



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in

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

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

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

## STATEMENT

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

## CITATION TO THE VIRGINIA REGISTER

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

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

**Members of the Virginia Code Commission:** John S. Edwards, Chair; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Joanne Frye; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## January 2022 through January 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
38:10	December 13, 2021 ( <b>Monday</b> )	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022
38:26	July 27, 2022	August 15, 2022
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 ( <b>Monday</b> )	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023
39:11	December 27, 2022 ( <b>Tuesday</b> )	January 16, 2023

\*Filing deadlines are Wednesdays unless otherwise specified.

# PETITIONS FOR RULEMAKING

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Agency Decision

**Title of Regulation:** 12VAC5-110. Regulations for the Immunization of School Children.

**Statutory Authority:** §§ 32.1-46 and 32.1-47 of the Code of Virginia.

**Name of Petitioner:** Kristen M. Calleja.

**Nature of Petitioner's Request:** I am writing to voice my request and sincere hope that the board will mandate vaccines for all school employees, with only medical exemptions allowed. Vaccines are already required for all state employees. In addition, vaccines should be required for all students for whom the vaccine has been fully approved, just as many other vaccines are mandated.

My 10th grade daughter and all other kids have sacrificed much over the past 18 months. They only have one childhood. They are finally back to in-person school, but we are already seeing constant disruptions to education for far too many due to infections, possible infections based on symptoms, and mandatory quarantines.

My daughter and all other students should have a right to be able to attend school without being unnecessarily put at risk by other students and teachers who refuse to be vaccinated, and without constant disruptions to their education. And it sure would be great for them to be able to go to school without masks and without worrying about lunch and other unmasked times, as well as overcrowded busses. The irrational minority should not be dictating the public health policy for Virginia or the schools.

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** On September 1, 2021, the Virginia Department of Health (VDH) posted a petition for rulemaking to the Virginia Regulatory Town Hall. The petitions was received from a resident of Virginia. The petition contained two requests: (i) mandate vaccines for all school employees, with only medical exemptions allowed and (ii) mandate the vaccine for all students for whom the vaccine has been fully approved. The petition was posted for a 21-day public comment period and received 15,308 comments. The summary of those comments can be found in the table provided.

Opinions	Total Comments	Percent Total	Unique IP*	Percent Unique
All	15,308		11,718	
Against	14,301	93.42%	11,086	94.61%
For	847	5.53%	607	5.18%

Irrelevant	160	1.05%	106	0.90%
*Total of Opinions count is greater than total unique IPs because some IPs made multiple comments that were logged under different opinion categories.				

Opinion	Categorization	Total Number of Comments	Total Number of Comments with Unique IP Addresses
Against	Religious exemption is necessary	212	205
	Religious exemption is necessary; unconstitutional	42	42
	Should remain voluntary	8,058	6,503
	Should remain voluntary; experimental	329	310
	Should remain voluntary; religious exemption is necessary	606	567
	Should remain voluntary; not enough data on safety and efficacy of vaccine	2,232	2,037
	Should remain voluntary; unconstitutional	642	603
	Should remain voluntary; not enough data on safety and efficacy of vaccine; religious exemption is necessary	101	101
	Should remain voluntary; religious exemption is necessary; unconstitutional	27	27

## Petitions for Rulemaking

	Should remain voluntary; not enough data on safety and efficacy of vaccine; unconstitutional	37	37
	Unconstitutional	127	123
	Not enough data on safety and efficacy of vaccine	1,571	1,429
	Not enough data on safety and efficacy of vaccine; religious exemption is necessary	150	146
	Not enough data on safety and efficacy of vaccine; unconstitutional	159	158
	Not enough data on safety and efficacy of vaccine; religious exemption is necessary; unconstitutional	8	8
<b>For</b>	Support with removal of all other mitigation measures	1	1
	Supports for both staff and students	843	604
	Supports for staff only	1	

Agency Contact: Kristin Collins, Policy Analyst, Office of Epidemiology, Virginia Department of Health, 109 Governor Street, Richmond, VA, 23219, telephone (804) 864-7298, FAX (804) 864-7022, or email [kristin.collins@vdh.virginia.gov](mailto:kristin.collins@vdh.virginia.gov).

VA.R. Doc. No. PFR22-06; Filed September 1, 2021, 1:54 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-191, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations**, and determined that this regulation should be repealed. The department is publishing its report of findings dated October 15, 2021, to support this decision.

This general permit expired December 31, 2010, and has not been reissued. This general permit regulation does not allow the board to provide the public notice opportunities as required by the federal Concentrated Animal Feeding Operation (CAFO) Regulation. CAFOs are now regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the federal CAFO Regulation. This general permit regulation is no longer needed and will be repealed.

Animal feeding operations (AFOs) and CAFOs that do not discharge are also regulated under the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs.

Public comment was received during the public comment period supporting the repeal of this regulation. The general permit associated with this regulation expired December 31, 2010. Continuing to list this regulation as an active regulation leads to confusion concerning regulatory requirements to be complied with. Neither the VPA general permits nor VPDES individual permits used to permit livestock and poultry AFOs and CAFOs conflict with federal laws.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-640, Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements**, and determined that this

regulation should be retained as is. The department is publishing its report of findings dated October 29, 2021, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation requires operators of regulated petroleum aboveground storage tanks (ASTs) and pipeline facilities to demonstrate they have the financial resources available to pay for the costs of containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. The regulation is clearly written and easily understandable.

The agency is recommending the regulation stay in effect without change. The current regulation continues to be needed. The regulation is structured to minimize the impact on the regulated community, including those that are small businesses, while protecting human health and the environment. The regulation requires financial assurance to be provided based on the amount of petroleum that is being stored. Multiple different types of financial mechanisms have been included in the regulation to provide the regulated community with flexibility concerning how they demonstrate financial assurance. The wordings of the financial mechanisms are included in the regulation and are to be used by the regulated community. This assists with reducing the regulatory burden on the regulated community.

This regulation does not duplicate or conflict with federal or state law. The Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) is a companion regulation to this regulation. 9VAC25-91 contains the technical standards for aboveground storage tanks while this regulation addresses the financial assurance requirements for aboveground storage tanks and pipeline facilities.

No comments were received during the public comment period.

The regulation was last amended in 2021 to update an agency name and Code of Virginia citations. The financial assurance mechanisms included in the regulation continue to be available to the regulated community from financial institutions.

The regulation continues to meet the objective of protecting the public from expenses related to containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. All owners, including small business owners, are allowed to select from multiple financial assurance mechanisms to demonstrate financial assurance. This provides the regulated community with flexibility concerning compliance with the financial assurance requirements.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.



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# Periodic Reviews and Small Business Impact Reviews

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF SOCIAL WORK

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC140-20, Regulations Governing the Practice of Social Work**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins December 20, 2021, and ends January 19, 2022.

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: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-294, Applications for Public Assistance**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health,

safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins December 20, 2021, and ends January 10, 2022.

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: Angela Morse, Director, Regional Operations and Local Support, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 396-0310.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**Title of Regulation:** **1VAC20-100. Ranked Choice Voting (adding 1VAC20-100-10 through 1VAC20-100-80).**

**Statutory Authority:** § 24.2-673.1 of the Code of Virginia.

**Effective Date:** December 3, 2021.

**Agency Contact:** Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, 1st Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

#### Summary:

*This regulatory action establishes standards for the administration of ranked choice voting for certain local seats elections, including ballot standards for localities that adopt ranked choice voting or instant runoff voting for a specified election. Ranked choice voting is a method of voting that permits voters to rank their preference of candidates. Changes to the proposed regulation include (i) revised definitions; (ii) clarification, using updated terminology, of how to handle various voter ballot errors; and (iii) inclusion of all relevant details for ranked choice voting tabulation in the reallocation process.*

#### Chapter 100

#### Ranked Choice Voting

#### **1VAC20-100-10. Definitions.**

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

"Active ballot" means a ballot that counts toward an active candidate in the current round of counting.

