensed professional engineer exercise responsible charge over engineering projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 U.S.C § 60101 et seq., as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety.[2] These regulations are in furtherance of the Act's related amendment to a Code provision[3] that, inter alia, had generally exempted employees of Commission-regulated public service corporations from professional engineer licensing, when those employees provided engineering services in connection with public service corporations' facilities regulated by the Commission. The Act further required the Commission to convene a stakeholder group, including representatives of natural gas utilities in the Commonwealth, and to direct such stakeholder group to develop and propose to the Commission recommendations concerning such regulations no later than December 1, 2020.

On May 29, 2020 the Commission issued an Order Establishing Proceeding that, among other things, directed Staff to, utilizing input from the stakeholder group and upon its own inquiry, submit to the Commission, on or before December 1, 2020, a Staff Report presenting draft regulations, findings, and recommendations corresponding to the Act's Third Enactment Clause. On November 24, 2020 Staff filed its Report in which it summarized the work of the stakeholder group and provided proposed rules for the Commission's consideration in this proceeding ("Proposed Rules").

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that notice of the Proposed Rules should 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 further 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.[4] The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.[5] 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 shall 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").[6] 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.[7]

(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) Within five (5) business days of the date of this Order, Staff shall transmit electronically copies of this Order to those persons and entities identified by Staff as potentially having an interest in this matter.

(4) An electronic copy of the Proposed Rules may be obtained by submitting a request to Lauren Govoni in the Commission's Division of Utility and Railroad Safety at the following e-mail address: Lauren.Govoni@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Utility and Railroad Safety's website: scc.virginia.gov/pages/Rulemaking. Additionally, interested persons may download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) On or before February 2, 2021, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Such comments may also include proposed modifications and hearing requests. All filings shall refer to Case No. URS-2020-00052. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a satisfactory 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 February 25, 2021, the Staff may 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. A copy hereof also shall be sent to the Commission's Office of General Counsel and Division of Utility and Railroad Safety.

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[1]The Act's Fourth Enactment Clause delays the effective date of the Act's First Enactment containing these Code amendments to January 1, 2021.

[2]Under the Statute, a professional engineer is defined as a person who is qualified to practice engineering by reason of special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

[3]Section 54.1-401 of the Code.

[4]See, 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/.

[5]See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), 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).

[6]5 VAC 5-20-10 et seq.

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

Chapter 360
Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects

20VAC5-360-10. Purpose and scope.

This chapter delineates standards used by the commission to enforce the provisions of § 56-257.2:1 of the Code of Virginia. This chapter further details certain standards and requirements for professional engineering oversight of projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 USC § 60101 et seq., as amended and adopted by the commission pursuant to § 56-257.2 of the Code of Virginia, and the federal pipeline safety laws and (ii) may present a material risk to public safety.

20VAC5-360-20. Definitions.

Terms used in this chapter shall have the same meaning and effect as in the federal pipeline safety laws under 49 USC § 60101 et seq. and 49 CFR Parts 191, 192, 193, 195, and 199. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means Chapter 822 of the 2020 Acts of Assembly.

"Bypass" means a pipeline connection or control mechanism installed in order to allow construction, maintenance, or repair work, thus altering the flow of gas or hazardous liquid to different facilities other than those transporting the gas prior to installation of the pipeline connection or control mechanism.

"Commission" means the Virginia State Corporation Commission.

"Commission's pipeline safety standards" means standards for gas and hazardous liquid pipeline facilities adopted, prescribed, or enforced by the commission pursuant to §§ 56-257.2 and 56-555 of the Code of Virginia; 49 USC § 60101 et seq.; and 20VAC5-300-70, 20VAC5-307-10, and 20VAC5-308-10.

"Compressor stations" means pipeline facilities that compress natural gas, increasing the pressure and providing the energy needed to move the gas through the pipeline.

"District regulator stations" means a pressure regulating station that controls pressure to a high-pressure or low-pressure distribution main.

"Emergency work" means nonroutine maintenance or repair work, such as repairs to hazardous leaks, that should be performed immediately. Examples include third party damages, repairs, work to maintain priority service, reduce customer outages as a matter of safety, and compromises to system integrity as a cause of overpressurization.

"Engineered structures" means distribution mains vertically attached to buildings, overpasses, or water crossings.

"Gate station" means pressure regulating stations where custody of natural gas or hazardous liquid is transferred from an interstate supplier to a Virginia public service company.

"Maintenance" means any repair or rehabilitation activity performed on a pipeline facility or prescribed by 49 CFR 192, Subpart M.

"MAOP" means maximum allowable operating pressure.

"O&M Procedures" means any operations or maintenance procedures or processes prepared by the operator for conducting operations and maintenance activities or emergency response, as prescribed by 49 CFR 192, Subpart L.

"Peak shaving facilities" means pipeline storage facilities designed to house natural gas or propane gas for reintroduction into an operator's system at times of peak demand. These facilities may store liquefied natural gas or liquefied petroleum gas.

"P.E. stamp" means a professional seal as prescribed by 18VAC10-20-760, pertaining to use of seal.

"Public right-of-way" means any portion of a designated interstate, freeway, or expressway, as well as any other principal arterial roadway with four or more lanes, as defined in the Federal Highway Administration's Highway Functional Classification Concepts, Criteria and Procedures. Section 3.1 (see: https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf).

"Professional engineer" or "P.E." means a person who is qualified to practice engineering by reason of special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board for Architects. Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"PSIG" means pounds per square inch, gauge.

"Repair" means any activity on a distribution main or transmission line that calls for removing the leak by cutting out and replacing a cylindrical piece of pipe, installing a pressure-carrying full encirclement welded split sleeve of appropriate design, or any other permanent repair that is consistent with 49 CFR § 192.717.

"Tie-in" means any process of connecting a newly installed pipeline to either an existing pipeline or another newly installed pipeline by means of joining.

"Uprating" means the act of increasing maximum allowable operating pressures for pipelines.

20VAC5-360-30. Use of professional engineers.

A. Any gas pipeline engineering plans or specifications for engineering work or services that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 USC § 60101 et seq., as amended and adopted by the commission in the commission's pipeline safety standards pursuant to § 56-257.2 of the Code of Virginia, and the federal pipeline safety laws and (ii) may present a material risk to public safety must be produced by or under the direct charge and supervision of a professional engineer with sufficient knowledge of a gas company's natural gas distribution system, and such plans or specifications must bear the professional engineer's stamp, in accordance with § 54.1-406 of the Code of Virginia.

B. A professional engineer must ensure that the plan or specification conforms to the applicable pipeline safety laws, regulations, and standards, and the review and use of a professional engineer's stamp must comply with the professional and ethical obligations set forth in Virginia.

C. Engineering services involving gas pipeline facilities and that present a material risk to public safety shall include:

1. New installation of district pressure regulator stations, compressor stations, or gate stations.

2. Reconfiguration or physical facility changes performed at district pressure regulator stations, compressor stations, or gate stations that alter or modify the configuration or overpressure protection of equipment.

3. Installation, uprating, repair, or abandonment of intrastate transmission pipelines.

4. Any distribution main piping modifications or replacement work falling within established district regulator awareness zones as established by each operator.

5. Any construction or maintenance work on distribution mains that changes the system operating pressure and requires a bypass or a change in the system operating pressure that involves more than two tie-ins.

6. Installation of distribution mains where such mains attach to bridges or other engineered structures.

7. Installation of distribution mains, including replacements and extension projects, that are within or cross any public right-of-way.

8. Installation or abandonment of service lines connecting to transmission lines or a high-pressure distribution main with a MAOP that exceeds 90 PSIG.

9. Installation of peak shaving facilities, to include any modifications or reconfigurations that would alter such a facility's pressure delivery characteristics.

10. Any other project in the judgment of the operator that poses a material risk to public safety.

D. A professional engineer's stamp is not required for emergency work, but a professional engineer's stamp is required after the emergency has been resolved if the remaining work or services are on a project that presents a material risk to public safety.

E. Incorporation of Guidelines into Operations and Maintenance Procedures: Each public service company shall incorporate the provisions of this chapter into its written procedures as required under 49 CFR Part 192 and the commission's pipeline safety standards.

20VAC5-360-40. Documentation.

Each public service company subject to this chapter shall maintain the plans and specifications that must bear a professional engineer's stamp pursuant to this chapter at its office. These plans and specifications shall be readily accessible upon request of the commission, and they shall be maintained in accordance with the document retention timelines set forth in 49 CFR Part 192 and the commission's pipeline safety standards.

20VAC5-360-50. Commission authority.

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.

VA.R. Doc. No. R21-6603; Filed December 14, 2020, 11:43 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Proposed Regulation

Title of Regulation: **24VAC35-70. Remote Alcohol Monitoring Device Regulations (adding 24VAC35-70-10 through 24VAC35-70-140).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: January 29, 2021.

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email richard.foy@vasap.virginia.gov.

Summary:

Pursuant to Chapter 1007 of the 2020 Acts of Assembly, the proposed regulatory action establishes 24VAC35-70,

Remote Alcohol Monitoring Device Regulations. The proposed regulation includes requirements for (i) qualifications of remote alcohol monitoring device manufacturers and service providers, (ii) training and certification of remote alcohol monitoring technicians and state directors, (iii) remote alcohol monitoring device specifications and calibration, (iv) program participation fees, (v) customer orientation training, and (vi) recordkeeping.

Basis: Chapter 1007 of the 2020 Acts of Assembly made changes and additions to §§ 18.2-270.1, 18.2-270.2, 18.2-271.1, and 18.2-272 of the Code of Virginia. Section 18.2-270.2 directs the Executive Director of the Commission on the Virginia Alcohol Safety Action Program (VASAP), pursuant to approval by the commission, to certify remote alcohol monitoring devices for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices.

Purpose: Offenders who are eligible for an ignition interlock are usually subject to a number of additional driving restrictions such as limiting the permissible purposes for which they can drive. A new law will permit courts, upon request of offenders, to eliminate these additional driving restrictions when remote alcohol monitoring devices are used in combination with an ignition interlock. Unlike ignition interlock devices, which are designed to prevent attempts to drive under the influence, remote alcohol monitoring devices only provide a notification that someone has a prohibited alcohol concentration at a certain time and location. Remote alcohol monitoring devices do not prevent someone from driving under the influence.

Chapter 1007 of the 2020 Acts of Assembly requires the Commission on VASAP to develop regulations regarding remote alcohol monitoring devices. These proposed regulations are similar in content to Virginia's ignition interlock regulations but include language to encompass the wide variety of remote alcohol monitoring devices on the market that use varying technology. Remote alcohol monitoring devices protect the public by ensuring that persons prohibited from drinking by court order adhere to their probationary requirements.

Substance: The proposed regulation includes sections addressing the qualifications of remote alcohol monitoring device manufacturers and service providers; training and certification of remote alcohol monitoring technicians and state directors; remote alcohol monitoring device specifications and calibration; program participation fees; customer orientation training; and recordkeeping.

Issues: Remote alcohol monitoring devices protect the public by ensuring that persons prohibited from drinking by court order adhere to their probationary requirements. Courts and probationary agencies will have the benefit of receiving real-time information about offenders they are supervising.

A new law, effective July 1, 2021, permits convicted DUI offenders to drive with the sole driving restriction being the installation of an ignition interlock, provided they agree to remote alcohol monitoring as well. This provides drivers who opt to submit to remote alcohol monitoring, in combination with an ignition interlock device, the freedom to drive at any time to any location.

The manufacturers and service providers of remote alcohol monitoring devices will have an opportunity to conduct business in Virginia by providing requested services to this offender population.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As required by Chapter 1007 of the 2020 Acts of Assembly (Chapter 1007),[1] the Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to adopt a regulation for the installation, maintenance, and certification of remote alcohol monitoring devices.

Background.

Ignition Interlock: Code of Virginia Section 18.2-270.1 states that an offender convicted of driving under the influence in Virginia shall be required to have an ignition interlock device installed on his or her vehicle as a condition of a restricted license or license restoration. An ignition interlock is a device that is installed in a motor vehicle to prevent alcohol-impaired individuals from driving. Before starting the vehicle, the offender is required to blow into the ignition interlock's mouthpiece to provide a breath sample for analysis. If the blood alcohol concentration is above the pre-set limit of 0.02%, the vehicle will not start. Once the vehicle is started, the offender may be required to submit additional breath samples at random times while the engine is running.

Chapter 1007: Offenders who have an ignition interlock are usually subject to a number of additional driving restrictions, such as limiting the permissible purposes for which they can drive.[2] Chapter 1007 permits courts, upon request of offenders, to eliminate these additional driving restrictions when remote alcohol monitoring devices are used in combination with an ignition interlock. The legislation defines "remote alcohol monitoring device" as an unsupervised mobile testing device with the ability to confirm the location and presence of alcohol in a person and that is capable of scheduled, random, and on-demand tests that provide immediate or as-requested results. A testing device may be worn or used by persons ordered by the court to provide measurements of the presence of alcohol in their blood.

The offender would be required to refrain from alcohol consumption at all times, and the monitoring device would be worn or accessible at all times, not only when driving.

Chapter 1007 specifies that VASAP is to "adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices." Further the

legislation states that "Such regulations shall also provide for the establishment of a fund, using a percentage of fees received by the manufacturer or distributor providing … remote alcohol monitoring devices, to afford persons found by the court to be indigent all or part of the costs of … remote alcohol monitoring device."

Proposed Regulation: The proposed new regulation, 24VAC35-70, Remote Alcohol Monitoring Device Regulations, has 14 sections. Some of the most noteworthy requirements and their sections are listed.

• 24VAC35-70-30. Approval of manufacturers: Explains the requirements manufacturers of remote alcohol monitoring devices have to meet in order to contract for the provision of services in Virginia. VASAP shall issue a request in compliance with the Commonwealth of Virginia procurement procedures to contract with remote alcohol monitoring manufacturers for the services and commodities required for the implementation and maintenance of the Commonwealth's remote alcohol monitoring program. Requirements for manufacturers seeking to contract include: (1) Services shall be made available within a 50-mile radius of every residence in the Commonwealth unless otherwise authorized by VASAP. Manufacturers are permitted to subcontract remote alcohol monitoring services to third-party service providers for delivery of their remote alcohol monitoring services in Virginia. (2) Adequate insurance covering liability related to remote alcohol monitoring operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence and $3 million general aggregate total. (3) Provide a state remote alcohol monitoring director who will serve as a central point of contact for VASAP regarding all aspects of the manufacturer's remote alcohol monitoring operations. Among other duties, the manufacturer's state remote alcohol monitoring director would be expected to (i) respond promptly to problems in the field; (ii) upon request of VASAP provide testimony themselves, or through a designee, before applicable courts, the General Assembly of Virginia, or VASAP; (iii) assist and provide training to VASAP; and (iv) be responsible for quality control of reports and statistics, updates to all required documentation, and field services reporting and repairs. Provide remote alcohol monitoring generated reports and report all required alcohol-related violations to the relevant local Alcohol Safety Action Program.[3]

• 24VAC35-70-60. Fees: Establishes the fees manufacturers must pay if they desire to conduct remote alcohol monitoring business in the state. Outlines the fees that service providers may charge offenders. States that all potential manufacturers desiring to conduct business in the Commonwealth of Virginia's remote alcohol monitoring program shall submit a $250 nonrefundable application fee to VASAP. States that the following additional fees shall be paid by the manufacturer to VASAP:

A $250 annual contract review fee;

A $50 annual review fee for each remote alcohol monitoring service location;

A $30 monthly remote alcohol monitoring administrative fee for each offender;

A $250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Remote Alcohol Monitoring Certification Exam due to an unsuccessful attempt on the first exam; and

A $250 remote alcohol monitoring device certification fee for any new device proposed for use in the Commonwealth.

States that service providers may charge offenders for remote alcohol monitoring services at rates up to, but not to exceed, the following:

$80 for a standard remote alcohol monitoring device orientation;

$330 plus applicable taxes, per month, for remote alcohol monitoring device calibrations and monitoring, inclusive of the monthly administrative fees to be paid to VASAP;

$10 per month for optional insurance to cover theft or accidental damage to the remote alcohol monitoring device and its components;

An amount of 10% over the actual replacement cost of the remote alcohol monitoring device and its components when theft or accidental damage occurs and the offender has not purchased the optional insurance;[4]

$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;

$35 for missed appointments; and

An amount permitted by the Code of Virginia at the time for returned checks.

Additionally, in this section it is stated that all manufacturers or their service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by VASAP. No manufacturers or their service providers shall deny service to any offender for whom there has been a declaration of indigency by the court and approval by VASAP.

• 24VAC35-70-80. Remote alcohol monitoring device orientation: Requires that the offender be provided orientation and training in the proper use of the remote alcohol monitoring device.

• 24VAC35-70-120. General manufacturer requirements: Lists general requirements for manufacturers to follow, including obtaining approval from VASAP before disseminating any offender training or advertising materials used in association with the Virginia remote alcohol monitoring program.

• 24VAC35-70-130. Service provider technician certification: Explains the prerequisites for qualifying to be a remote alcohol monitoring service provider technician, to include the certification testing process. Service provider technicians and state directors are required to possess a Virginia Remote Alcohol Monitoring Certification Letter to perform any remote alcohol monitoring services in the Commonwealth. Newly hired service provider technicians, or state directors, however, may perform remote alcohol monitoring services under the direct supervision of a certified technician or state director for training purposes for up to 90 days prior to obtaining a Virginia Remote Alcohol Monitoring Certification Letter. In order to obtain the Virginia Remote Alcohol Monitoring Certification Letter, the applicant must pass the Virginia Remote Alcohol Monitoring Certification Exam.

Estimated Benefits and Costs. The introduction of the option for offenders to request the remote alcohol monitoring device is potentially beneficial for offenders who do not wish to have their driving limited to purposes such as driving to and from work. By refraining from alcohol consumption at all times and paying for the installation and use of the device,[6] they would be able to drive at any time to any location. To the extent that a substantial number of offenders choose to request the device and their requests are granted by courts, businesses that provide the devices would likely benefit and the additional monitoring data could enable more informed decisions by local courts.

Participating in the remote alcohol monitoring program is optional for offenders. Contracting with VASAP to provide remote alcohol monitoring devices and services is optional for manufacturers. Thus, the creation of the program does not appear to create costs because offenders and businesses could simply choose not to participate in the newly available option.

There is discretion on specifics of the proposed regulation, though. For example, Chapter 1007 does not mandate that manufacturers have service centers within a 50-mile radius of every residence in the Commonwealth. It seems likely that manufacturers would find it more profitable to not meet this proposed requirement in the least populated areas of Virginia. The proposed requirement is beneficial for offenders in rural areas in that it limits how far they would have to travel to receive the service.

The legislation also does not directly address liability insurance for remote alcohol monitoring device manufacturers. Code of Virginia § 18.2-270.2 mandates that the Ignition Interlock Program Regulations (24VAC35-60) require that ignition interlock systems be "manufactured by an entity which is adequately insured against liability, in an amount established by VASAP, including product liability and installation and maintenance errors." The Ignition Interlock Program Regulations[7] do require manufacturers to submit "sufficient documentation to enable the verification of adequate insurance covering liability related to ignition interlock operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence and $3 million general aggregate total."

Chapter 1007 amends § 18.2-270.2 to require that VASAP adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices, but unlike for ignition interlocks, does not address insurance. On liability insurance, the proposed Remote Alcohol Monitoring Device Regulations are analogous to the existing Ignition Interlock Program Regulations in that it is stated that manufacturers are required to submit "sufficient documentation to enable the verification of adequate insurance covering liability related to remote alcohol monitoring operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence and $3 million general aggregate total." This is beneficial in that it provides some financial protection for Virginians, but it is an additional required cost for manufacturers.

Businesses and Other Entities Affected. VASAP is aware of three manufacturers of remote alcohol monitoring devices that are likely to seek to contract to provide the services and commodities required for the implementation and maintenance of the Commonwealth's remote alcohol monitoring program. Two of the manufacturers already provide ignition interlocks and have service centers throughout the Commonwealth. VASAP believes that those manufacturers would use their existing service centers for the remote alcohol monitoring devices as well as the ignition interlocks. The third manufacturer does not currently have service centers in the Commonwealth. VASAP estimates that it would need 20 to 25 service centers to provide adequate statewide coverage.[7] This manufacturer could choose to subcontract the servicing of its devices to one or more other firms.

The proposed regulation would also affect VASAP, courts, the 24 Alcohol Safety Action Programs located throughout the Commonwealth,[8] and those offenders who qualify and are potentially interested in the Virginia remote alcohol monitoring program.

Small Businesses[9] Affected. According to VASAP, all three manufacturers of remote alcohol monitoring devices that are likely to seek to contract are large corporations and have operations in other states or even in other countries. Thus, they may not be considered to be small businesses. As stated, one of the three manufacturers does not currently have service centers in the Commonwealth and may choose to subcontract the servicing of its devices to one or more other firms. Such firms may be small businesses, but would not be adversely affected by the establishment of this regulation.

Localities[10] Affected.[11] The proposed regulation applies throughout the Commonwealth and does not introduce costs for local governments.

Projected Impact on Employment. The manufacturer that does not already have service centers would have to either hire staff for the required service centers, or subcontract the servicing of

its product. In the latter case, the subcontractor or subcontractors would have to hire staff. Since according to VASAP each service center would typically have one employee, approximately 20 to 25 new jobs would be created. If the demand for the remote alcohol monitoring devices turns out to be substantial, the two manufacturers with existing service centers may need to hire additional staff as well.

VASAP does not believe additional staff would be necessary for the courts, the Alcohol Safety Action Programs, or itself.

Effects on the Use and Value of Private Property. The manufacturer that does not already have service centers, or its subcontractors, would need to rent or purchase 20 to 25 physical properties for service centers. This would positively impact the value of such properties. To the extent that the renting and servicing of remote alcohol monitoring devices is profitable under the set fees in the proposed regulation, the values of the manufacturers and potential subcontractors may increase.

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[1]See https://lis.virginia.gov/cgi-bin/legp604.exe?201 ful CHAP1007

[2]See Code of Virginia Section 18.2-271.1 E for the list of limited driving purposes: https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-271.1/

[3]The 24 Alcohol Safety Action Programs provide probationary oversight to offenders who have been referred from a court, typically for a conviction of driving under the influence.

[4]VASAP is aware of three manufacturers likely to seek a contract and estimates that for two of the manufacturers, the replacement cost of the remote alcohol monitoring device and its components would be $2,000 to $2,500. The replacement cost is unknown for the third likely manufacturer.

[5]This is in addition to the costs paid for the installation and use of the ignition interlock.

[6]See https://law.lis.virginia.gov/admincode/title24/agency35/chapter60/section40/

[7]The proposed regulation requires that services be made available within a 50-mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by VASAP.

[8]The Alcohol Safety Action Programs provide probationary oversight to offenders who have been referred from a court, typically for a conviction of driving under the influence.

[9]Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

[10]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[11]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis:

The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

Chapter 70
Remote Alcohol Monitoring Device Regulations

24VAC35-70-10. Definitions.

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

"Alcohol" means ethyl alcohol, also called ethanol (C_2H_5OH).

"ASAP" means a local alcohol safety action program.

"Blood alcohol concentration" or "BAC" means the amount of alcohol in an offender's blood or breath, as determined by chemical analysis, that is measured by the number of grams of alcohol per 100 milliliters of blood or 210 liters of breath.

"Bodily fluid" means any bodily fluid capable of being used to estimate blood alcohol concentration, provided the relationship between such bodily fluid and BAC has been established according to scientifically acceptable standards. Such fluids include blood, exhaled deep lung breath, perspiration (transdermal), and saliva.

"Breath test" means an analysis of the breath alcohol concentration of a deep lung breath sample, where "deep lung breath sample" or "alveolar breath sample" means a minimum 1.0-liter air sample that is the last portion of a prolonged, uninterrupted exhalation and that gives a quantitative measurement of alcohol concentration from which breath sample concentrations can be determined. "Alveolar" refers to the alveoli that are the smallest air passages in the lungs surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

"Calibration" means a device system check indicating the absence of issues that affect the remote alcohol monitoring device's ability to provide an accurate alcohol concentration reading.

"Commission" means the Commission on Virginia Alcohol Safety Action Program or its designee.

"Device" means a remote alcohol monitoring device.

"Device certification" means the testing and approval process required by the Commission on Virginia Alcohol Safety Action Program for all remote alcohol monitoring devices.

"Executive Finance Committee" means the advisory subcommittee of the commission composed of the Executive Director of the Commission on Virginia Alcohol Safety Action Program, two commission members, and such other persons as the commission designates.

"Manufacturer" means the entity that is responsible for the design, production, and distribution of remote alcohol monitoring devices to service providers.

"Offender" means the individual required by the court to use a remote alcohol monitoring device.

"Orientation" means to increase offender familiarity and understanding of remote alcohol monitoring device operation and program expectations through training and set up of the remote alcohol monitoring device for use by the offender.

"Remote alcohol monitoring device" means an unsupervised mobile testing device with the ability to confirm the location and presence of alcohol in a person and that is capable of scheduled, random, and on-demand tests that provide immediate or as-requested results. A testing device may be worn or used by persons ordered by the court to provide measurements of the presence of alcohol in their blood via breath or bodily fluid.

"Retest" means an additional opportunity to provide a deep lung breath or transdermal sample.

"Routine maintenance" means inspection, calibration, and other simple, small-scale activities associated with regular and general upkeep of the remote alcohol monitoring device against normal wear and tear but does not include internal repair.

"Service center" means the physical location where remote alcohol monitoring services are performed.

"Service provider" means an authorized entity that provides orientation of approved remote alcohol monitoring devices for manufacturers. Among other activities, service providers may calibrate and perform routine maintenance of devices as well as provide required reports and testify in court. In some cases, the service provider may also be a manufacturer of a remote alcohol monitoring device.

"Set point" means the level at which the breath or transdermal alcohol concentration initiates a sequence of events to determine if the BAC or TAC sample is a confirmed alcohol event.

"State director" means a manufacturer employee who provides oversight of the manufacturer's remote alcohol monitoring device operations in the Commonwealth of Virginia.

"Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the remote alcohol monitoring device.

"Technician" means a service provider employee who provides remote alcohol monitoring services in the Commonwealth of Virginia on behalf of a manufacturer.

"Testing window" means a time period programmed into the remote alcohol monitoring device in which an offender can provide an on demand, random, or scheduled breath or transdermal test.

"Transdermal" means transfer through the skin or the quantification of alcohol from a vapor after it passes through the skin.

"Transdermal alcohol content" or "TAC" means the detection of alcohol in human subjects using an external, noninvasive detection device attached and secured to the skin with tamper resistance approved by the commission.

"Transdermal test" means an analysis of the transdermal concentration of a bodily fluid sample.

"Violation" means an event, such as a breath or transdermal test indicating alcohol consumption; a refusal to provide a deep lung breath or transdermal sample; altering, concealing, hiding, or attempting to hide one's identity from the remote alcohol monitoring device's camera while providing a breath sample; or tampering that breaches the guidelines for use of the remote alcohol monitoring device.

"Virginia Remote Alcohol Monitoring Certification Letter" means a letter issued by the commission to a service provider technician or state director authorizing the service provider technician or state director to perform remote alcohol monitoring services in the Commonwealth of Virginia.

24VAC35-70-20. When remote alcohol monitoring devices are required.

Remote alcohol monitoring devices are required when ordered by a court.

24VAC35-70-30. Approval of manufacturers.

A. The commission shall issue a request in compliance with the Commonwealth of Virginia procurement procedures to contract with remote alcohol monitoring manufacturers for the services and commodities required for the implementation and maintenance of the Commonwealth's remote alcohol monitoring program. Contracts will be for a length of time established by the commission.