[ "~~Continuing~~ "Active ] candidate" means a candidate [ or person ] who has not been [ ~~eliminated~~ defeated ] during a round-by-round vote count. In a count [ ~~which that~~ ] lasts multiple rounds, the number of active candidates will decrease with each round.

[ "~~Defective ranking~~" means a voter assigned more than one candidate the same ranking. ]

"Duplicate ranking" means a voter has assigned one candidate multiple rankings.

"Election threshold" means the [ ~~percentage of votes a candidate must receive to guarantee to win a seat or remain within the election~~ number of votes sufficient for a candidate to be elected in a multi-winner, single transferable vote contest. The election threshold equals the total votes counted for active candidates in the first round of tabulation, divided by the sum of one plus the number of offices to be filled, then adding one, disregarding any fractions. Election threshold = ((Total votes cast)/(Seats to be elected+1))+1, with any fraction disregarded ].

[ "~~Eliminated candidate~~" means a candidate who has been eliminated during the round by round vote count.

"Exhausted ballot" means a ballot that can no longer be counted due to the ballot having no continuing candidates in the round.

"Highest-ranked active candidate" means the active candidate assigned to a higher ranking than any other active candidates.

"Inactive ballot " means a ballot that can no longer be counted due to the ballot having no active candidates in the round. ]

"Instant runoff voting" means no more than one seat in the office must be filled by the election.

[ "Ranked choice overvote" means a voter assigned more than one candidate the same ranking. ]

"Ranked choice voting" means a method of [ ~~voting that permits voters to rank their preference for candidates~~ casting and tabulating votes in which (i) voters rank candidates in order of preference, (ii) tabulation proceeds in rounds such that in each round either a candidate or candidates are elected or the last-place candidate is defeated, (iii) votes for voters' next-ranked candidates are transferred from elected or defeated candidates, and (iv) tabulation ends when the number of candidates elected equals the number of offices to be filled ]. Ranked choice voting is [ ~~also~~ ] known as [ ~~instant~~ "instant ] runoff [ ~~voting~~ voting" when electing a single office and "single transferable vote" when electing multiple offices ].

"Ranking" means the [ ordinal ] number [ ~~preference a voter determines for a candidate~~ assigned on a ballot to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number two is the

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# Regulations

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next-highest ranking, and so on, consecutively, up to the number of candidates indicated on the ballot ].

"Round" means a stage of the vote tabulation in which a [ ~~candidate person~~ ] may be elected or [ ~~eliminated~~ the last ranked person is defeated ].

"Single transferable vote" means more than one seat in the office must be filled by the election.

"Skipped ranking" means a voter has left [ ~~at least one a~~ ] ranking [ ~~order~~ ] unassigned but ranks a candidate at a subsequent ranking [ ~~order~~ ].

[ "Surplus fraction" means a number equal to the quotient of the difference between an elected candidate's vote total and the election threshold, divided by the candidate's vote total, (or (V-T)/V, in which "V" is the elected candidate's vote total and "T" is the election threshold), truncated after four decimal places. ]

"Surplus vote" means the number of votes a candidate receives beyond the [ ~~minimum needed in order to receive a seat in a single~~ election threshold set for a ] transferable vote race.

[ ~~"Inclusive Gregory Method of Reallocation" means vote counts are transferred fractionally. When a candidate wins a seat, votes for that candidate are reweighted, multiplying their current weight by the quotient of their surplus vote divided by their total vote.~~

"Transfer value" means the proportion of a vote that a ballot will contribute to its highest-ranked active candidate. Each ballot begins with a transfer value of one. If a ballot contributes to the election of a candidate under 1VAC20-100-50 B, it receives a new transfer value. ]

## **1VAC20-100-20. Administration.**

The Department of Elections shall publish on the department website, <https://www.elections.virginia.gov>, instructions on the administration of ranked choice voting elections.

## **1VAC20-100-30. Ranked choice voting.**

As prescribed by § 24.2-673.1 of the Code of Virginia, a county board of supervisors or city council may elect by majority to conduct an election for its members by ranked choice voting. The adoption for ranked choice voting shall only be valid for the election specified in the ordinance [ ~~signed~~ adopted ] by the governing body.

1. Adoption to conduct an election by ranked choice voting must be enacted no later than 90 days prior to the date of the specified election.
2. Any locality that adopts to conduct an election by ranked choice voting must electronically transfer the signed ordinance to the Department of Elections promptly.
3. No ranked choice voting may be conducted for a primary with fewer than three candidates.

4. Notwithstanding § 24.2-613 E of the Code of Virginia, all ballot forms for an election conducted by ranked choice voting shall comply with the standards prescribed by the State Board of Elections.

## **1VAC20-100-40. Ballot treatment.**

As prescribed by § 24.2-673.1 of the Code of Virginia, ballots shall be tabulated in the following manner:

1. [ ~~Defective rankings~~ Ranked choice overvote ].
  - a. A ballot with a [ ~~defective ranking~~ ranked choice overvote ] shall be counted in the initial round if voter intent can be determined. The ballot shall not be counted in any round in which the ballot has a [ ~~defective ranking~~ ranked choice overvote ].
  - b. A ballot with a duplicate ranking shall be counted unless the voter's choice was [ ~~eliminated~~ defeated in a previous round ].

### [ e. 2. Skipped ranking.

- a. In the event of a ballot with a skipped ranking, the next valid ranking shall be counted.
- b. In the event the ballot reaches two consecutive skipped rankings, the ballot will be considered an inactive ballot. ]

### [ 2- 3. ] Tie breaking. [ ~~All candidates with the fewest number of votes at the end of a round shall be eliminated from the election.~~

- a. In the event two persons have an equal number of votes for a seat and a higher number than any other person in the last round of an election conducted by ranked choice voting, the candidate or person to be elected shall be determined by lot as prescribed by § 24.2-674 of the Code of Virginia.
- b. In the event two or more persons have an equal number of votes for a seat and the fewest number of votes in a round of an election conducted by ranked choice voting, tabulation cannot be continued until one of the persons is defeated. The person to continue as an active candidate shall be determined by lot as prescribed by § 24.2-674 of the Code of Virginia. ]

## **1VAC20-100-50. [ ~~Reallocation of votes~~ Ranked choice voting tabulation ].**

[ ~~Vote reallocation will be conducted with the Inclusive Gregory Method of Reallocation.~~ A. Instant runoff voting. For any election for one office conducted by ranked choice voting, each ballot shall count as one vote for the highest-ranked active candidate on that ballot. Tabulation shall proceed in rounds with each round proceeding sequentially as follows:

1. If two or fewer active candidates remain, the candidate with the greatest number of votes is elected and tabulation is complete.

2. If more than two active candidates remain, the active candidate with the fewest votes is defeated, votes for the defeated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins with subdivision 1 of this subsection.

B. Single transferable vote. For any election for more than one office conducted by ranked choice voting, each ballot shall count, at its current transfer value, for the highest-ranked active candidate on that ballot. Tabulation shall proceed in rounds. Each round proceeds sequentially, until tabulation is complete, as follows:

1. If the sum of the number of elected persons and the number of active candidates is less than or equal to the number of office seats to be filled, then all active candidates are designated as elected, and tabulation is complete. Otherwise, the tabulation proceeds pursuant to subdivision 2 of this subsection.