B. A manufacturer seeking to contract with the commission shall:

1. Submit evidence demonstrating successful experience in the development and maintenance of a remote alcohol monitoring service program in Virginia, other states, or other countries;

2. Supply and train staff, technicians, and state directors and provide remote alcohol monitoring device orientation to ensure good customer service and compliance with all contract requirements. Personnel seeking to perform remote alcohol monitoring services or administrative duties in the Commonwealth of Virginia shall not necessarily be barred from employment due to a criminal record; however, a criminal record may be considered in conjunction with other information to determine the overall suitability of applicants for employment;

3. Provide, upon request of the commission or the court, via a properly served subpoena, expert or other required testimony in any civil, criminal, or administrative proceedings as to the method of manufacturing the device, remote alcohol monitoring functionality, and the testing protocol by which the device is calibrated and serviced. The manufacturer may assign a service provider designee to perform these duties;

4. Identify all key personnel who will be providing remote alcohol monitoring services for the Commonwealth of Virginia and furnish the commission with credentials on these personnel;

5. Notify the commission at least five business days in advance of a reduction in staffing levels of key personnel in the Commonwealth of Virginia;

6. Ensure that service provider technicians and state directors, or their designee, are trained and available to testify in court if required by a court or Commonwealth's Attorney, or upon a 10-business-day notice by the ASAP in that court's jurisdiction, regardless of whether a subpoena is issued;

7. Submit a description of the manufacturer's plan, to be approved by the commission, for distribution of the device to all locations of the Commonwealth of Virginia where remote alcohol monitoring services will be performed. Services shall be made available within a 50-mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by the commission. Manufacturers are permitted to subcontract remote alcohol monitoring services to third-party service providers that meet the requirements of this chapter for delivery of their remote alcohol monitoring services in the Commonwealth of Virginia. Alcohol Safety Action Programs may qualify as third-party service providers for a manufacturer for remote alcohol monitoring services in the Commonwealth of Virginia if approved by the commission. Alcohol Safety Action Programs that are approved by the commission to contract with remote alcohol monitoring manufacturers to provide remote alcohol monitoring services shall employ a minimum of one state-certified technician for every 50 remote alcohol monitoring offenders monitored by their program and shall meet the same certification requirements as all other service providers;

8. Submit sufficient documentation to enable the verification of adequate insurance to cover liability related to remote alcohol monitoring operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence and $3 million general aggregate total. This liability insurance shall be considered primary above all other available insurance and shall so stipulate in the "other insurance" or applicable section of the insurance contract. The manufacturer shall provide a signed statement holding harmless the Commonwealth of Virginia and the commission and its members, employees, and agents from all claims, demands, and actions as a result of damage or injury to persons or property that may arise directly or indirectly out of an act or omission by the manufacturer or the manufacturer's service provider relating to the orientation, service, repair, or use of a remote alcohol monitoring device. Coverage shall extend to any action taken or not taken by ASAPs (unless the ASAP is a service provider for a remote alcohol monitoring device manufacturer) or the commission due to verified errors in reporting of remote alcohol monitoring device activity by the manufacturer or the manufacturer's service provider;

9. Submit documentation that the manufacturer will provide a state remote alcohol monitoring director who will serve as a central point of contact for the commission regarding all aspects of the manufacturer's remote alcohol monitoring operations in the Commonwealth. Among other duties, the manufacturer's state remote alcohol monitoring director will be expected to (i) respond promptly to problems in the field; (ii) upon request of the commission, provide testimony themselves or through their designee before applicable courts, the General Assembly of Virginia, or the commission; (iii) assist and provide training to the commission; and (iv) be responsible for quality control of reports and statistics, updates to all required documentation, and field services reporting and repairs. In the event of a state director vacancy, the manufacturer shall submit to the commission the name of an interim state director within 10 days of the vacancy and the name of a permanent state director within 90 days of the vacancy;

10. Not discriminate against an employee or applicant for employment due to race, religion, color, sex, national origin, age disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary for the normal operation of the manufacturer or the manufacturer's service provider. The manufacturer agrees to post at all service provider locations in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Furthermore, the manufacturer shall require that its service providers, in all solicitations or advertisements for employees placed by or on behalf of the service provider, state that the contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subdivision;

11. Not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603; 100 Stat. 3359) during the performance of the contract for goods and services;

12. Notify the commission in writing within 15 days of a disciplinary action taken by a state or other political entity against the manufacturer in areas where the manufacturer conducts or has conducted remote alcohol monitoring business. This notification shall include the reason for the disciplinary action and other information as the commission may reasonably request. This requirement applies regardless of the existence of an appeal;

13. Notify the commission in writing of all final adjudications against the manufacturer related to the remote alcohol monitoring device or delivery of remote alcohol monitoring services;

14. Provide remote alcohol monitoring generated reports and report all required alcohol-related violations to the Alcohol Safety Action Program of jurisdiction; and

15. Provide documentation annually of the manufacturer's certification to the current International Organization for Standardization (ISO) 9001 Quality Management System (QMS) for aspects related to design, maintenance, and distribution of a remote alcohol monitoring device. Along with this certification, a copy of the manufacturer's Quality Assurance Plan (QAP) for checking the accuracy of the calibration of the remote alcohol monitoring device is required.

C. Provided that all manufacturer, facility certification, and device certification requirements are met, the commission may contract with those manufacturers and may approve multiple makes and models of remote alcohol monitoring devices for use in the Commonwealth of Virginia.

24VAC35-70-40. Remote alcohol monitoring service facility certification.

Each remote alcohol monitoring service facility shall be inspected and certified by the commission prior to opening and at least annually thereafter. Remote alcohol monitoring service facilities shall:

1. Comply with all local business license and zoning requirements and with all federal, state, and local health, fire, and building code requirements. Prior to the jurisdictional compliance deadline, a copy of a valid business license or business license payment receipt, and tax document shall be posted in a conspicuous place at the service facility immediately upon receipt when applicable;

2. Comply with all local, state, and federal laws pertaining to the provisions of physical access to persons with disabilities;

3. Maintain offender records in a manner that complies with federal confidentiality guidelines. All offender files, payment receipts, and other identifying information shall be located in locked filing cabinets if unattended by a technician. Electronic storage of offender files shall be encrypted and secured to prevent third party access;

4. Require and enforce maintenance of a drug-free workplace and have posted in a conspicuous place available to employees and applicants for employment a statement notifying employees that the manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the service provider's workplace. The notice shall specify the actions that may be taken against employees for violations of the policy;

5. Notify offenders of the address and closure date of any remote alcohol service facility and provide the address of an alternate remote alcohol monitoring service facility within 15 days of the closure date, if applicable;

6. Ensure that employees maintain a professional appearance and are attired in such a manner as to be readily identifiable as service provider employees;

7. Ensure that the locations where remote alcohol monitoring services are performed are tidy and pose no hazards to public safety; and

8. Provide the commission a minimum of 20 days' notice prior to the scheduled opening date of a new location. This requirement allows the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders.

24VAC35-70-50. Remote alcohol monitoring device specifications and certification.

A. All remote alcohol monitoring devices used in the Commonwealth of Virginia shall be certified by the commission. The commission shall maintain a list of approved remote alcohol monitoring devices.

B. A manufacturer seeking to have a remote alcohol monitoring device certified by the commission shall submit:

1. The name and address of the remote alcohol monitoring device manufacturer;

2. The name and model number of the remote alcohol monitoring device; and

3. A detailed description of the device including drawings, wiring protocols if applicable, and instructions used in orientation.

C. The manufacturer or the manufacturer's service provider shall provide literature promoting its device to the commission and for distribution to the ASAPs.

D. The manufacturer shall provide a certification report that the remote alcohol monitoring device conforms to the minimum specifications set forth by the commission. Included with the certification report should be the name and location of the testing facility, the address and phone number of the testing facility, and the names and qualifications of the individuals performing the tests. This section applies only to the portion of the device that records breath or bodily fluid samples for

analysis. At a minimum, the following specifications shall be met:

1. The remote alcohol monitoring device shall work accurately and reliably in an unsupervised environment at minimal inconvenience to others.

2. The remote alcohol monitoring device shall be able to analyze a specimen of alveolar breath or bodily fluid for alcohol concentration, correlate accurately with established measures of blood or transdermal alcohol concentration, and be calibrated according to the manufacturer's specifications.

3. The remote alcohol monitoring device shall use an electrochemical fuel cell or other technology approved by the commission that reacts to and measures ethanol.

4. A remote alcohol monitoring device that is designed to take a breath test shall indicate when an acceptable breath sample has been collected, indicating this by audible or visual means. The remote alcohol monitoring device shall not be set to a breath volume requirement of less than 1.0 L.

5. The remote alcohol monitoring device shall detect and record a BAC or TAC for all completed breath or bodily fluid samples.

6. The results of the test shall be noted through the use of green, yellow, and red signals or similar pass or fail indicators. No digital blood or transdermal alcohol concentration shall be indicated to the offender.

7. The remote alcohol monitoring device shall automatically purge alcohol before allowing subsequent analyses.

8. The remote alcohol monitoring device shall be capable of random, scheduled, continuous, or on-demand tests that provide immediate, scheduled, or on-demand results.

9. The internal memory of the remote alcohol monitoring device shall be capable of recording and storing a minimum of 500 remote alcohol monitoring events.

10. The remote alcohol monitoring device shall be designed and set up in a manner as to minimize opportunities for tampering, alteration, bypass, or circumvention.

11. The remote alcohol monitoring device shall be capable of recording and providing evidence of actual tampering, alteration, bypass, or circumvention.

12. The remote alcohol monitoring device shall operate accurately and reliably at temperatures between 10º and 40ºC.

13. The remote alcohol monitoring device shall operate up to altitudes of 2.5 km above sea level.

14. The readings of the remote alcohol monitoring device shall not be affected by humidity, dust, electromagnetic interference, smoke, or food substance when used in accordance with the manufacturer's instructions.

15. The remote alcohol monitoring device shall be set up with a means to confirm the location and presence of alcohol in an offender. If a remote alcohol monitoring device is equipped with global positioning system (GPS) capabilities, GPS coordinates are not to be shared by the manufacturer unless required by court order, subpoena, or law.

16. The remote alcohol monitoring device shall have a set point equivalent to 0.02g/210 liters of breath unless otherwise approved by the commission.

17. The testing window shall be 30 minutes unless otherwise approved by the commission.

18. Remote alcohol monitoring devices that are not continuously attached to the offender to confirm identity shall be equipped with an internal camera to provide evidence that the offender is the individual providing breath samples into the device as required by law or court order.

19. The remote alcohol monitoring device shall prompt for a subsequent breath or transdermal test 30 minutes after any reading above the set point. If the subsequent test records any BAC level, or is refused, a confirmed alcohol violation will be reported to the ASAP by the manufacturer or the manufacturer's service provider in a manner specified by the commission, unless the manufacturer has its own alcohol violation confirmation process. In situations where a manufacturer has its own alcohol violation confirmation process, the manufacturer may use its process as an alternative standard to report an alcohol violation if approved by the commission.

20. Prompted remote alcohol monitoring device tests that are not provided within the testing window shall be reported as a confirmed alcohol violation to the ASAP by the manufacturer or the manufacturer's service provider in a manner specified by the commission.

21. In the event the remote alcohol monitoring device battery level falls below 20%, the device shall prompt the offender to connect to a power supply. A low battery condition under 20% of capacity and connecting or disconnecting the device from a constant power supply shall be uniquely recorded in the device's memory.

22. Remote alcohol monitoring devices shall have calibration stability of at least six months.

23. Remote alcohol monitoring devices shall be produced by a manufacturer that maintains certification to the current International Organization for Standardization (ISO) 9001 Quality Management Systems for aspects related to the design, maintenance, and distribution of the device. Documentation demonstrating compliance with this requirement shall be submitted to the commission by the manufacturer on an annual basis.

E. All remote alcohol monitoring devices that have been approved by the commission shall have affixed a warning label

with the following language: "Any person tampering with or attempting to circumvent this remote alcohol monitoring system shall be guilty of a Class 1 misdemeanor and, upon conviction, be subject to a fine or incarceration or both." Remote alcohol monitoring devices may be equipped with a GPS. If a remote alcohol monitoring device is equipped with a GPS, the following additional language is required in bold on the warning label: "Please note that this remote alcohol monitoring device is equipped with a functioning GPS." The cost and supply of the warning labels to be affixed to the remote alcohol monitoring devices shall be borne by the manufacturer or service provider. The manufacturer or service provider shall submit to the commission a prototype of the warning label for approval.

F. Additional technical specifications for the operation and installation of the remote alcohol monitoring device may be described in the contract between the commission and the manufacturer.

G. The manufacturer shall notify the commission in writing if the approval or certification of a device that is approved, or has been submitted for approval for use in Virginia, is or ever has been denied, withdrawn, suspended, or revoked in another state, whether the action occurred before or after approval in Virginia. This notification shall be made in a timely manner, not to exceed 15 days after the manufacturer has received notice of the denial, withdrawal, suspension, or revocation of approval or certification of the device, whether or not the action will or has been appealed.

24VAC35-70-60. Fees.

A. All potential manufacturers desiring to conduct business in the Commonwealth of Virginia's remote alcohol monitoring program shall submit a $250 nonrefundable application fee to the commission.

B. The following additional fees shall be paid by the manufacturer to the commission:

1. A $250 annual contract review fee;

2. A $50 annual review fee for each remote alcohol monitoring service location;

3. A $30 monthly remote alcohol monitoring administrative fee for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the remote alcohol monitoring services were provided;

4. A $250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Remote Alcohol Monitoring Certification Exam due to an unsuccessful attempt on the first exam; and

5. A $250 remote alcohol monitoring device certification fee for any new device proposed for use in the Commonwealth.

C. Service providers may charge offenders for remote alcohol monitoring services at rates up to, but not to exceed, the following:

1. $80 for a standard remote alcohol monitoring device orientation;

2. $330 plus applicable taxes per month for remote alcohol monitoring device calibrations and monitoring, inclusive of the monthly administrative fees to be paid to the commission;

3. $10 per month for optional insurance to cover theft or accidental damage to the remote alcohol monitoring device and its components;

4. An amount of 10% over the actual replacement cost of the remote alcohol monitoring device and its components when theft or accidental damage occurs and the offender has not purchased the optional insurance;

5. $50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;

6. $35 for missed appointments; and

7. An amount permitted by the Code of Virginia at the time for returned checks.

D. All manufacturers or their service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission. No manufacturer or manufacturer's service provider shall deny service to any offender for whom there has been a declaration of indigency by the court and approval by the commission.

24VAC35-70-70. Suspension or revocation of remote alcohol monitoring devices or service facility certification.

A. The commission may indefinitely suspend or revoke certification of a remote alcohol monitoring device or service facility. The Executive Finance Committee, for a period not to exceed 30 days, may suspend or revoke certification of a remote alcohol monitoring device or service facility for the following reasons:

1. When there is a voluntary request by a manufacturer to cancel certification of a device;

2. When a device is discontinued by the manufacturer;

3. When the manufacturer's liability insurance is terminated or canceled, or in cases where the service provider is responsible for the liability insurance, the insurance is canceled and not remedied by the manufacturer within three business days;

4. When a manufacturer or a manufacturer's service provider attempts to conceal its true ownership;

5. When materially false or inaccurate information is provided relating to a device's performance standards by the manufacturer;

6. When there are defects in design, materials, or workmanship causing repeated failures of a device;

7. When a manufacturer or a manufacturer's service provider knowingly permits nonqualified employees to perform work;

8. When a manufacturer or a manufacturer's service provider assists users with circumventing or tampering with a device;

9. When a manufacturer fails to fully correct an identified remote alcohol monitoring facility noncompliance issue within the timeframe required by the Code of Virginia, the provisions of this chapter, or a remote alcohol monitoring manufacturer contract;

10. When there is a pattern of identified remote alcohol monitoring facility noncompliance issues;

11. When a manufacturer or a manufacturer's service provider impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission involving customer service issues or other complaint brought forward by a third party;

12. When there is an identified public safety or offender confidentiality issue at a remote alcohol monitoring service facility; or

13. When a manufacturer fails to maintain annual certification with the International Organization for Standardization (ISO) 9001 Quality Management System (QMS) for aspects related to design, maintenance, and distribution of a remote alcohol monitoring device.

B. If a suspension or revocation of a remote alcohol monitoring device or service facility certification occurs, the manufacturer may request judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Should a revocation of certification be upheld, the manufacturer whose device has been revoked (i) shall be responsible for removal of all devices installed and serviced by the manufacturer's service providers that are subject to the revocation and (ii) will bear the costs associated with the required removal and installation of new approved devices. In addition, the manufacturer whose device or facility is subject to the revocation shall continue to provide services for these ASAP offenders for a time to be determined by the commission, but no longer than 90 days.

C. When the certification of a remote alcohol monitoring device or remote alcohol monitoring service facility is suspended or revoked, manufacturers shall continue to make sure services are provided for ASAP offenders; however, no new remote alcohol monitoring installations shall be permitted during the period of suspension.

D. If a manufacturer or a manufacturer's service provider terminates the contract or goes out of business, the manufacturer shall be responsible for removal of all of its devices operational in the Commonwealth and shall bear the costs associated with required offender transfers to new approved devices. In addition, if a manufacturer or a manufacturer's service provider terminates the contract or goes out of business, a manufacturer or manufacturer's service provider shall continue to provide services for 90 days after notification to the commission that services will be terminated in Virginia.

24VAC35-70-80. Remote alcohol monitoring device orientation.

A. No offender who has a court order pursuant to § 18.2-270.1 of the Code of Virginia shall use a remote alcohol monitoring device in Virginia unless enrolled in and monitored by the ASAP. Prior to providing offender orientation of the device, the service provider shall first receive written or electronic authorization from the ASAP for the particular offender. This section also applies to out-of-state offenders who have a Virginia court-ordered remote alcohol monitoring requirement. This enables the commission to maintain consistency in policy and use of remote alcohol monitoring devices in the Commonwealth of Virginia and allows for a consistent pattern of instruction to the manufacturer's service providers.

B. The remote monitoring device shall have orientation provided by a commission-approved service provider within 30 days of the date of the court order; if not, the service provider shall notify the ASAP. Once orientation has occurred, the service provider shall notify the ASAP via a method established by the commission, documenting that the remote alcohol monitoring device orientation has been completed.

C. All agreements between the service provider and the offender shall be in the form of a contract and signed by the service provider and the offender. Copies of the contract shall be retained by the service provider in a manner that complies with federal confidentiality guidelines, with a copy given to the offender.

D. Prior to orientation of the remote alcohol monitoring device, offenders shall provide to the service provider:

1. Photo identification; and

2. Written authorization from the commission when the air volume requirement, blow pressure, or anti-circumvention features of the remote alcohol monitoring device are to be lowered or disabled in order to compensate for an offender's diminished lung capacity, when applicable.

E. A training video for remote alcohol monitoring devices shall be developed and delivered by the service provider to the offender, including information on the use and maintenance of the device as well as procedures for regular and emergency servicing. A remote alcohol monitoring demonstration unit

shall be made available to an offender at the offender's orientation appointment for training and practice purposes.

F. Prior to attaching a transdermal unit to an offender, the offender must be breath tested using a remote alcohol monitoring device certified by the commission for use in Virginia to confirm the offender has no BAC level. If during the orientation and demonstration of the remote alcohol monitoring device, the offender provides a positive BAC, the ASAP shall be notified.

G. The service provider shall maintain a toll-free 24-hour emergency telephone service that may be used to request assistance in the event of failure of the remote alcohol monitoring device. The assistance provided by the authorized service provider shall include technical information. The remote alcohol monitoring device shall be made functional within 48 hours of the call for assistance or the remote alcohol monitoring device shall be replaced.

H. At the time of device orientation, a service provider may charge an orientation fee. The maximum permissible cost for orientation of the device shall be set by the commission, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft or accidental damage. Optional insurance may be offered by the service provider, and a written copy of the insurance policy stating clearly the applicable coverages, coverage amounts, conditions, and exclusions shall be given to offenders who purchase the insurance.

I. The manufacturer or manufacturer's service providers shall provide service to those offenders who are eligible for a reduction in fees based upon a declaration of indigence by the court and approval by the commission.

J. A remote alcohol monitoring device installed and assigned to one offender shall not be assigned simultaneously to any additional offender for the purpose of attempting to comply with a court-ordered Virginia remote alcohol monitoring requirement.

K. Remote alcohol monitoring services provided by one service provider for an individual offender shall not be transferred to another remote alcohol monitoring service provider without written permission from the commission. If the offender's reason to transfer to another remote alcohol monitoring service provider is based upon a malfunctioning remote alcohol monitoring device or legitimate customer service issue, the commission shall not unreasonably deny permission.

L. Remote alcohol monitoring test times shall be set by the court of jurisdiction. In the absence of recommended time settings by the court of jurisdiction, default test times shall be set by the commission.

24VAC35-70-90. Calibration and monitoring.

A. Only calibration units found on the current National Highway Traffic Safety Administration's Conforming Products List of Calibrating Units for Breath Alcohol Testers and certified by the commission shall be used by manufacturers or their service providers to calibrate remote alcohol monitoring devices.

B. The manufacturer or the manufacturer's service provider shall:

1. Provide calibration and monitoring of the remote alcohol monitoring device at least every 30 days. If the device self-system check during calibration indicates a potential inaccuracy issue, the manufacturer or service provider shall:

a. Check the remote alcohol monitoring device for accuracy using a dry gas reference sample. Only units currently on the National Highway Traffic Safety Administration's Conforming Products List (CPL) or those subsequently tested and approved for inclusion in the next CPL publication may be used. Dry gas reference values shall be adjusted in a manner approved by the commission;

b. Check the remote alcohol monitoring device for accuracy by using a dry gas alcohol standard with an alcohol reference value between 0.030 and 0.050 g/210L;

c. Expel a three-second purge of the remote alcohol monitoring device prior to introducing the alcohol reference sample into the device. This is not required if there is less than three inches of tubing from the dry gas dispenser to the device;

d. Perform an accuracy check that will consist of two consecutive reference checks with the result of each individual check being within plus or minus 10% or 0.003, whichever is greater, of the alcohol reference value introduced into the remote alcohol monitoring device. The time period between the first and second consecutive accuracy checks shall not exceed five minutes; and

e. Store dry gas alcohol standard tanks in a manner consistent with the gas manufacturer's specifications. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Manufacturers or their service providers shall possess a certificate of analysis from the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public;

2. Retrieve data from the remote alcohol monitoring device data log for the previous period and electronically submit

alcohol-related violations to the ASAP within 24 hours of retrieval;

3. Check the remote alcohol monitoring device for signs of circumvention or tampering if suspicious activity has been indicated to the service provider and electronically report violations to ASAP within the required timeframe established by the commission;

4. Collect the monthly monitoring fee from the offender. If an offender who has not been declared to be indigent by the court is one or more months delinquent in payments, the service provider may, in its discretion, refuse to provide services but shall not retrieve the remote alcohol monitoring device without authorization from the commission. Offenders with an outstanding balance in excess of $250 with any Virginia-approved remote alcohol monitoring device service provider shall not be permitted to install a remote alcohol monitoring device with another remote alcohol monitoring service provider unless otherwise approved by the commission; and

5. Conform to other calibration requirements established by the commission, as applicable.

C. All malfunctions other than routine maintenance of the remote alcohol monitoring device shall be either repaired or replaced by the manufacturer within two business days at no additional expense to the offender. If it is shown that the malfunction is due to damage to the device as a result of mistreatment or improper use, the offender shall be responsible for applicable repair or replacement fees. Routine maintenance of the device may be performed by the service provider.

D. The remote alcohol monitoring device shall record, at a minimum, the following data:

1. The time and date of all breath or transdermal tests;

2. The breath or transdermal alcohol level of all tests;

3. The time and date of attempts to tamper or circumvent the remote alcohol monitoring device;

4. For a unit that uses a breath sample, a photo of each person delivering an accepted breath test sample for analysis by the remote alcohol monitoring device; and

5. A reference photo of the offender.

E. A service provider may charge a monthly monitoring fee. The maximum permissible cost for monitoring and calibration shall be set by the commission through the remote alcohol monitoring regulations, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for administrative support and offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft and accidental damage. Fees for the first monthly monitoring and calibration visit will be collected from the user in advance at the time of installation and monthly thereafter when services are rendered.

24VAC35-70-100. Remote alcohol monitoring device retrieval.

A. Prior to retrieval of the remote alcohol monitoring device, the service provider must receive written or electronic authorization from the ASAP. This requirement also applies to offenders with a court-ordered Virginia remote alcohol monitoring requirement who are receiving services from a service provider in another state.

B. Offenders may not have their remote alcohol monitoring device retrieved or replaced by another manufacturer without written or electronic authorization from the commission. Whenever retrieval of a remote alcohol monitoring device is approved by the commission for the purpose of changing service providers, and the authorized retrieval is a result of a determination that the initial service provider failed to provide a level of service meeting contract requirements, the remote alcohol monitoring regulations, or the Code of Virginia, the original service provider shall bear the costs associated with orientation of the device by the new service provider.

C. Once the remote alcohol monitoring device has been retrieved, the service provider shall send an authorized report to the ASAP via a method established by the commission documenting that the remote alcohol monitoring device has been retrieved by the service provider.

D. No fee shall be charged to the offender for retrieval of the remote alcohol monitoring device.

24VAC35-70-110. Records and reporting.

A. The service provider shall be subject to announced or unannounced site reviews by the commission for the purpose of inspecting the facilities and offender records. Upon request, access to all service provider locations, records, and financial information shall be provided to the commission for the purpose of verifying compliance with state laws, commission regulations, and service provider agreements.

B. In accordance with federal confidentiality guidelines, all personal and medical information provided to the service provider regarding offenders shall be kept confidential. If the information is temporarily held at the offender's service center, it shall be stored in a locked filing cabinet when unattended by a service provider employee.

C. After providing orientation for a remote alcohol monitoring device, the service provider shall provide the ASAP, within 24 hours, an orientation report that includes:

1. The name, address, and telephone number of the offender; and

2. The serial number of the offender's remote alcohol monitoring device.

D. After performing a monitoring and calibration check, the service provider shall submit to the ASAP, within 24 hours, all data generated, to include:

1. Name of the offender whose device was monitored;

2. Name, address, and telephone number of the monitoring official;

3. Date of monitoring and calibration;

4. Make, model, and serial number of the remote alcohol monitoring device;

5. Attempts to alter, tamper, circumvent, bypass, or otherwise remove the device;

6. Noncompliance with conditions of the ASAP or remote alcohol monitoring program;

7. Offender concerns;

8. Charges incurred for the monitoring visit;

9. Date of the next scheduled monitoring visit;

10. For devices that use a breath sample, a photo of each person who has delivered an accepted breath test sample or missed a retest on the remote alcohol monitoring device;

11. A reference photo of the offender; and

12. All identified alcohol-related violations.

E. In addition, the service provider shall have available monthly reports detailing:

1. Device orientations during the period covered;

2. Calibrations performed during the period by date and offender name, detailing any unit replacements made during the monitoring period;

3. Datalogger information from all remote alcohol monitoring devices;

4. Attempts to alter, tamper, circumvent, bypass, or otherwise remove the device;

5. Device failure due to material defect or improper device set up; and

6. A summary of complaints received and corrective action taken.

F. The manufacturer or the manufacturer's service provider shall be responsible for purchasing and providing necessary computer hardware and software to convey all data and information requested by the commission if the equipment is not already present at the commission office or the ASAP.

G. Accurate reports shall be submitted to the ASAP in the format specified by the commission.

H. The service provider shall provide a copy of the most recent "ASAP Remote Alcohol Monitoring Agreement" to each offender at each offender's remote alcohol monitoring installation appointment and shall require the offender to read and sign the agreement.

24VAC35-70-120. General manufacturer requirements.