2. If any active candidate has a number of votes greater than or equal to the election threshold for the contest, that person shall be designated as elected. Each ballot counting for an elected person is assigned a new transfer value by multiplying the ballot's current transfer value by the surplus fraction for the elected person, truncated after the fourth decimal place. The transfer value of each ballot cast for an elected candidate must be transferred to the highest-ranked active candidate on that ballot. Each person elected under this subdivision is deemed to have a number of votes equal to the election threshold for the contest in all future rounds and a new round begins pursuant to subdivision 1 of this subsection.

If no candidate or person is elected pursuant to subdivision 2 of this subsection, the candidate with the fewest votes is defeated and votes for the defeated candidates shall be transferred at their current transfer value to each ballot's next-ranked active candidate and a new round begins pursuant to subdivision 1 of this subsection.

C. Surplus transfer. If in a round of counting conducted under subsection B of this section, two or more active candidates have a number of surplus votes greater than the election threshold for the contest, the surpluses shall be distributed in rounds in which the largest surplus is distributed first, with any ties resolved by lot as required by § 24.2-674 of the Code of Virginia. ]

**1VAC20-100-60. [ ~~Paper Unreadable~~ ] ballots.**

[ For the purposes of this section, "paper ballot" means a tangible ballot that is marked by a voter and must be manually counted. ]

In the event the general registrar receives a ballot that cannot be read by the ballot scanner machine, the general registrar or election official shall transpose the voter's intent to a machine readable ballot.

**[ 1VAC20-100-65. Write-Ins.**

Pursuant to § 24.2-644 C of the Code of Virginia, at all elections conducted by ranked choice voting except primary elections, any voter may vote for any person other than the listed candidates for the office by writing or hand printing the person's name on the official ballot. ]

**1VAC20-100-70. Election results.**

Results for all rounds must be publicly posted on the Department of Elections website at <https://www.elections.virginia.gov>.

**1VAC20-100-80. Outreach.**

[ ~~A.~~ ] For the purposes of this section, "educational information" means nonpartisan information that in plain language informs the public on the adoption of ranked choice voting for an election, a description of ranked choice voting, an unmarked official sample ranked choice voting ballot, and instructions on how to read and mark the ballot.

[ ~~B. 1.~~ ] The Department of Elections shall be required to post educational information about ranked choice voting on its website at <https://www.elections.virginia.gov> for the public.

[ ~~C. 2.~~ ] Any county board of supervisors or city council that adopts to conduct an election by ranked choice voting shall develop and distribute educational information about ranked choice voting no later than 60 days before the specified election.

[ ~~1. a.~~ ] Educational information must be disseminated to the public through circulation in the local newspaper, posted on the locality's website, or mailed to active and inactive voters eligible to vote in the specified election.

[ ~~2. b.~~ ] Educational information must be posted in the office of the general registrar [ no later than 60 days before the specific election ] and made available for distribution if requested by the public.

[ ~~3. c.~~ ] Educational information about ranked choice voting shall be posted in each satellite office and polling place operating for the election.

VA.R. Doc. No. R21-6851; Filed November 30, 2021, 3:18 p.m.



**TITLE 3. ALCOHOLIC BEVERAGES**

**ALCOHOLIC BEVERAGE CONTROL AUTHORITY**

**Fast-Track Regulation**

**Title of Regulation: 3VAC5-10. Procedural Rules for the Conduct of Hearings before the Board and Its Hearing Officers (amending 3VAC5-10-220).**

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**Statutory Authority:** §§ 4.1-103 and 4.1-111 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** January 21, 2022.

**Effective Date:** February 7, 2022.

**Agency Contact:** LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

**Basis:** Section 4.1-103 of the Code of Virginia enumerates the powers of the Alcoholic Beverage Control Authority Board of Directors, which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board of directors with the authority to adopt reasonable regulations to carry out the provisions of the Alcoholic Beverage Control Act (§ 4.1-100 of the Code of Virginia) and to amend or repeal such regulations.

**Purpose:** The Virginia Alcoholic Beverage Control Authority recognizes that the regulation needs to be revised because although the regulation currently references § 2.2-4019 of the Code of Virginia, the pre-trial conferences are not being conducted for those purposes. To eliminate any confusion on the behalf of licensees and applicants participating in these conferences, the regulation is being revised to remove that citation. Additionally, the regulation is being amended to rename the proceeding as a "pre-hearing conference" so that it is not confused with the term "informal conference" as it is used in § 2.2-4019. Revising the regulation will achieve consistency with the regulation and statute. It is in the public interest for the regulation to mirror the actual process, which the amendments allow. The amendments add a provision for virtual and telephonic proceedings, which are beneficial to the public especially during the pandemic.

**Rationale for Using Fast-Track Rulemaking Process:** The regulatory action is not controversial because the amendments consist primarily of changing the name of the proceeding from "informal conference" to "pre-hearing conference." The changes to the regulation reflect processes that have already been implemented for years; however, the regulation references § 2.2-4019 of the Code of Virginia, which does not accurately represent the agency's actual process. The change to regulation does not change current agency process, it just corrects regulatory text so that it aligns to agency process.

**Substance:** The regulation is amended to change the name of a proceeding to "pre-hearing" conference and to remove a citation to § 2.2-4019 of the Code of Virginia.

**Issues:** The primary advantage to the public and the Commonwealth is that this amendment will revise the regulation to more accurately represent the authority's pre-

hearing procedure and prevent any confusion that the citation to § 2.2-4019 of the Code of Virginia may create. The primary advantage to the Commonwealth is that the regulation will actually mirror the current process and will not create any confusion with the licensed community. There are no disadvantages to the public or the Commonwealth.

## Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (Board) proposes to remove the citation to § 2.2-4019 of the Code of Virginia, which is part of the Administrative Process Act (APA). The cited section addresses pre-hearing conferences and would be removed because the Virginia Alcoholic Beverage Control Authority's (Authority) pre-hearing conference procedure slightly differs from the procedure referenced in the APA.

Background. The purpose of this action is to amend the regulation so that it comports with how the Authority conducts its pre-hearing conferences in practice. The current regulation states that the Authority will conduct an informal conference for the reasons set forth in § 2.2-4019, which states in part:

"A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, which notice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case; (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof; and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case."

In practice however, the Authority's pre-hearing conference procedure departs from the statute in two aspects regarding clauses (ii) and (iv). First, the Authority conducts pre-hearing conferences also virtually or telephonically in addition to in-person meetings. Second, the Authority may not issue a

decision at the pre-hearing conference. The proposed amendments account for these two differences and more accurately reflect how the pre-hearing conference is conducted in practice.<sup>2</sup>

**Estimated Benefits and Costs.** Since the proposed amendments more accurately describe how the pre-hearing conferences are already conducted in practice, no economic effect is expected other than improving the accuracy of the regulatory text.

**Businesses and Other Entities Affected.** This revision will impact applicants for Alcoholic Beverage Control (ABC) licenses and current ABC licensees. According to the Authority, there are 20,728 active licenses. They are all subject to the APA and would be impacted by this amendment if they were to go through the hearing process with the Authority. In 2021, there were 44 pre-hearing conferences conducted by the Authority. None of the ABC licensees appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed changes to the regulatory text would more accurately reflect the current practice with no other significant economic impact expected. Thus, an adverse impact is not indicated.

**Small Businesses<sup>4</sup> Affected.<sup>5</sup>** The majority of ABC licensees are believed to qualify as a small business. However, the proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments do not affect localities.

**Projected Impact on Employment.** The proposed amendments do not affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments do not affect the use and value of private property or real estate development costs.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>The Authority cites § 2.2-4000 B of the Code of Virginia and states that the APA is meant to supplement an agency's basic laws in deciding cases, not supersede them. Based on this interpretation, the Authority believes its pre-hearing conference procedure in the proposed regulation is allowed to depart from § 2.2-4019 B of the Code of Virginia in the two aspects as discussed. The Office of Attorney General has certified the Board's authority to promulgate this regulation and concluded that the proposed amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect. See

[https://townhall.virginia.gov/GetFile.cfm?File=2\5856\9447\AGmemo\\_ABC\\_9447\\_v1.pdf](https://townhall.virginia.gov/GetFile.cfm?File=2\5856\9447\AGmemo_ABC_9447_v1.pdf)

<sup>3</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup>Pursuant to § 2.2-4007.04, 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."

<sup>5</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>6</sup>"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.

<sup>7</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

**Summary:**

*The amendments (i) change "informal" conferences to "pre-hearing" conferences; (ii) remove the requirement they be conducted for the reasons set forth in § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia); (iii) stipulate that the pre-hearing conference may be held virtually or telephonically and at least five days prior to the formal hearing; and (iv) allow that the pre-hearing conference may be held, when practical, at the county or city in which the establishment of the applicant or licensee is located.*

**3VAC5-10-220. Informal Pre-hearing conferences.**

A. ~~An informal conference~~ A pre-hearing conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the agency will automatically waive the ~~informal pre-hearing~~ conference when the applicant or licensee does so. When the applicant or licensee is offered ~~an informal a pre-hearing~~ conference and fails to respond within 10 calendar days after the date of such

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offer, the ~~informal pre-hearing~~ conference will be deemed to be waived.

~~B. The informal conference will be conducted for the reasons set forth in § 2.2-4019 of the Code of Virginia. The informal conference may not be used for purposes of agreement fixing a period of suspension or license revocation.~~ The informal pre-hearing conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections, the evidence in support thereof and to hear any matters relevant thereto presented by the interested parties and to explore whether (i) administrative proceedings or objections should be terminated or (ii) the case should proceed to formal hearing and stipulations can be reached. The conference will be open to the public, but participation will be limited to the interested parties, their attorneys-at-law or other qualified representatives, and designated board representatives. The pre-hearing conference may be held virtually or telephonically, and at least five days prior to the formal hearing. The conference ~~will~~ may be held, when practical, at the county or city in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time, and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the ~~informal pre-hearing~~ conference. The ~~informal proceeding pre-hearing conference~~ will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. Any initial decision will include a summary of the informal pre-hearing conference.

V.A.R. Doc. No. R22-6996; Filed November 30, 2021, 1:37 p.m.

## Fast-Track Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-90).**

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 21, 2022.

Effective Date: February 7, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Board of Directors of the Alcoholic Beverage Control Authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board of directors with the authority to adopt reasonable regulations to carry out the provisions of the Alcoholic

Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) and to amend or repeal such regulations.

Purpose: Virginia Alcoholic Beverage Control Authority recognizes that the regulation needs to be revised because there are instances where discounts being offered to the public require the consumer to redeem coupons through other means besides mailing them to the manufacturer or importer. This regulatory change benefits the public by providing more ways for the public to enjoy money-saving discounts while still prohibiting instantly redeemable coupons that may encourage excessive drinking. The goal of this regulatory change is to update the regulation with technology.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking should not generate any controversy because it simply adds the ability for members of the public to redeem coupons by additional options beyond mailing, updating the regulation with current technology.

Substance: The regulatory change replaces the words "mail in" and "mailed" with the word "submitted" to allow for alternative methods by which a consumer may redeem a coupon.

Issues: This regulatory change benefits the public by providing more ways for the public to enjoy money-saving discounts. The regulatory change benefits the Commonwealth by continuing to prohibit instantly redeemable coupons, which may encourage excessive drinking. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (Board) proposes to broaden the methods of redemption for coupons that can be offered by manufacturers and importers and used by consumers to purchase alcoholic beverages.

Background. Currently, the regulation allows manufacturers and importers of spirits, wine, and beer to use only consumer "mailed in" coupons. According to the Virginia Alcoholic Beverage Control Authority (Authority), advancements in technology now allow various methods by which a coupon may be redeemed (i.e., email, mobile devices, websites). The proposed amendments would substitute the words "mail in" and "mailed" with the word "submitted," which would effectively allow additional types of redemption methods. However, the proposed revision maintains the prohibition against instantly redeemable discounts.

Estimated Benefits and Costs. Allowance of additional coupon redemption methods (i.e., email, mobile devices, websites) in addition to mail is expected to provide consumers with more

flexibility as to how coupons may be redeemed. Electronic redemption methods that would be allowed under the proposed regulation also appear to be more convenient for consumers in terms of the speed of redemption and avoidance of standard mail costs (e.g., envelopes, postage stamps, trip to the mailbox). Because of such advantages, manufacturers and importers would likely have incentives to utilize coupons that can be electronically redeemed over the coupons that require mailing in. Thus, some substitution between the types of coupons used may be expected in favor of electronically redeemable coupons.

In theory, increased use of electronically redeemable coupons would lead to an increase in aggregate alcoholic beverage sales and consumption in the Commonwealth to some extent. So, it is reasonable to expect some benefits from this action (i.e., monetary savings by consumers, improved profits for suppliers). Although excessive drinking is usually associated with societal costs, there are many rules geared toward addressing a variety of aspects of excessive drinking that may mitigate any such risks. Additionally, whether the expected increase in aggregate sales or consumption would be significant or not is impossible to accurately assess from the information available.

**Businesses and Other Entities Affected.** This revision will impact manufacturers and importers of alcoholic beverages and consumers. Currently, there are 889 manufacturers and 658 importers licensed by the Authority. None of the affected entities appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>2</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed changes would provide more flexibility to the manufacturers and importers as well as consumers of alcoholic beverages. Given the rules to prevent excessive drinking, an adverse impact does not appear to be indicated.

**Small Businesses<sup>3</sup> Affected.<sup>4</sup>** The proposed amendments do not appear to adversely affect any businesses including small businesses.

**Localities<sup>5</sup> Affected.<sup>6</sup>** The proposed amendments do not directly affect localities.

**Projected Impact on Employment.** Expected increase in sales or consumption of alcoholic beverages indicates a positive effect on business activity and thus may positively affect total employment.

**Effects on the Use and Value of Private Property.** To the extent electronic redemption methods add to the manufacturer or importer sales, a positive effect on their asset values may be expected. The proposed amendments do not appear to affect real estate development costs.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed

amendments. Further the analysis should include: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>3</sup>Pursuant to § 2.2-4007.04, 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."

<sup>4</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>5</sup>"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.

<sup>6</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

**Summary:**

*The amendments provide consumers with flexibility as to how coupons from manufacturers or importers of spirits, wine, and beer may be redeemed by replacing the words "mail-in" and "mailed" with the word "submitted."*

**3VAC5-20-90. Advertising; coupons.**

A. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market; and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers or importers of spirits, wine, and beer may use only consumer ~~mail-in~~ submitted refunds, not instantly redeemable discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet or state government store but shall be ~~mailed~~ submitted directly to the manufacturer or importer or its

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designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Consumer proof of purchase (such as a dated, retail specific receipt) is required for redemption of all consumer coupons. Coupons are permitted in the print media, via the Internet, by direct mail or electronic mail to consumers, or as part of, or attached to, the package. Manufacturers, importers, bottlers, brokers, wholesalers, and their representatives may provide coupon pads to retailers for use by retailers on their premises; if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or ~~his~~ retailer's representative. Wholesale licensees may attach refund coupons to the package if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or ~~his~~ retailer's representative.