Remote alcohol monitoring manufacturers that are approved to perform remote alcohol monitoring services in the Commonwealth of Virginia and their service providers shall:

1. Abide by all commission memorandums, directives, contract terms, and regulations pertaining to the statewide remote alcohol monitoring program unless prohibited by state law;

2. Resolve offender, court, Department of Motor Vehicles, ASAP, commission, and other stakeholder complaints as directed by the commission;

3. Provide orientation for all ASAP remote alcohol monitoring device authorizations within the time parameters set forth by the commission. In situations where a remote alcohol monitoring service facility becomes inoperable due to a large-scale weather event or other verified unforeseen circumstances, the manufacturer shall contact the commission within 24 hours with an action plan to mitigate the impact to customer service;

4. Resolve remote alcohol monitoring service facility compliance issues as directed by the commission;

5. Obtain approval from the commission before disseminating any offender training or advertising materials used in association with the Virginia remote alcohol monitoring program;

6. Make modifications to the company website of the manufacturer or the manufacturer's service provider that is used to review monthly calibration reports upon reasonable request by the commission. Reasonable requests include changes due to language that is confusing, misleading, offensive, or inaccurate; changes required due to updated technology; changes to comply with the Code of Virginia or the remote alcohol monitoring regulations; or changes due to workload changes or product enhancements;

7. Assume full liability for action taken or not taken by an ASAP or the commission due to failure by a manufacturer or a manufacturer's service provider to report an alcohol-related violation to the local ASAP as required by this chapter or due to inaccurate or misleading reporting, whether electronic or hard copy, provided by the manufacturer or the manufacturer's service provider;

8. Be accountable for Virginia offenders with remote alcohol monitoring devices set up for use by its company in another state and ensure that all Virginia remote alcohol monitoring processes, regulations, requests for proposal terms, contract terms, and commission requirements are met unless prohibited by state law;

9. Notify the commission within 15 days of disciplinary action received from a state where the manufacturer conducts or has conducted remote alcohol monitoring business. This notification shall include the reason for the disciplinary action. This requirement applies regardless of the existence of an appeal;

10. Provide information technology assistance and training upon reasonable request by the commission; and

11. Report all changes to the remote alcohol monitoring device software or firmware, whether temporary or permanent, to the commission within 30 days of release in the Commonwealth of Virginia.

24VAC35-70-130. Service provider technician certification.

A. Service provider technicians and state directors are required to possess a Virginia Remote Alcohol Monitoring Certification Letter to perform any remote alcohol monitoring services in the Commonwealth of Virginia. Newly hired service provider technicians or state directors, however, may perform remote alcohol monitoring services under the direct supervision of a certified technician or state director for training purposes for up to 90 days prior to obtaining a Virginia Remote Alcohol Monitoring Certification Letter. In order to apply for a certification letter, manufacturers shall submit a completed application to the commission for approval of newly hired service provider technicians and state directors. The completed application shall include submission of:

1. A completed applicant form provided by the commission;

2. A complete local and national criminal history check;

3. A complete driver's record; and

4. Documentation issued by the commission of successful completion of the Virginia Remote Alcohol Monitoring Device Certification Exam.

Failure to submit a completed application will result in disqualification from consideration for a Virginia Remote Alcohol Monitoring Certification Letter by the commission to perform remote alcohol monitoring services in the Commonwealth of Virginia.

B. Applicants shall be required to complete a Virginia Remote Alcohol Monitoring Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the state certification exam on the first attempt shall be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the state certification exam on the second attempt shall not be allowed to reapply to provide remote alcohol monitoring services for the Commonwealth of Virginia for six months from the date of the second failed exam. Service providers shall be required to pay an administrative fee, as provided in 24VAC35-70-60 B 4, to the commission for all second and subsequent attempts to successfully complete the state certification exam. Applicants who successfully pass the state certification exam will receive documentation of successful completion from the commission that shall be submitted with the application for the Virginia Remote Alcohol Monitoring Certification Letter to perform remote alcohol monitoring services in the Commonwealth of Virginia.

C. The commission may deny, revoke, suspend, or terminate a Virginia Remote Alcohol Monitoring Certification Letter for a service provider technician or state director for any of the following reasons:

1. Having been convicted of a felony;

2. Having been convicted of a misdemeanor potentially punishable by confinement;

3. Committing an unethical, deceptive, or dishonest act that negatively impacts the integrity of the remote alcohol monitoring program;

4. Failing to demonstrate sufficient knowledge or skill required to perform remote alcohol monitoring services in the Commonwealth of Virginia;

5. Material misstatement or omission in an application; or

6. Defrauding any offender, manufacturer, service provider, or other person or entity in the conduct of the licensee's business.

A service provider technician or state director whose Virginia Remote Alcohol Monitoring Certification Letter has been denied, revoked, suspended or terminated may request judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-400 et seq. of the Code of Virginia). In the event that the decision to suspend or revoke the Virginia Remote Alcohol Monitoring Certification Letter of a service provider's technician or state director is upheld, the service provider technician or state director shall not perform remote alcohol monitoring services in the Commonwealth of Virginia for the entire suspension period, or in the case of a revocation or termination, on a permanent basis. This prohibition includes any period during which the denial, suspension, revocation, or termination is being contested. The manufacturer is required to return the Virginia Remote Alcohol Monitoring Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated by the commission.

D. Once the completed application has been approved by the commission and all other qualifications have been met by the applicant, a Virginia Remote Alcohol Monitoring Certification Letter to perform remote alcohol monitoring services in the Commonwealth of Virginia shall be issued to the applicant by the commission. The certification letter shall contain the effective date of the letter and a certification number specific to the applicant. The certification letter will be valid for a time period specified by the commission unless otherwise

suspended, revoked, or terminated, but for no longer than the manufacturer contract end date. In the event that an applicant is not approved for a Virginia Remote Alcohol Monitoring Certification Letter to perform remote alcohol monitoring services in the Commonwealth of Virginia, the commission will notify the manufacturer in writing within 10 days of the determination. The Virginia Remote Alcohol Monitoring Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

E. An application to renew a Virginia Remote Alcohol Monitoring Certification Letter for a remote alcohol monitoring service provider technician or state director shall be submitted 30 days prior to the expiration date printed on the current certification letter. A service provider technician or state director who has had his state certification revoked or terminated shall be ineligible to reapply for a Virginia Remote Alcohol Monitoring Certification Letter unless otherwise approved by the commission.

F. Manufacturers are required to surrender Virginia Remote Alcohol Monitoring Certification Letters for service provider technicians and state directors who are no longer employed with their company. The surrendered certification letter shall be sent to the commission within 15 days of the date that the service provider technician or state director is no longer employed with the service provider or manufacturer.

G. In addition to the successful completion of the Virginia Remote Alcohol Monitoring Certification Exam required for application, the commission may order that a certified technician or state director already performing remote alcohol monitoring services in the Commonwealth of Virginia review requirements and retake the state certification exam to demonstrate that the technician or state director possesses the knowledge required to perform remote alcohol monitoring services. An exam retake fee is not applicable in this circumstance.

24VAC35-70-140. Emergency declarations.

The commission reserves the right to suspend service-related requirements of this chapter in applicable geographical areas when there exists a federal or state disaster or declaration of emergency.

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EXECUTIVE ORDER NUMBER SEVENTY-TWO (2020)

and Order of Public Health Emergency Nine

Commonsense Surge Restrictions

Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)

Importance of the Issue

In November, as case counts and positivity rates began to rise, we took additional measures to stem the spread of the virus throughout the Commonwealth. In general, Virginians cooperated with those measures. Unfortunately, the surge that began many weeks ago is continuing across the Commonwealth. All five health regions are experiencing increases in new COVID-19 cases, positive tests, and hospitalizations. Virginia is averaging more than 4,000 new COVID-19 cases per day, up from a statewide peak of approximately 1,200 in May. Virginia's PCR percent test positivity rate is at 11.1 percent, an increase from 6.5 percent approximately one month ago. As of December 10, 2020, all but one health region reported a PCR test positivity rate at or above ten percent. Hospitalizations have increased by approximately 83 percent in the last four weeks. COVID-19 ICU hospitalizations have been increasing for 33 days and the statewide rate (4.4 per 100,000 persons) has exceeded the threshold of concern (3.5 per 100,000 persons) for the rate of confirmed COVID-19 hospitalizations. Since this pandemic began in March, we have learned that socialization with persons outside of your household and sustained activities in indoor settings contribute significantly to the transmission of the virus. Virginians must continue to practice the measures that we know work to stem the spread of the virus: wash your hands, avoid touching your face, avoid gatherings, and wear face coverings both indoors and outdoors. Therefore, additional measures are necessary to protect public health and stem the spread of COVID-19.

Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

I. MODIFIED STAY AT HOME ORDER

All individuals in Virginia should remain at their place of residence between the hours of 12:00 a.m. and 5:00 a.m. Individuals may leave their residences for the purposes of:

a. Obtaining food, beverages, goods, or services as permitted in this Order;

b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;

c. Taking care of other individuals or animals;

d. Traveling required by court order or to facilitate child custody, visitation, or child care;

e. Engaging in exercise, provided individuals comply with social distancing requirements;

f. Traveling to and from one's residence, place of worship, or work;

g. Traveling to and from an educational institution;

h. Volunteering with organizations that provide charitable or social services; or

i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.

II. RESTRICTIONS

A. BUSINESS RESTRICTIONS

1. All Businesses

Any business not listed in Section II, subsections A or C below must adhere to the Guidelines for All Business Sectors expressly incorporated by reference herein as best practices. This guidance is located here.

2. Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to operate delivery, take-out, and indoor and outdoor service, provided such businesses comply with the Guidelines for All Business Sectors, and sector-specific guidance for restaurant and beverage services incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. No alcoholic beverage shall be sold, consumed, or possessed on premises after 10:00 p.m. in any restaurant, dining establishment, food court, brewery, microbrewery, distillery, winery, or tasting room. Alcoholic beverages may continue to be sold via delivery or take-out after 10:00 p.m., as permitted by existing regulations promulgated by the Virginia Alcoholic Beverage Control Authority.

b. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms between the hours of 12:00 a.m. and 5:00 a.m. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to offer delivery and take-out services between the hours of 12:00 a.m. and 5:00 a.m.

c. All parties must be separated by at least six feet, including in the bar area. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart, including in the bar area.

d. Customers may be provided with self-service options. Facilities must provide hand sanitizer at food lines and require the use of barriers (e.g., gloves or deli paper) when employees or patrons touch common utensils. Food lines must be monitored by trained staff at all times of operation, and serving utensils must be changed hourly.

e. Employees must wear face coverings over their nose and mouth while working at their place of employment.

f. Patrons must wear face coverings, except while eating or drinking.

g. Routine cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes during operation. Tabletops must be cleaned in between patrons.

h. Bar seats and congregating areas of restaurants must be closed to patrons except for through-traffic. Non-bar seating in the bar area (i.e., tables or counter seats that do not line up to a bar or food service area) may be used for customer seating as long as a minimum of six feet is provided between parties at tables.

i. If any such business cannot adhere to these requirements, it must close.

3. Farmers' Markets

Farmers' markets may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for farmers' markets incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below in section II, subsection D, paragraph 2, at all times. Employees and vendors must, where possible, configure operations to avoid congestion or congregation points.

b. Employees and vendors must wear face coverings over their nose and mouth while working at their place of employment.

c. Employees and vendors must routinely clean and disinfect frequently-contacted surfaces during operation.

d. Patrons must wear face coverings over their nose and mouth according to Section III.

e. Farmers' markets must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

f. If any such business cannot adhere to these requirements, it must close.

4. Brick and Mortar Retail Businesses Not Listed in Section II, Subsection C, Paragraph 1 (Non-Essential Retail)

Any brick and mortar retail business not listed in section II, subsection C, paragraph 1 below may continue to operate, provided such business complies with the Guidelines for All Business Sectors and the sector-specific guidance for brick and mortar retail expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below in section II, subsection D, paragraph 2, at all times.

b. Employees must wear face coverings over their nose and mouth while working at their place of employment.

c. Patrons must wear face coverings over their nose and mouth according to Section III.

d. If any such business cannot adhere to these requirements, it must close.

5. Fitness and Exercise Facilities

Fitness centers, gymnasiums, recreation centers, sports facilities, and exercise facilities may continue to operate indoor and outdoor activities, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for fitness and exercise facilities expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Patrons, members, and guests who are not Family members as defined below must remain at least ten feet apart during all activities except where necessary for the physical safety of an individual.

b. Instructors and all participants of group exercise and fitness classes who are not Family members as defined below must maintain at least ten feet of physical distancing between each other at all times, with the exception of swimming lessons, where parents or guardians may support a participant during class, and instructors may have contact with swimmers when necessary.

c. Occupancy must be limited to 75 percent of the lowest occupancy load on the certificate of occupancy.

d. The total number of attendees (including both participants and instructors) in all group exercise and fitness classes cannot exceed the lesser of 75 percent of the minimum occupancy load on the certificate of occupancy or 10 persons.

e. Hot tubs, spas, splash pads, spray pools, and interactive play features, except water slides, must be closed.

f. Outdoor and indoor swimming pools may be open, provided occupancy is limited to no more than 75 percent of the lowest occupancy load on the certificate of occupancy and all swimmers maintain at least ten feet of physical distance from others who are not Family members as defined below in section II, subsection D, paragraph 2.

g. Employees working must wear face coverings over their nose and mouth while working at their place of employment. Lifeguards responding to distressed swimmers are exempt from this requirement.

h. Patrons must wear face coverings over their nose and mouth according to Section III.

i. Employers must ensure cleaning and disinfection of shared exercise equipment after each use.

j. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

k. If any such business cannot adhere to these requirements, it must close.

6. Personal Care and Personal Grooming Services

Beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for personal care and personal grooming services expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Service providers must maintain at least six feet of physical distancing between work stations.

b. Service providers and employees must wear face coverings over their nose and mouth while working at their place of employment.

c. Provide face coverings for clients or ask that clients bring a face covering with them, which they must wear during the service, except when treating the areas of the nose and mouth.

d. Routine cleaning and disinfection of frequently contacted surfaces must be conducted every 60 minutes of operation. All personal care and personal grooming tools should be cleaned and disinfected after each use. If that is not possible, such items must be discarded.

e. If any such business cannot adhere to these requirements, it must close.

7. Campgrounds

Privately-owned campgrounds as defined in § 35.1-1 of the Code of Virginia may continue to operate provided they comply with the Guidelines for All Business Sectors and the sector-specific guidelines for campgrounds, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. Employees must wear face coverings over their nose and mouth while working at their place of employment.

b. Patrons must wear face coverings over their nose and mouth in accordance with Section III.

c. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons entering into the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

d. If any such business cannot adhere to these requirements, it must close.