2. Manufacturers or importers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least 15 days in advance of the issuance of the coupons of its amount, its expiration date, and the area of the Commonwealth in which it will be primarily used; if not used statewide.

3. Wholesale licensees are not permitted to offer coupons.

4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale, or by direct mail to consumers.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons, and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers ~~which that~~ are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual ~~below~~ younger than the legal age for purchase.

V.A.R. Doc. No. R22-6995; Filed November 30, 2021, 1:39 p.m.

## Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-220).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: January 21, 2022.

Effective Date: February 7, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia enumerates the powers of the Alcoholic Beverage Control Authority Board of Directors, which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations to carry out the provisions of the Alcoholic Beverage Control Act (§ 4.1-100 of the Code of Virginia) and to amend or repeal such regulations.

Purpose: The Virginia Alcoholic Beverage Control Authority recognizes that the regulation needs to be revised because current trends in compensation structure of management agreements involves management companies being paid a percentage of the income from the business that they manage. The authority is often met with resistance when trying to enforce this provision of the regulation because it is not indicative of how most companies operate. The goal is to create another exception to the general rule that will allow for a percentage-based payment while still giving the authority the ability to hold the licensee liable for any violations committed by the management company, which serves the public welfare, and also enforce a reasonable cap on the percentage of income from the licensed business that a management company may receive as payment.

Rationale for Using Fast-Track Rulemaking Process: This is not anticipated to be controversial because it is a requirement only applicable to licensees that choose to use management agreements, which the majority of licensees do not. (Out of over 20,000 licensees, a few more than 700 actually use management agreements.) The changes represent the current industry-acceptable method of payment for companies that utilize management agreements.

Substance: The amendments create an additional exception to the general rule that a licensee may not let another person receive a percentage of the income of the licensed business or have any beneficial interest in such business. Presently, the regulation allows an exception to the general rule where the percentage-based payment is a franchise fee or a rent payment. The revision allows percentage-based payments to management companies and promoters hired by the licensee to handle operational duties on behalf of the licensee provided that the management company or promoter receives less than 10% of the business income and the authority is provided a copy of the contract indicating that the management company or promoter is an agent of the licensee for the purposes of exercising the privileges of the license, and the licensee is liable for any violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) or Alcoholic Beverage Control Authority regulation.

**Issues:** The primary advantage to the public and the Commonwealth is that this amendment will allow the regulation to catch up to current business trends while still maintaining control over who can receive percentage-based payments from licensed entities, limiting the amount of these payments and maintaining administrative liability for entities that are not within the exception created by this provision. There are no perceived disadvantages to the public or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

**Summary of the Proposed Amendments to Regulation.** The Virginia Alcoholic Beverage Control Authority Board of Directors (Board) proposes to allow percentage-based payments to management companies and promoters hired by the licensee to handle operational duties on behalf of the licensee, provided that the management company or promoter receives less than 10% of the business income.

**Background.** Currently, the regulation prohibits percentage-based payments to third parties except for two instances where the percentage-based payment is a franchise fee or a rent payment. The purpose of the general prohibition against the percentage-based payments is to prevent otherwise unqualified individuals from operating a licensed business (e.g., hidden ownership).

The proposed changes would create an additional exemption to the general rule and thereby allow percentage-based payments to a management company or promoter if the payment is less than 10% of the business income. According to the Virginia Alcoholic Beverage Control Authority (Authority), compensation structures in management agreements based on the percentage of income for a licensed business have been more common in recent years. Examples of such agreements include operation of a restaurant in a hotel or operation of a food-court business in a mall. In such situations, a party may own the location and may wish to reap most of the profits from that location but may not have the business expertise to run it in instances where alcoholic beverages are served. The 10% threshold is rooted in the statutory disclosure requirements whereby an ownership percentage above the threshold is subject to background checks.<sup>2</sup>

**Estimated Benefits and Costs.** It is not unusual for an entity or an individual to have the capital or real estate needed to start a business that requires an alcoholic beverage license but to lack the experience needed to run such a business. The proposed regulation would accommodate such entities or businesses by allowing them to hire other individuals or entities with expertise to run such businesses based on a percentage of

revenues. Currently, the Authority does not tolerate such compensation structures, and once identified, the licensees are usually forced to modify their licenses to reflect a status as joint owners, which triggers a need for all owners to comply with the ownership requirements (such as background checks and liability) as is already required for the primary licensee. The joint license requirements currently discourage this type of business model by imposing requirements on an individual who or entity that has the expertise to run such a business but may lack the capital or the real estate to operate it.

Other requirements will remain in place that would likely help prevent the abuse of this new exception. These include the 10% threshold on percentage-based payments and the requirement that the Authority be provided a copy of the contract indicating that the management company or promoter is an agent of the licensee for the purposes of exercising the privileges of the license and the licensee is liable for any violations of Title 4.1 (the Alcoholic Beverage and Cannabis Control Act) or of Board regulations that may be committed by the management company or promoter.

In summary, the proposed amendments would remove a barrier to forging partnerships by allowing capital or real estate resources to work with operational expertise while minimizing the risk of hidden ownerships or violations of laws and regulations.

**Businesses and Other Entities Affected.** According to the Authority, there are 20,648 licensed businesses in the Commonwealth. Of these, 713 currently utilize management agreements. A subset of the 713 licensees are most likely to take advantage of the newly available percentage-based compensation structure. None of the licensees appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the percentage-based payments represents a new business friendly compensation structure option. Thus, no adverse impact is indicated.

**Small Businesses<sup>4</sup> Affected.<sup>5</sup>** The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments do not introduce costs for local governments.

**Projected Impact on Employment.** To the extent the proposed allowance for percentage payments help start new businesses, a positive impact on employment can be expected.

**Effects on the Use and Value of Private Property.** To the extent the proposed allowance for percentage payments help start new businesses, a positive impact on asset values of parties on both sides of the agreement and on the value of real estate involved may be expected. The proposed amendments do not appear to directly affect the real estate development costs.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>See §§ 4.1-222 and 4.1-225 of the Code of Virginia.

<sup>3</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup>Pursuant to § 2.2-4007.04, 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."

<sup>5</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>6</sup>"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.

<sup>7</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

*The amendments create an additional exception to the general rule that a licensee may not let another person receive a percentage of the income of the licensed business or have any beneficial interest in such business. The new exception allows percentage-based payments to management companies and promoters hired by the licensee to handle operational duties on behalf of the licensee provided that the management company or promoter receives less than 10% of the business income and the authority is provided a copy of the contract indicating that the management company or promoter is an agent of the licensee for the purposes of exercising the privileges of the license and the licensee is liable for any violation of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the*

*Code of Virginia) or Alcoholic Beverage Control Authority regulation committed by the management company or promoter.*

**3VAC5-50-220. Interests in the businesses of licensees.**

Persons to whom licenses have been issued shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses; ~~or~~

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses; and do not unreasonably restrict the control of the licensee over the sale and consumption of alcoholic beverages; or

3. The payment by the licensee of a management fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted under the license where the licensee has contracted with a management company or promoter to perform operational duties on behalf of the licensee, provided that:

a. All payments to any management company or promoter are less than 10% in aggregate of the gross receipts of the business conducted under the license; and

b. The licensee provides the Alcoholic Beverage Control Authority (authority) a copy of the contract between the licensee and the promoter that identifies the management company or promoter as an agent of the licensee for the purposes of exercising the privileges of the license and holds the licensee liable for any violations of the Alcoholic Beverage Control Act (§ 4.1-100 of the Code of Virginia) or authority regulation committed by the management company or promoter.