8. Indoor Shooting Ranges

Indoor shooting ranges may continue to operate, provided they comply with the following requirements:

a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members as defined below in section II, subsection D, paragraph 2 at all times.

b. Employees must wear face coverings over their nose and mouth while working in their place of employment.

c. Perform thorough cleaning and disinfection of frequently-contacted surfaces every 60 minutes of operation, while disinfecting all equipment between each customer use and prohibiting the use of equipment that cannot be thoroughly disinfected.

d. Patrons must wear face coverings over their nose and mouth according to Section III.

e. If any such indoor shooting range cannot adhere to these requirements, it must close.

9. Public Beaches

All public beaches as defined in § 10.1-705 of the Code of Virginia may remain open to individual and family recreational activity. All such public beaches, must comply with the requirements below.

a. Require beachgoers to practice physical distancing of at least six feet between each person unless they are with Family members as defined in section II, subsection D, paragraph 2.

b. Prohibit gatherings of more than 10 people in accordance with section II, subsection B.

c. Implement and adhere to a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.

d. Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate.

e. Establish procedures for temporary beach closure or access limitations in the event of overcrowding.

f. Ensure adequate personal protective equipment for all lifeguards.

g. Perform a disinfectant-level cleaning of all public restrooms every two hours with an EPA-approved disinfectant by staff or volunteers trained to follow Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting.

h. For chair and umbrella rental companies, require vendors to set up chairs and umbrellas for customers, maintain at least six feet of distance between groups, and clean equipment between rentals following Environmental Protection Agency and CDC guidelines on cleaning and disinfecting.

i. Post signage at all public access points to the beaches and other "cluster prone" areas providing health reminders regarding physical distancing, gathering prohibitions, options for high risk individuals, and staying home if sick. Messaging must be specific to location.

j. Each locality shall provide daily metrics to its local health department to include beach closures, complaint incidents, police reports of violence related to enforcement, and number of reports of noncompliance to be submitted each Monday.

k. All employees and contract workers must wear a cloth face covering when not able to practice physical distancing following CDC Use of Face Cloth Coverings guidance.

l. All employees and contract workers must have access to soap and water or hand sanitizer containing at least 60 percent alcohol, and locality should provide best hygiene practices to employees on a regular basis, including washing hands often with soap and water for at least 20 seconds and practicing respiratory etiquette protocols.

m. Each locality shall require all employees and contract workers to take their temperature before reporting to work and direct such employees not to report to work if they have a fever of over 100.4 degrees, have experienced chills, or have been feverish in the last 72 hours.

n. Individuals must wear face coverings over their nose and mouth in accordance with Section III.

o. Follow enhanced workplace safety best practices outlined in the Guidelines for All Business Sectors.

10. Racetracks and Speedways

Outdoor racetracks may remain open for racing events, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for racetracks expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. The event must be held at locations with the ability to restrict access (i.e., barriers and gating).

b. All individuals must maintain at least six feet of physical distancing between themselves and other participants who are not Family members as defined below.

c. Food services must adhere to the sector-specific guidance for restaurant and beverage services and camping areas must adhere to the sector-specific guidance for campgrounds.

d. The total number of patrons cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons.

e. Employees must wear face coverings while working in their place of employment.

f. Patrons must wear face coverings over their nose and mouth in accordance with Section III.

g. Prohibit gatherings of more than 10 people in accordance with section II, subsection B.

11. Large Outdoor Amusement Parks and Zoos

Large Outdoor Amusement Parks and Zoos are outdoor amusement parks and zoos comprised of at least 25 acres of land that contain one or more permanent amusement exhibits or rides and that host at least 500,000 visitors annually.

a. Total occupancy for the venue must not exceed 50 percent the combined occupancy load on the certificates of occupancy for all areas of the venue.

b. Install visible markers for queue lines that separate people by six feet of physical distance.

c. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.

d. Patrons must wear face coverings over their nose and mouth in accordance with Section III.

e. Employees must wear face coverings over their nose and mouth while working at their place of employment.

f. Venues must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

g. Venues should screen patrons for COVID-19 symptoms prior to admission to the venue. Patrons should be asked if they are currently experiencing fever (100.4 degrees Fahrenheit or higher) or a sense of having a fever, a new cough that cannot be attributed to another health condition, new shortness of breath that cannot be

attributed to another health condition, new chills that cannot be attributed to another health condition, a new sore throat that cannot be attributed to another health condition, or new muscle aches that cannot be attributed to another health condition or specific activity (such as physical exercise). Anyone experiencing symptoms should not be permitted in the facility. Screenings should be conducted in accordance with applicable privacy and confidentiality laws and regulations.

h. Any ride, attraction, or theatre at an amusement park that is located indoors, or has queue lines indoors, must remain closed. The amusement park may open indoor restaurants, concessions, gifts shops or retail spaces, and restrooms. On site retail, recreation and fitness, cabins, and food establishments must follow the requirements and guidelines specific to those establishments.

i. All private bookings are limited to 10 people and must comply with Section II, subsection B, paragraph 1.

j. If any such venue cannot adhere to these requirements, it must close.

12. Entertainment and Amusement Businesses

Performing arts venues, concert venues, sports venues, convention centers, expos, movie theaters, museums, aquariums, fairs, carnivals, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, amusement parks and zoos not covered in paragraph 11, and other places of indoor public amusement may open provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

a. The total number of spectators cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons.

b. All private bookings are limited to 10 people and must comply with Section II, subsection B, paragraph 1.

c. No alcoholic beverage shall be sold, consumed, or possessed on premises after 10:00 p.m. Alcoholic beverages may continue to be sold via delivery or take-out after 10:00 p.m., as permitted by existing regulations promulgated by the Virginia Alcoholic Beverage Control Authority.

d. Install visible markers for queue lines that separate people by six feet of physical distance.

e. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.

f. Require ten feet of physical distancing between parties at all establishments with physical activity, singing, or cheering; six feet of physical distancing is required in other venues.

g. If interactive exhibits are in service, post signage to discourage congregating and encourage the use of hand sanitizer. Provide hand sanitizer stations around any interactive exhibits. Discontinue any interactive exhibits that pose a risk for children to place items in their mouths.

h. Practice routine cleaning and disinfection of high contact areas and hard surfaces, including check out stations and payment pads, store entrance push/pull pads, door knobs/handles, dining tables/chairs, light switches, handrails, restrooms, guest lockers, floors, and equipment.

i. Where possible, install plexiglass barriers in front of commonly used point-of-sale or guest service stations.

j. Employees are required to wear face coverings over their nose and mouth while working at their place of employment.

k. Patrons must wear face coverings over their nose and mouth in accordance with Section III.

l. Businesses must promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the entering into place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

m. If any such business cannot adhere to these requirements, it must close.

13. Recreational Sports

Indoor and outdoor recreational sports activities are permitted, provided participants and organizers of recreational sports activities comply with the following requirements:

a. For sports played indoors, spectators must be limited to 25 persons per field. For sports played outdoors, spectators are limited to two guests per player. The total number of spectators cannot exceed 30 percent of the occupancy load of the certificate of occupancy for the venue.

b. Races or marathons may have up to 250 participants, provided staggered starts separate runners into groups of 25 or less.

c. Conduct screening of coaches, officials, staff, and players for COVID-19 symptoms prior to admission to the venue/facility.

d. Employees must wear face coverings while working in their place of employment.

e. Spectators must wear face coverings over their nose and mouth at all times.

For more information on how to reduce the risk of COVID-19 exposure and spread associated with indoor and outdoor recreational sports activities, consult the Virginia Department of Health's "Considerations for Recreational Sports" webpage, which can be found here.

14. Enforcement - Business Restrictions

a. Guidelines for All Business Sectors and the sector-specific guidelines appear here.

b. The Virginia Department of Health and the Virginia Alcoholic Beverage Control Authority shall have authority to enforce section II, subsection A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia.

c. In addition, any agency with regulatory authority over a business listed in section II, subsection A, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, and the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia, or any other law applicable to these agencies, may enforce this Order as to that business.

B. OTHER RESTRICTIONS

1. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 10 individuals who do not live in the same residence are prohibited. A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors. The presence of more than 10 individuals performing functions of their employment or assembled in an educational instructional setting is not a "gathering." The presence of more than 10 individuals in a particular location, such as a park, or retail business is not a "gathering" as long as individuals do not congregate. This restriction does not apply to the gathering of Family members, as defined in section II, subsection D, paragraph 2 living in the same residence.

Subject to the following requirements, this restriction shall not bar individuals from attending religious services or assembling for educational instruction with more than 10 people provided:

a. Individuals assembled for educational instruction adhere to the applicable physical distancing and sanitization plan and guidelines of the relevant governing body or educational institution;

b. Individuals attending religious services:

i. Practice proper physical distancing at all times.

ii. Mark seating and common areas where attendees may congregate in six-foot increments to maintain physical distancing.

iii. Ensure that any items used to distribute food or beverages either should be disposable or washed or cleaned between uses between individuals who are not Family members.

iv. Conduct routine cleaning and disinfection of frequently-contacted surfaces prior to and following any religious service.

v. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted to participate in the religious service.

vi. Post signage to provide public health reminders regarding physical distancing, gatherings, options for high risk individuals, and staying home if sick.

vii. Individuals attending religious services must wear face coverings in accordance with Section III below.

viii. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction in Section II, subsection B, paragraph 1. Additional suggested guidance can be found here.

2. Institutions of Higher Education

Institutions of higher education shall comply with all applicable requirements under the Phased Guidance of Virginia Forward and the "Guidelines for All Business Sectors." Any postsecondary provider offering vocational training in a profession regulated by a Virginia state agency/board must also comply with any sector-specific guidelines relevant to that profession to the extent possible under the regulatory training requirements. Such

professions may include, but are not necessarily limited to: aesthetician, barber, cosmetologist, massage therapist, nail technician, and practical nurse.

3. Overnight Summer Camps

Overnight services of summer camps, as defined in § 35.1-1 of the Code of Virginia, must remain closed.

4. Enforcement – Other Restrictions

Violations of section II, subsection B, paragraphs 1 and 3 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia. Any law enforcement officer as defined in § 9.1-101 of the Code of Virginia including the Virginia Department of State Police may enforce these restrictions.

C. REQUIREMENTS FOR ESSENTIAL RETAIL BUSINESSES

1. Essential Retail Businesses

Essential retail businesses as set out below may continue to remain open during their normal business hours.

a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;

b. Medical, laboratory, and vision supply retailers;

c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;

d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;

e. Home improvement, hardware, building material, and building supply retailers;

f. Lawn and garden equipment retailers;

g. Beer, wine, and liquor stores;

h. Retail functions of gas stations and convenience stores;

i. Retail located within healthcare facilities;

j. Banks and other financial institutions with retail functions;

k. Pet and feed stores;

l. Printing and office supply stores; and

m. Laundromats and dry cleaners.

Essential Retail Businesses must comply with the Guidelines for All Business Sectors expressly incorporated by reference and linked here. Employers are required to provide face coverings to employees. If any such business cannot adhere to these requirements, it must close.

2. Enforcement – Essential Retail

a. Guidelines for All Business Sectors and the sector-specific guidelines appear here.

b. The Virginia Department of Health and the Virginia Alcoholic Beverage Control Authority shall have authority to enforce section II, subsection C of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia.

c. In addition, any agency with regulatory authority over a business listed in section II, subsection C, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, and the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia or any other law applicable to these agencies, shall have authority to enforce section II, subsection C of this Order as to that business.

D. CONTINUED GUIDANCE AND DIRECTION

1. State Agencies

All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.

2. Family Members

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

3. Exceptions

With the exception of Section III below, nothing in the Order shall limit:

a. The provision of health care or medical services;

b. Access to essential services for low-income residents, such as food banks;

c. The operations of the media;

d. Law enforcement agencies; or

e. The operation of government.

III. REQUIREMENT TO WEAR FACE COVERING

A. Face Coverings Required - Indoors

1. All individuals in the Commonwealth aged five and older must cover their mouth and nose with a face covering, as described and recommended by the CDC, if they are in an indoor setting shared by others. This requirement applies to state and local government settings, train stations, bus stations, and intrastate public transportation, including buses, rideshares, trains, taxis, and cars for hire, as well as any waiting or congregating areas associated with boarding public transportation. This requirement shall not apply in any area under federal jurisdiction or control.

2. This restriction does not apply to persons inside their personal residence.

3. Individuals may remove face coverings to participate in a religious ritual.

B. Face Coverings Required - Outdoors

All individuals in the Commonwealth aged five and older must cover their mouth and nose with a face covering, as described and recommended by the CDC, when outdoors and unable to maintain at least six feet of physical distance from other individuals who are not Family members.

C. Face Coverings Required - Employees

All employees of all businesses listed in section II, subsections A and C shall wear a face covering while working at their place of employment.

D. Face Coverings - Enforcement

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

2. In addition, any agency with regulatory authority over a business listed in section III, including but not limited to the Virginia Department of Labor and Industry, pursuant to § 40.1-51.1 of the Code of Virginia, the Department of Professional and Occupational Regulation, pursuant to 18 Va. Admin Code § 41-20-280, the Virginia Department of Agriculture and Consumer Services, pursuant to § 3.2-5106 of the Code of Virginia or any other law applicable to these agencies, shall have authority to enforce section III of this Order as to that business.

3. Violations of section III, subsection A of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia and enforceable by the Virginia Alcoholic Beverage Control Authority.

4. No minor shall be subject to criminal penalty for failure to wear a face covering. Adults accompanying minors should use the adult's best judgment with respect to placing face coverings on a minor between the ages of two through four while inside the public areas noted above. Adults accompanying minors age five through 18 shall use reasonable efforts to prompt the minor to wear face coverings while inside the public areas noted above.

5. Medical-grade masks and personal protective equipment should be reserved for medical personnel. The use of cloth face coverings does not replace the need to maintain six feet of physical social distancing, clean and disinfect frequently touched surfaces routinely in all public settings, stay home when sick, and practice frequent handwashing.