VA.R. Doc. No. R22-6997; Filed November 30, 2021, 1:43 p.m.



## 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:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-30, 4VAC20-620-40).

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

**Effective Date:** December 8, 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 allow the Marine Resources Commission to establish by public announcement on the commission's website landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.*

#### 4VAC20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of summer flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, ~~as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625), and shall be distributed as described in subsections B through G of this section.~~

B. The commercial harvest of summer flounder from Virginia tidal waters for each calendar year shall be limited to 100,000 pounds of the annual quota described in subsection A of this section.

~~C. From the first Monday in January through October 15, the allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 60% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.~~

~~D. From October 16 through December 31, allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 40% of the quota as described in subsection A of this section after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E of this section.~~

~~E. Should landings from the first Monday in January through October 15 exceed or fall short of 60% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 100,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.~~

~~F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section.~~ C. It shall be unlawful for any person to harvest or to land summer flounder for commercial purposes after the commercial harvest limit or any allowable commercial landings as described in this section have been attained and announced as such. If any person lands summer flounder after the commercial harvest limit or any allowable commercial landing have been attained and announced as such, the entire amount of summer flounder in that person's possession shall be confiscated.

~~G. D.~~ It shall be unlawful for any buyer of seafood to receive any summer flounder after any commercial harvest limit or landing quota allowable commercial landings as described in this section has been attained and announced as such.

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

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

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

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

~~C. From February 25 through April 7, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:~~

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

~~2. Land in Virginia more than a total of 15,000 pounds of summer flounder.~~

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

~~D. From June 15 through August 15, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:~~

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

~~2. Land in Virginia more than a total of 12,500 pounds of summer flounder.~~

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

~~E. From September 8 through October 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:~~

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

~~2. Land in Virginia more than a total of 15,000 pounds of summer flounder.~~

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

~~F. From November 1 through December 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:~~

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

~~2. Land in Virginia more than a total of 12,000 pounds of summer flounder.~~

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

C. It shall be unlawful for any person to land summer flounder in Virginia that was harvested outside of Virginia waters, except as in accordance with the established seasons and

landing limits announced by the Marine Resources Commission (commission). Season opening dates, closing dates, and landing limits shall be set based on market conditions and quota monitoring and announced on the commission website. Within each season announced by the commission, it shall be unlawful to do any of the following:

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

2. Land any summer flounder more than the landing limit announced by the commission.

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

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

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

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

~~J. G.~~ If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from

such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

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

~~L. I.~~ It shall be unlawful for any boat or vessel possessing summer flounder on board to enter Virginia waters for safe harbor unless they have contacted the Marine Resources Commission Operations Station in advance of such entry into Virginia waters. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

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

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

~~O. K.~~ It shall be unlawful to transfer or offload summer flounder from one vessel to another vessel at sea.

VA.R. Doc. No. R22-7040; Filed December 7, 2021, 2:22 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:** **4VAC20-754. Pertaining to Importation of Fish, Shellfish or Crustacea into Virginia's Waters (amending 4VAC20-754-20, 4VAC20-754-30).**

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

**Effective Date:** December 10, 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 modify the list of approved states and waters from which fish, shellfish, and crustacean may come in order to be introduced into Virginia waters; the species of fish, shellfish, and crustacean that may be introduced into Virginia waters; and the criteria necessary for fish, shellfish, and crustacean to be imported for introduction into Virginia waters.*

**4VAC20-754-20. Definitions.**

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

"Atlantic coastal areas" means the tidal waters of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, and Georgia and the tidal waters of the state of Florida that enter the Atlantic Ocean through lands on the eastern side of the state of Florida north of the southernmost point of the mainland peninsula of Florida.

"Clinical disease" means infection by endemic Perkinsus or Haplosporidium pathogens or QPX that exceeds 5.0% prevalence in a sample or with any single infection of moderate or greater intensity or infection by any non-endemic pathogen.

"Northern broodstock" means clams that originated in Virginia waters or other growing areas on the east coast of the continental United States north of Virginia.

"Shell height" means the straight-line distance from the hinge of the mollusk to its bill.

"Shell length" means the longest straight-line distance on the mollusk from edge to edge.

"VIMS" means the Director of the Virginia Institute of Marine Science or Virginia Institute of Marine Science staff designated by the director to act with the same authority.

**4VAC20-754-30. Approved species and criteria for importation.**

A. Pursuant to the provisions of § 28.2-825 of the Code of Virginia and under the following conditions, it shall be lawful to import into the Commonwealth, with the intent of placing such animals into the waters of the Commonwealth, any

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species listed below in this chapter, except as prohibited in the exception contained in subdivision 1 of this subsection:

1. Any hard clam of the species *Mercenaria mercenaria* from ~~the waters of any coastal area or state within the continental United States and that is absent of any known shellfish pathogen, as specified in subsection B of this section, except that any importation of hatchery-produced seed of the genus *Mercenaria* from Pacific coastal states within the continental United States shall be prohibited, and any importation of hatchery-produced seed of the genus *Mercenaria* from South Carolina or Florida shall meet all requirements established by subdivision 1 a through d of this subsection. Importation requirements established by subdivision 1 a through d of this subsection shall be in addition to those importation requirements established by subsection B of this section~~ Atlantic coastal areas and that is absent of clinical disease caused by any known shellfish pathogen, as specified in subsection B of this section. Importation requirements established by subdivisions 1 a through 1 d of this subsection, shall be in addition to those importation requirements established by subsection B of this section.

a. The ~~South Carolina or Florida~~ hatchery or facility shall certify that only northern broodstock clams of the genus *Mercenaria*, absent of shellfish pathogens, were used to produce hard clam seed that is to be exported to Virginia. The certification shall be accompanied by evidence that the facility took possession of the northern broodstock hard clams within the previous 12 months.

b. The ~~South Carolina or Florida~~ hatchery or facility shall certify that any clam seed scheduled for importation into Virginia was produced from broodstock that satisfies the requirements specified by subdivision 1 a of this subsection.

c. The ~~South Carolina or Florida~~ hatchery or facility shall certify that only hard clams of northern broodstock were held in the facility used for spawning purposes throughout the time period, within a calendar year, corresponding to all shipments of hard clam seed to Virginia, and all shipments of clam seed shall be accompanied by a tag indicating the name of the hatchery or facility and the quantity on a per bag or container basis.

d. Any certification requirements described in subdivisions 1 a and 1 b of this subsection shall accompany the certified statement from an approved shellfish pathologist as to the ~~complete~~ complete absence of known shellfish pathogens clinical disease in a random sample of hard clam seed of the genus *Mercenaria* scheduled for importation into Virginia, as described in subsection B of this section. All certified statements required for importation of hard clam seed of genus *Mercenaria* as specified by subdivisions 1 a and 1 b of this subsection and subsection B of this section shall be provided to the Virginia Marine Resources Commission, ~~Fisheries~~

~~Management Division~~, at least 10 days prior to the shipment of any hard clam seed of genus *Mercenaria*.

2. Any American oyster shellstock of the species *Crassostrea virginica* greater than ~~25mm~~ 15mm in shell height from ~~the waters of New England, Mid Atlantic, or South Atlantic coastal areas or states and that is absent of any known non-endemic shellfish pathogen pathogens and with Perkinsus and Haplosporidium infection prevalence and intensity no higher than in recipient Virginia waters, as specified in subsection B of this section.~~

3. Any American oyster hatchery-produced seed of the species *Crassostrea virginica* less than ~~25mm~~ 15mm in shell height from ~~the waters of any coastal area or state within the Continental United States and~~ Atlantic coastal areas that is absent of clinical disease caused by any known shellfish pathogen, as specified in subsection B of this section, or documentation of appropriate certification of the hatchery facility demonstrating compliance with biosecurity standards under a VIMS-supported program for seed of the size in question.

4. Any bay scallop hatchery-produced seed of the species *Argopecten irradians* less than 25mm in shell height from ~~the waters of any coastal area or state within the continental United States~~ Atlantic coastal areas and that is absent of clinical disease caused by any known shellfish pathogen, as specified in subsection B of this section.

5. Any surf clam hatchery-produced seed of the species *Spisula solidissima* less than 25mm in shell length from ~~the waters of any coastal area or state within the continental United States~~ Atlantic coastal areas and that is absent of clinical disease caused by any known shellfish pathogen, as specified in subsection B of this section.

6. Any soft shell clam-hatchery-produced-seed of the species *Mya arenaria* less than 25mm in shell length from ~~the waters of any coastal area or state within the United States~~ Atlantic coastal areas and that is absent of clinical disease caused by any known shellfish pathogen.

7. Any pre-molt (peeler) blue crab of the species *Callinectes sapidus* from the waters of the states of New Jersey, Delaware, Maryland, North Carolina, South Carolina, or Georgia.

B. ~~In~~ Requirements to be met in order to import any species described in subsection A of this section; shall include a certified statement from an approved shellfish pathologist as to the ~~complete~~ complete absence of clinical disease caused by any known shellfish pathogens in a random sample shall be provided, or for oysters of Perkinsus and Haplosporidium prevalences and intensities no higher than in recipient Virginia waters. That certified statement shall be provided to the Virginia Marine Resources Commission, ~~Fisheries Management Division~~, at least 10 days prior to the shipment of any molluscan shellfish specified above in this chapter for introduction into the waters

of the Commonwealth. The test for shellfish pathogens in all shellfish species ~~except oysters~~ shall be from a random sample of 60 individuals from the shipment or population in question that was examined by histological and fluid thioglycollate methods, ~~or histological and PCR methods for small seed,~~ within ~~60~~ 30 days of each importation. ~~For oysters, samples shall be tested within 30 days of each importation.~~ Documentation of appropriate hatchery facility certification demonstrating compliance with biosecurity standards under a VIMS-supported program may be accepted in lieu of batch analysis of oyster and Mercenaria seed proposed for transfer at the discretion of the Virginia Marine Resources Commission.

C. Shipments of any molluscan shellfish specified ~~above~~ in this chapter, upon entry into the Commonwealth for introduction into the waters of the Commonwealth, shall be accompanied by a certified statement from an approved shellfish pathologist as to the ~~complete~~ absence of clinical disease caused by any known shellfish pathogens in a random sample of 60 individuals from the shipment or population in question or by documentation of appropriate hatchery facility certification demonstrating compliance with biosecurity standards under a VIMS-supported program for seed of the size in question and written ~~acknowledgment~~ acknowledgment from the Virginia Marine Resources Commission on the receipt of such statement or documentation.

D. Shipments of any species under the provisions of this chapter shall be accompanied by documentation of the quantity imported.

E. The provisions of the chapter shall not apply to the importation of any molluscan shellfish from the waters of the Delaware Bay or the Maryland portion of the Chesapeake Bay and its tributaries.

VA.R. Doc. No. R22-7041; Filed December 7, 2021, 2:41 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-400, 9VAC25-260-420, 9VAC25-260-440, 9VAC25-260-510).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR 131.

Effective Date: November 24, 2021.

On December 9, 2020, the State Water Control Board adopted revisions to the water quality standards in 9VAC25-260-400, 9VAC25-260-420, 9VAC25-260-440, and 9VAC25-260-510. These revisions designate portions of four waterbodies as public water supplies. The amendments were published in final

form on June 7, 2021, in Volume 37, Issue 21 of the Virginia Register of Regulations ([37:21 VA.R. 3354-3358 June 7, 2021](#)) to be effective upon filing notice of U.S. Environmental Protection Agency (EPA) approval with the Registrar of Regulations. The State Water Control Board has received a letter from Catherine A. Libertz, EPA Region III Water Division Director, dated November 10, 2021, approving the amendments, and filed notice with the Registrar.

Copies are available by calling toll free at 1-800-592-5482 ext. 4121 or local at 804-698-4121; by written request to David Whitehurst, P.O. Box 1105, Richmond, VA 23218; or by email request to [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).

Agency Contact: David Whitehurst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4121, FAX 804-698-4178, or email [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).

VA.R. Doc. No. R21-6535; Filed November 24, 2021, 11:00 a.m.

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## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### 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: **10VAC5-200. Short-Term Lending (amending 10VAC5-200-10).**

Statutory Authority: §§ 6.2-1815 and 12.1-13 of the Code of Virginia.

Effective Date: December 15, 2021.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, or email [dustin.physioc@scc.virginia.gov](mailto:dustin.physioc@scc.virginia.gov).

Summary:

*The amendment adds the definition of "business check" to mean a paper check, an electronic check, or an electronic funds transfer through the Automated Clearing House system.*

AT RICHMOND, DECEMBER 1, 2021  
COMMONWEALTH OF VIRGINIA, ex rel.  
STATE CORPORATION COMMISSION

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# Regulations

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CASE NO. BFI-2021-00101

Ex Parte: In the Matter of Defining the  
Term "Business Check" in the Regulations  
Governing Short-Term Lending

## ORDER ADOPTING A REGULATION

On October 12, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions to amend 10 VAC 5-200-10 of the Commission's rules governing Short-Term Lending, 10 VAC 5-200-10 et seq. by defining the term "business check" to mean a paper check, an electronic check, or an electronic funds transfer through the Automated Clearing House system. The Order to Take Notice and proposed regulation were published in the Virginia Register of Regulations on November 8, 2021, posted on the Commission's website, and sent to all short-term lenders licensed under Chapter 18 of Title 6.2 of the Code of Virginia and other interested persons. The Order to Take Notice invited all persons to participate and required that any comments or requests for a hearing on the proposed regulation be submitted in writing on or before November 19, 2021.

Comments on the proposed regulation were filed by The Pew Charitable Trusts, which supports the proposal. The Commission did not receive any requests for a hearing.

NOW THE COMMISSION, having considered this matter, finds that the proposed regulation should be adopted with an effective date of December 15, 2021. The Commission expresses its appreciation to The Pew Charitable Trusts for its written comments.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, as attached hereto, is adopted effective December 15, 2021.

(2) This Order and the attached regulation shall be made available on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(3) The Commission's Division of Information Resources shall provide a copy of this Order and the regulation to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

A COPY of this Order and the attached regulation shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached regulation to every short-term lender licensed under Chapter 18, The Pew Charitable Trusts, and such other interested persons as he may designate.

## 10VAC5-200-10. Definitions.

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

"Act" means Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a short-term loan. This includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, and calendars.

"Business check" for purposes of the Act and this chapter means a paper check, an electronic check, or an electronic funds transfer through the Automated Clearing House system.

"Business day" for purposes of the Act and this chapter means a day on which the licensee is able to make loans pursuant to the Act.

"Duplicate original" means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a credit card, prepaid card, debit card, or the Automated Clearing House system.

"Liquid assets" for purposes of the Act and this chapter means funds held in a checking account or savings account at a depository institution, money market funds, commercial paper, and treasury bills.