E. Face Covering - Exceptions

The requirement to wear a face covering does not apply to the following:

1. While eating or drinking;

2. Individuals exercising or using exercise equipment;

3. Any person who is playing a musical instrument when wearing a mask or face covering would inhibit the playing of the instrument (e.g. wind instrument) so long as at least 10 feet of physical distancing can be maintained from other persons, whether the rehearsal or performance is indoors or outdoors;

4. Any person who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance;

5. Any person seeking to communicate with the hearing impaired and for which the mouth needs to be visible;

6. When temporary removal of the face covering is necessary to secure government or medical services;

7. Persons with health conditions or disabilities that prohibit wearing a face covering. Nothing in this Order shall require the use of a face covering by any person for whom doing so would be contrary to his or her health or safety because of a medical condition. Adaptations and alternatives for individuals with health conditions or disabilities should be considered whenever possible to increase the feasibility of wearing a mask or to reduce the risk of COVID-19 spreading if it is not possible to wear one.

Any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

F. Face Coverings - Waiver

The waiver of § 18.2-422 of the Code of Virginia is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020 and will remain in effect until 11:59 p.m. on March 12, 2021, unless amended or rescinded by further executive order.

IV. ADDITIONAL PROVISIONS

A. Construction with the Emergency Temporary Standard "Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19"

Where the Emergency Temporary Standard "Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19" adopted by the Safety and Health Codes Board of the Virginia Department of Labor and Industry pursuant to 16 Va. Admin. Code §§ 25-60-20 and 25-60-30 conflicts with requirements and guidelines applicable to businesses in this Order, this Order shall govern.

B. Expiration of Executive Orders

First Amended Executive Order 63, Order of Public Health Emergency Five (2020) and Sixth Amended Executive Order

67, Order of Public Health Emergency Seven (2020) will expire at 11:59 p.m., Sunday, December 13, 2020.

Effective Date of this Executive Order

This Order is in furtherance of Amended Executive Order 51 (2020). Further, this Order shall be effective 12:01 a.m., Monday, December 14, 2020, and shall remain in full force and effect until 11:59 p.m., January 31, 2021.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 10th day of December, 2020.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER SEVENTY-THREE (2020)

Declaration of a State of Emergency Due to Winter Weather

Importance of the Issue

On this date, December 15, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to a winter storm. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code of Virginia, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency.

Directive

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

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

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

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

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

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

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

F. Authorization of a maximum of $350,000.00 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is $250,000.00 for the Department of Military Affairs, if it is called to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective December 15th, 2020 and shall remain in full force and in effect until January 15, 2021, unless sooner amended or rescinded by further Executive Order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of December, 2020.

/s/ Ralph S. Northam
Governor

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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: Division of Rehabilitative Services Policy and Procedure Manual Select Policies 2020.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

* * *

Titles of Documents: Adult Services Manual Update Chapters 1, 2, 3, 4, and 7.

Electronic Storage of Centers for Independent Living Consumer Service Records.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

STATE BOARD OF EDUCATION

Titles of Documents: Emergency Guidelines for the Use of Local Alternative Assessments in Lieu of the Virginia Studies, Civics and Economics, and Grade 8 Writing Standards of Learning Tests for the 2020-2021 School Year.

Emergency Guidelines for the Use of Local Performance Assessments to Verify Credits in Writing for the 2020-2021 School Year.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Shelley Loving-Ryder, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2102, or email shelley.loving-ryder@doe.virginia.gov.

* * *

Title of Document: Model Policies for the Treatment of Transgender Students in Virginia's Public Schools.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Samantha Hollins, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-8079, or email samantha.hollins@doe.virginia.gov.

* * *

Title of Document: Procedural Guidelines for Conducting Licensure Hearings.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Nancy Walsh, Director of Professional Practices, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email nancy.walsh@doe.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Virginia Cancer Registry User Manual.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

Agency Contact: Mylam Ly, Policy Analyst and Project Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7263, or email mylam.ly@vdh.virginia.gov.

BOARD OF MEDICINE

Titles of Documents: Completing Form B, Employment Verification.

Continuing Competency Violations for Nurse Practitioners.

Guidance Regarding Collaborative Practice Agreements.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

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.

BOARD OF NURSING

Titles of Documents: Adult Immunization Protocols.

Continuing Competency Violations for Nurse Practitioners.

Joint Statement of the Department of Health and the Department of Health Professions on Impact of Criminal Convictions on Nursing Licensure or Certification and Employment in Virginia.

Impact of Criminal Convictions on Registration of Medication Aides and Licensure of Massage Therapist in Virginia.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

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.

BOARD OF PHARMACY

Titles of Documents: Contracted Employee Access to a Pharmaceutical Processor.

Guidance Regarding Collaborative Practice Agreements.

Physicians Dispensing Drugs.

Guidance for Continuous Hours Worked by Pharmacists and Breaks.

Categories of Facility Licensure.

Naloxone Protocols.

Public Comment Deadline: February 3, 2021.

Effective Date: February 4, 2021.

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 CONSERVATION AND RECREATION

Public Comment - Community Flood Preparedness Fund Draft Guidelines

Purpose of notice: The Department of Conservation and Recreation (DCR) is accepting public comment to establish guidelines for implementation of the Community Flood Preparedness Fund as required by the Clean Energy and Community Flood Preparedness Act, which Governor Northam signed on July 1, 2020.

After reviewing public comment and making any necessary and appropriate amendments to the draft, DCR will finalize the guidelines no later than March 1, 2021. The finalized guidelines will inform the development of annual requests for proposals, a grant manual, and scoring criteria for grant and loan applications.

Public comment period: The public comment period for this forum will begin December 7, 2020, and close on January 31, 2021. In accordance with statutory requirements, a separate 30-day guidance document public forum is also available on the Virginia Regulatory Town Hall until January 6, 2020.

Document for public comment: The document may be accessed at: https://www.dcr.virginia.gov/document/Community-Flood-Preparedness-Fund-Draft-Guidelines.pdf.

Contact Information: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

All Provider Manuals Chapter 1 Draft

The draft Chapter 1 of all Provider Manuals is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/#/manualdraft for public comment until January 7, 2021.

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.

SAFETY AND HEALTH CODES BOARD

Department of Labor and Industry Announces Revisions to Proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

On July 15, 2020, in accordance with Executive Order 63, Order of Public Health Emergency Five, Requirement to Wear Face Covering While Inside Buildings, the Safety and Health Codes Board adopted an Emergency Temporary Standard (ETS) for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

The board adopted the ETS under § 40.1-22(6a) of the Code of Virginia. The ETS became effective, July 27, 2020, when the ETS was published in full in the Richmond Times Dispatch. The publication of the ETS in the Richmond Times Dispatch also constituted notice the board intended to adopt a permanent standard within six months of July 27, 2020.

On July 27, 2020, the Department of Labor and Industry published a proposed permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 on its website and opened up a 60-day comment forum on the Virginia Regulatory Town Hall for members of the public to register its comments on the proposed standard.

In addition, as required by § 40.1-22(6a) of the Code of Virginia, the board held a public hearing on the adoption of a permanent standard on September 30, 2020, to receive comments from the public regarding the proposed standard.

Based upon the comments received during the 60-day comment period as well as those received by the board during the September 30, 2020, public hearing, the department has revised the proposed permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

The department would now like to invite the public to register its comments on the Revised Proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 prior to the board meeting to consider the proposed standard's adoption as a final standard.

Please visit the department's website to view the revised proposed permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220: https://www.doli.virginia.gov/wp-content/uploads/2020/12/Proposed-Standard-for-COVID-19-12.10.2020.pdf

To register a public comment about the proposed permanent standard, please use the comment forum. The forum will be open for comments from December 10, 2020, to January 9, 2021.

Contact Information: Jay Withrow, Director, Legal Support, VPP, ORA, OPP, and OWP, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, FAX (804) 786-8418.

STATE WATER CONTROL BOARD

Public Comment Period and Public Meeting - Water Quality Study for the James River, Maury River and Jackson River

The Virginia Department of Environmental Quality (DEQ) and its contractor, Virginia Tech Biological Systems Engineering, are initiating the development of a water quality study to address Polychlorinated Biphenyl (PCB) contamination in the James River, Maury River, and Jackson River watersheds. This water quality study is known as a total maximum daily load (TMDL), or simply a watershed clean-up plan. To begin this process, this notice provides information on the first public meeting and the first Technical Advisory Committee (TAC) meeting. A 30-day public comment period will follow the public meeting, during which time DEQ invites stakeholders interested in serving on the TAC to submit their request. A TAC typically consists of representatives from local governments, Virginia Pollutant Discharge Elimination System permittees, watershed residents, anglers, recreational and conservation groups, and other stakeholders interested in providing input on the technical aspects of the TMDL development process.

Description of study: DEQ monitoring data indicates levels of PCBs in fish tissue are elevated in portions of the James, Maury, and Jackson Rivers and present a risk to individuals who consume the fish (for more information on PCBs watch this DEQ video). As a result, sections of these rivers are listed as impaired for PCBs on the § 303(d) TMDL priority list. Additionally, Fishing Creek in Lynchburg and Reedy Creek in Richmond are also listed as impaired on the § 303(d) TMDL priority list because DEQ monitoring data indicates levels of PCBs in the water above the state water quality criteria. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL priority list and report. TMDLs are developed to identify the total amount of a pollutant (i.e., PCBs) that a waterbody can receive and still meet water quality standards. To restore water quality, pollutant levels must be reduced to the TMDL. TMDLs will be developed for the entire Jackson River and Maury River watersheds and all of the James River watershed draining from the headwaters to Richmond. The affected counties include Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Chesterfield, Craig, Cumberland, Fluvanna, Giles, Goochland, Greene, Hanover, Henrico, Highland, Montgomery, Nelson, Powhatan, and Roanoke, and the affected cities include Buena Vista, Charlottesville, Covington, Lexington, Lynchburg, and Richmond.

Public meeting: The Virginia Department of Environmental Quality will virtually host the first public meeting for the James River, Maury River, and Jackson River PCB TMDL Project on Tuesday, January 12, 2021, at 6 p.m. To register for the meeting and receive access information, use the following link: https://register.gotowebinar.com/register/7942773453649560335. 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 telephone are necessary to participate virtually. Although using a telephone for audio only participation is an option, all participants are encouraged to access the meeting using a computer so that they can view the meeting presentation. This meeting will be recorded. If there are technical issues registering for this meeting or difficulty during the meeting, please contact Lucy Smith at telephone (540) 562-6718. For more information on the meeting in general, please contact Will Isenberg at email william.isenberg@deq.virginia.gov or telephone (804) 698-4228. This meeting is open to the public and all are welcome. A 30-day public comment period will follow this meeting, from January 13, 2021, through February 11, 2021. The goal of this meeting is to introduce interested stakeholders to the water quality improvement process in Virginia (i.e., the TMDL process), provide information on PCB monitoring efforts, and invite stakeholder participation and input. During this meeting participants will be invited to serve on the TAC. In the event that 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, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

How to comment and participate: The meetings of the TMDL process are open to the public. Anyone who is interested is welcome. Written comments will be accepted from January 13, 2021, through February 11, 2021. These comments should include the name, address, and telephone number of the person submitting the comments. It is important to have public input throughout the TMDL development process. Among many possible benefits, this input helps to ensure that the final pollution reductions are reasonable, realistic, and reflect local insight. DEQ invites stakeholders interested in serving on the TAC to submit their request during this public comment period. For more information or to submit comments, please contact or comments to the DEQ staff person listed.

Technical Advisory Committee (TAC) Meeting: The Virginia Department of Environmental Quality will virtually host the first meeting of the TAC on Wednesday, February 24, 2021, at 3 p.m. Although this meeting is intended for TAC members, it is open to the public and all are welcome to attend. No registration is necessary for this meeting. Instead, attendees can access the meeting at https://global.gotomeeting.com/join/997151765. Meeting attendees can use their computer audio and computer microphone to participate, or can dial 786-535-321 and enter the access code 997-151-765. Although using a phone for audio only participation is an option, all participants are encouraged to access the meeting using a computer so that they

can view the meeting presentation. This meeting will be recorded. If there are technical issues accessing this meeting or difficulty during the meeting please contact Lucy Smith at telephone (540) 562-6718. For more information on the meeting in general, please contact Will Isenberg at email william.isenberg@deq.virginia.gov or telephone (804) 698-4228. In the event that 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, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

Contact Information: Will Isenberg, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4228, or email william.isenberg@deq.virginia.gov.

Public Comment Period and Public Meeting - Water Quality Study for the Tidal James River and Elizabeth River

The Virginia Department of Environmental Quality (DEQ) and its contractor, the Virginia Institute of Marine Science, are continuing the development of a water quality study to address Polychlorinated Biphenyl (PCB) contamination in the tidal James River, Elizabeth River, and tidal portions of some tributaries. This water quality study is known as a total maximum daily load (TMDL), or simply a watershed clean-up plan. To continue this process, DEQ will hold separate meetings for the Richmond-based Piedmont Regional Office and the Virginia Beach-based Tidewater Regional Office due to the large area and number of stakeholders involved in this project. This notice provides information on the Piedmont public meeting. A 30-day public comment period will follow the public meeting, during which time DEQ invites stakeholders interested in serving on the Technical Advisory Committee (TAC) to submit their request. A TAC typically consists of representatives from local governments, Virginia Pollutant Discharge Elimination System permittees, watershed residents, anglers, recreational and conservation groups, and other stakeholders interested in providing input on the technical aspects of the TMDL development process.

Description of study: DEQ monitoring data indicates levels of PCBs in fish tissue are elevated in the tidal James River, Elizabeth River, and tidal portions of some tributaries and present a risk to individuals who consume the fish (for more information on PCBs watch this DEQ video). As a result, sections of the rivers are listed as impaired for PCBs on the § 303(d) TMDL priority list. Additionally, several James River mainstem segments and tributaries within the tidal watershed are listed as impaired because DEQ monitoring data indicates levels of PCBs in the water above the state water quality criteria. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL priority list and report. TMDLs are developed to identify the total amount of a pollutant (i.e., PCBs) that a waterbody can receive and still meet water quality standards. To restore water quality, pollutant levels must be reduced to the TMDL. TMDLs will be developed for the all of the tidal James River watershed draining from Richmond to its mouth at the Chesapeake Bay and the Elizabeth River. The affected counties in the Piedmont region include Amelia, Appomattox, Buckingham, Charles City, Chesterfield, Colonial Heights City, Cumberland, Dinwiddie, Hanover, Henrico, Hopewell City, New Kent, Nottoway, Petersburg City, Powhatan, Prince Edward, Prince George, Richmond City, and Surry. The affected counties in the Tidewater region include Chesapeake City, Hampton City, Isle of Wight, James City, Newport News City, Norfolk City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, and York.

Public meeting: The Virginia Department of Environmental Quality will virtually host the Piedmont region public meeting for the Tidal James River and Elizabeth River PCB TMDL Project on Thursday, January 28, 2021, from 6 p.m. to 8 p.m. Register for the meeting and receive access information at https://attendee.gotowebinar.com/register/5150281502071344 77. 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 telephone are necessary to participate virtually. Although using a telephone for audio only participation is an option, all participants are encouraged to access the meeting using a computer so that they can view the meeting presentation. This meeting will be recorded. If there are technical issues registering for this meeting or difficulty during the meeting, please contact Kelley West at kelley.west@deq.virginia.gov or telephone (804) 527-5029.

For more information on the meeting in general, please contact the DEQ staff person listed. This meeting is open to the public and all are welcome. A 30-day public comment period will follow this meeting, from January 29, 2021, through March 1, 2021. The goal of this meeting is to reintroduce interested stakeholders to the water quality improvement process in Virginia (i.e., the TMDL process), provide information on PCB monitoring efforts, and invite stakeholder participation and input. During this meeting, participants will be invited to serve on the TAC. 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, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

How to comment and participate: The meetings of the TMDL process are open to the public. Anyone who is interested is welcome. Written comments will be accepted from January 29, 2021, through March 1, 2021. These comments should include the name, address, and telephone number of the person submitting the comments. It is important to have public input throughout the TMDL development process. Among many possible benefits, this input helps to ensure that the final pollution reductions are reasonable, realistic, and reflect local

insight. DEQ invites stakeholders interested in serving on the TAC to submit their request during this public comment period. For more information or to submit comments, please contact the staff person listed.

Contact Information: Jen Rogers, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5174, or email jennifer.rogers@deq.virginia.gov.

Public Comment Period and Public Meeting - Water Quality Study for the Tidal James River and Elizabeth River

The Virginia Department of Environmental Quality (DEQ) and its contractor, the Virginia Institute of Marine Science, are continuing the development of a water quality study to address Polychlorinated Biphenyl (PCB) contamination in the Elizabeth River, the tidal James River, and tidal portions of some tributaries. This water quality study is known as a total maximum daily load (TMDL), or simply a watershed clean-up plan. To continue this process, DEQ will hold separate meetings for the Richmond-based Piedmont Regional Office and the Virginia Beach-based Tidewater Regional Office due to the large area and number of stakeholders involved in this project. This notice provides information for the Tidewater public meeting. A 30-day public comment period will follow the public meeting, during which time DEQ invites stakeholders interested in serving on the Technical Advisory Committee (TAC) to submit their request. A TAC typically consists of representatives from local governments, Virginia Pollutant Discharge Elimination System permittees, watershed residents, anglers, recreational and conservation groups, and other stakeholders interested in providing input on the technical aspects of the TMDL development process.

Description of study: DEQ monitoring data indicates levels of PCBs in fish tissue are elevated in the Elizabeth River, tidal James River, and tidal portions of some tributaries and present a risk to individuals who consume the fish (for more information on PCBs watch this DEQ video). As a result, sections of the rivers are listed as impaired for PCBs on the § 303(d) TMDL priority list. Additionally, several James River mainstem segments and tributaries within the tidal watershed are listed as impaired because DEQ monitoring data indicates levels of PCBs in the water above the state water quality criteria. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL priority list and report. TMDLs are developed to identify the total amount of a pollutant (i.e., PCBs) that a waterbody can receive and still meet water quality standards. To restore water quality, pollutant levels must be reduced to the TMDL. TMDLs will be developed for the all of the tidal James River watershed draining from the Richmond to its mouth at the Chesapeake Bay, and the Elizabeth River. The affected counties in the Tidewater region include Chesapeake City, Hampton City, Isle of Wight, James City, Newport News City, Norfolk City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, and York. The affected counties in the Piedmont region include Amelia, Appomattox, Buckingham, Charles City, Chesterfield, Colonial Heights City, Cumberland, Dinwiddie, Hanover, Henrico, Hopewell City, New Kent, Nottoway, Petersburg City, Powhatan, Prince Edward, Prince George, Richmond City, and Surry.

Public meeting: The Virginia Department of Environmental Quality will virtually host the Tidewater region public meeting for the Tidal James River and Elizabeth River PCB TMDL Project on Tuesday, January 26, 2021, from 6 p.m. to 8 p.m. Register for the meeting and receive access information at https://attendee.gotowebinar.com/register/9198601550875530254. 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 telephone are necessary to participate virtually. Although using a telephone for audio only participation is an option, all participants are encouraged to access the meeting using a computer so that they can view the meeting presentation. This meeting will be recorded. If there are technical issues registering for this meeting or difficulty during the meeting, please contact Kristie Britt at kristie.britt@deq.virginia.gov or telephone (757) 518-2153. For more information on the meeting in general, please contact Mark Richards at email mark.richards@deq.virginia.gov or telephone (804) 698-4392.

This meeting is open to the public and all are welcome. A 30-day public comment period will follow this meeting, from January 26, 2021, through March 1, 2021. The goal of this meeting is to introduce interested stakeholders to the water quality improvement process in Virginia (i.e., the TMDL process), provide information on PCB monitoring efforts, and invite stakeholder participation and input. During this meeting participants will be invited to serve on the TAC.

In the event that 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, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462.

How to comment and participate: The meetings of the TMDL process are open to the public. Anyone who is interested is welcome. Written comments will be accepted from January 26, 2021, through March 1, 2021. These comments should include the name, address, and telephone number of the person submitting the comments. It is important to have public input throughout the TMDL development process. Among many possible benefits, this input helps to ensure that the final pollution reductions are reasonable, realistic, and reflect local insight. DEQ invites stakeholders interested in serving on the TAC to submit their request during this public comment period. For more information or to submit comments, please contact the DEQ staff person listed.

Contact Information: Mark Richards, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond , VA 23218, telephone (804) 698-4228, or email mark.richards@deq.virginia.gov.

Public Comment Period and Public Meeting - Watershed Cleanup Plan for Select Tributaries of the James River

The Virginia Department of Environmental Quality (DEQ) and its contractors, 3E Consulting and James Madison University, are developing a Watershed Cleanup Plan, which consists of two parts, a total maximum daily load (TMDL) and an Implementation Plan (IP), to address benthic impairments in select tributaries of the James River. These tributaries are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for aquatic life use. This is an opportunity for local residents to learn about the condition of the tributaries, share information about the area, and become involved in the process of local water quality improvement.

Meeting description: DEQ will hold a virtual public meeting on January 26, 2021, 6 p.m. to 7:30 p.m. Register for this virtual meeting and receive access information at https://attendee.gotowebinar.com/register/3098877176945529101. This public meeting will introduce the project, provide information on biological monitoring efforts and sources, accept volunteers to be part of a technical advisory committee, and review the next planning steps. Participation and input is strongly encouraged. A 30-day public comment period will follow the public meeting.

Given the existing 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 meeting attendees are encouraged to access the meeting using a computer to view the meeting visuals. Attendees may also use a telephone for audio and a computer for visual to avoid possible interruptions in computer audio. Although the use of a telephone for audio only participation is possible, since the meeting will rely on visuals, audio only participation is discouraged. The URL to register for the virtual meeting is provided in 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 provided in this notice.

Description of study: Segments of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek in Chesterfield, Dinwiddie, and Prince George Counties, and the Cities of Petersburg and Hopewell have been listed as impaired for failing to support the standards for aquatic life use due to an altered benthic community. This standard is intended to protect the aquatic life designated use, which states that all of the Commonwealth's waterways will support a diverse and abundant population of aquatic life. This watershed cleanup plan will include a benthic stressor analysis to determine the most likely pollutant and sources responsible for the impairments. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL priority list and report. TMDLs are developed to identify the total amount of a pollutant that a waterbody can receive and still meet water quality standards. To restore water quality, pollutant levels must be reduced to the TMDL amount. In tandem, an IP will be developed that will describe measurable goals, necessary corrective actions, associated costs and benefits, and the environmental impact of addressing the impairments as well as set a timeline for water quality restoration. The IP addresses the nonpoint source portion of the TMDL reductions needed. Through this watershed cleanup plan process, DEQ will collaborate with a technical advisory committee (TAC) made up of local stakeholders. All are welcome to participate in this committee, and TAC meetings are open to the public.

How to comment and participate: This and future meetings are open to the public and all interested parties are welcome. Register for this virtual meeting and to receive access information at https://attendee.gotowebinar.com/register/3098877176945529101. If there are technical issues registering or difficulty signing on to the meeting, please contact Jennifer Palmore at telephone (804) 527-5058 or email jennifer.palmore@deq.virginia.gov.

In the event that 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, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060.

Written comments will be accepted from January 27, 2021, through February 26, 2021. These comments should include the name, address, and telephone number of the person submitting the comments. It is important to have public input throughout the TMDL development process. Among many possible benefits, this input helps to ensure that the final pollution reductions are reasonable, realistic, and reflect local insight. For more information or to submit written comments, please contact the DEQ staff person listed.

Contact Information: Jen Rogers, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5174, or email jennifer.rogers@deq.virginia.gov.

Public Comment Period and Public Meeting to Present the Salt Management Strategy Toolkit to Proactively Addresses Salt Pollution in the Northern Virginia Region

The Virginia Department of Environmental Quality (DEQ) and its contractor, the Interstate Commission for the Potomac River

Basin (ICPRB), will present the stakeholder developed Salt Management Strategy (SaMS) Toolkit. This toolkit was developed by a broad and diverse Stakeholder Advisory Committee (SAC) to provide resources and recommendations necessary to strike a balance between the benefits and harmful impacts of winter salt use. The SaMS Toolkit was developed for the Northern Virginia region, which includes Arlington, Fairfax, Loudoun, and Prince William Counties and the Cities of Alexandria, Manassas, Manassas Park, Falls Church, and Fairfax. This meeting and the associated public comment period are an opportunity for local residents and interested stakeholders to learn about this valuable resource, the SaMS initiative in general, and provide comment on the SaMS Toolkit.

Description of study: In May 2018, the Environmental Protection Agency approved a total maximum daily load (TMDL) study for the Accotink Creek watershed that identified chloride (salt) from snow and ice management as a contributing cause of a water quality impairment. Additionally, review of water quality data throughout the Northern Virginia region suggest that the patterns observed in the Accotink Creek watershed are not isolated, but instead occur region-wide. In order to assist in the implementation of the Accotink Creek chloride TMDL and proactively address salt pollution throughout the Northern Virginia region, DEQ convened the SaMS SAC to develop a strategy capable of balancing the benefits of winter salt use with the negative impacts. Through this effort, the SaMS SAC developed the SaMS Toolkit, which is a comprehensive resource comprised of winter maintenance best practices, an education and outreach toolbox, tools and plans for tracking salt use, best practice implementation, and water quality improvement, in addition to other informational resources. This public meeting marks the end of the SaMS Toolkit development phase and the beginning of the long-term, adaptive implementation phase.

Public meeting: The Virginia Department of Environmental Quality will virtually host a public meeting to present the SaMS Toolkit on Thursday, January 21, 2020, at 6:30 p.m. Register for the meeting and receive access information at https://register.gotowebinar.com/register/2180983979203362831. 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 telephone are necessary to participate virtually. Although using a telephone for audio only participation is an option, all participants are encouraged to access the meeting using a computer so that they can view the meeting presentation. This meeting will be recorded. If there are technical issues registering for this meeting or difficulty during the meeting, please contact Cathy Nicely at telephone (703) 583-3906. For more information on the meeting in general, please contact Dave Evans at email david.evans@deq.virginia.gov or telephone (703) 583-3835.

In the event that 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, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

How to Comment and Participate: The public meeting is open to the public and anyone who is interested is welcome to attend, during which oral comments will be received. Written comments will be accepted from January 22, 2021, through February 22, 2021. These comments should include the name, address, and telephone number of the person submitting the comments. For more information or to submit comments, please contact the staff person listed.

Contact Information: David Evans, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3835, or email david.evans@deq.virginia.gov.

Proposed Enforcement Action for Shield Contracting LLC

An enforcement action has been proposed for Shield Contracting LLC for violations at the CVS Pharmacy and Flat Rock Development in Powhatan County, Virginia. The State Water Control Board proposes to issue a special order by consent to Shield Contracting LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact person listed will accept comments by email, fax (please include recipient's name), or postal mail from January 4, 2021, to February 3, 2021.

Contact Information: Carla Pool, Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, FAX (804) 698-4178, or email carla.pool@deq.virginia.gov.

Release of the Final 2020 § 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2020 § 305(b)/303(d) Water Quality Assessment Integrated Report on January 4, 2021.

The integrated report combines both the 305(b) Water Quality Assessment and the 303(d) Report on Impaired Waters. The draft report was available for public comment June 8, 2020, through July 9, 2020. Comments were received from the public and the U.S. Environmental Protection Agency (EPA). EPA approved the final report on December 9, 2020.

The final report, public comment-response document, and map images are available for download at https://www.deq.virginia.gov/water/water-quality/water-quality-assessments/most-recent-year-305b-303d-integrated-report/-fsiteid-1.

Questions regarding the report can be directed to the staff person listed.

Contact Information: Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4324, or email sandra.mueller@deq.virginia.gov.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: **14VAC5-405. Rules Governing Balance Billing for Out-of-Network Health Care Services.**

Publication: 37:7 VA.R. 879-887 November 23, 2020.

Correction to Final Regulation:

Page 887, column 1, 14VAC5-405-80, after "**14VAC5-405-80. [**" strike "**Self-funded**"

VA.R. Doc. No. R20-6423; Filed December 4, 2020, 2:44 p.m.