"Member of the military services of the United States" for purposes of the Act and this chapter means a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

"Other dependent of a member of the military services of the United States" for purposes of the Act and this chapter means (i) an individual under the age of 18 whose mother or father is a member of the military services of the United States or (ii) an individual for whom a member of the military services of the United States provided more than one-half of the individual's financial support for 180 days immediately preceding the date the individual applied for a short-term loan.

"Payday loan" means a loan made pursuant to the Act and this chapter prior to January 1, 2021.

"Prepaid card" means a card with a network logo (e.g., Visa, MasterCard, American Express, or Discover) that is used by a cardholder to access money that has been loaded onto the card in advance.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-1800 of the Code of Virginia.

VA.R. Doc. No. R22-7001; Filed December 1, 2021, 11:05 a.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF PHARMACY**

**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:** **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehouseurs.**

**Agency Contact:** Elaine Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-50)

~~Application for License as a Wholesale Distributor (rev. 10/2020)~~

[Application for License as a Wholesale Distributor \(rev. 11/2021\)](#)

[Application for a Permit as a Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for a Permit as a Non-Restricted Manufacturer \(rev. 10/2020\)](#)

[Application for Registration as a Nonresident Manufacturer \(rev. 10/2020\)](#)

[Application for a Permit as a Warehouseur \(rev. 10/2020\)](#)

[Application for Registration as a Nonresident Warehouseur \(rev. 10/2020\)](#)

[Application for License as a Wholesale Distributor \(rev. 10/2020\)](#)

~~Application for a Non Resident Wholesale Distributor Registration (rev. 10/2020)~~

~~Application for a Non Resident Third Party Logistics Provider Registration (rev. 10/2020)~~

~~Application for a Permit as a Third-Party Logistics Provider (rev. 10/2020)~~

[Application for Non-Resident Wholesale Distributor Registration \(rev. 11/2021\)](#)

[Application for a Non-Resident Third-Party Logistics Provider Registration \(rev. 11/2021\)](#)

[Application for a Permit as a Third-Party Logistics Provider \(rev. 11/2021\)](#)

[Application for a Re-Inspection of Facility \(rev. 10/2020\)](#)

VA.R. Doc. No. R22-7039; Filed December 1, 2021, 10:56 a.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:** **20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-150).**

**Statutory Authority:** §§ 12.1-13 and 56-265.30 of the Code of Virginia.

**Effective Date:** January 1, 2022.

**Agency Contact:** Lauren Govoni, Director, Division of Utility and Railroad Safety, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9590, FAX (804) 371-9734, or email lauren.govoni@scc.virginia.gov.

**Summary:**

*The amendments allow for a qualified contractor, in addition to the excavator, to complete the post-excitation video inspection for trenchless excavation across gravity fed sewer mains and combination storm and sanitary sewer system utility lines.*

AT RICHMOND, DECEMBER 1, 2021

PETITION OF

VIRGINIA NATURAL GAS, INC.

CASE NO. URS-2021-00171

For rulemaking to revise requirement for trenchless excavation set forth in

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# Regulations

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20VAC5-309-150 of the Rules for Enforcement of the Underground Utility Damage Prevention Act

## ORDER ADOPTING REGULATIONS

On May 6, 2021, Virginia Natural Gas, Inc. ("Petitioner"), filed a Petition for Rulemaking ("Petition") requesting that the State Corporation Commission ("Commission") initiate a rulemaking for the limited purpose of revising 20 VAC 5-309-150 B 4 ("Rule 150 B 4") of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act that prescribes requirements for post excavation inspection. The Petition included proposed language ("Proposed Rule") to be considered by the Commission.

The Petitioner states that the Proposed Rule would provide for greater safety, efficiency, and flexibility when conducting post-drill inspections of certain trenchless excavations.<sup>1</sup> The Petitioner states 20 VAC 5-309-150 establishes the requirements for trenchless excavation. Subsection B, in particular, provides that "any person conducting trenchless excavation crossing any gravity fed sewer main or combination storm-sanitary sewer system utility lines need not expose such utility lines by hand digging" if certain steps are taken, including obtaining appropriate documentation from the utility line operator, appropriately locating the utility line and ensuring proper clearance, and conducting a post-excavation inspection to ensure no cross bore or other damage has occurred.<sup>2</sup>

The Petitioner seeks the amendment of the rule regarding the post-excavation inspection set forth in subsection B 4. Rule 150 B 4 currently requires the same excavator who performed the pre-excavation inspection and trenchless excavation work to also perform the post-excavation inspection using the same type of video equipment.<sup>3</sup>

With its Petition, the Petitioner proposes the revision of Rule 150 B 4 to allow a qualified contractor other than the one who performed the trenchless excavation to conduct the post-excavation inspection of that work. The Proposed Rule would still require a post-excavation video inspection of the sewer lines but provides an alternative to the current requirement that the excavator inspect his or her own excavation work.<sup>4</sup>

On May 27, 2021, the Commission entered an Order Establishing Proceeding ("Procedural Order") which, among other things, directed that notice of the Proposed Rule be given to interested persons and that such interested persons and the Commission Staff ("Staff") be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rule. The Procedural Order directed the Commission's Division of Information Resources to provide a copy thereof to the Registrar of Regulations for publication in the Virginia Register of Regulations.<sup>5</sup> The Procedural Order further directed the Petitioner: (i) to serve a copy thereof upon each member of the

Commission's Underground Utility Damage Prevention Advisory Committee and each entity listed in Attachment B of the Procedural Order.<sup>6</sup>

On August 25, 2021, Staff filed a letter in lieu of comments stating that Staff does not oppose the proposed revision. On September 3, 2021, the Petitioner filed a letter in lieu of rebuttal testimony acknowledging the Staff's comments and requesting that the Commission approve its Petition. No other comments or requests for hearing were filed in the docket.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Proposed Rule as submitted for Commission consideration should be approved subject to our findings discussed herein. The Rules we adopt herein contain modifications to those that were first proposed by Petitioner and published in the Virginia Register of Regulations on June 21, 2021. These modifications are for clarification and follow our consideration of the entire record in this proceeding.

The Petitioners request that, among other things, 20 VAC 5-309-150 B 4 be revised to remove the term "excavator" and replace it with the term "qualified contractor." The Commission finds that it is more appropriate to add the term "qualified contractor" while also retaining the permissibility of the excavator also performing the requisite post excavation inspections.

20 VAC 5-309-150 B 5 ("Rule 150 B 5") states "[t]he excavator shall immediately notify the utility line operator of any damage found." The Commission finds that by approving the Proposed Rule as revised herein, the language of Rule 150 B 5 should also be revised to allow for the qualified contractor who may ultimately perform the post excavation inspection to immediately notify the utility line operator of any damage found.

20 VAC 5-309-150 B 6 ("Rule 150 B 6") states "[a]fter the bore has been completed, the excavator shall make all video documentation available to the utility line operator and the division upon request. Such video documentation shall be maintained and made available for 12 months from the time of notice of excavation." The Commission finds that here also, Rule 150 B 6 should be revised to allow for the qualified contractor to make all video documentation available to the utility line operator and the division upon request.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309-10 et seq., hereby are adopted as shown in Attachment A to this Order and shall become effective as of January 1, 2022.
- (2) A copy of these regulations as set out in Attachment A of this Order Adopting Regulations shall be forwarded to the Registrar of Regulations for publication in the Virginia Register.

(3) This case is dismissed.

AN ATTESTED COPY hereof shall be sent 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 State Corporation Commission, c/o Document Control Center, 1300 E. Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Division Utility and Railroad Safety.

<sup>1</sup>Petition at 1.

<sup>2</sup>Id. at 2.

<sup>3</sup>Id.

<sup>4</sup>Id.

<sup>5</sup>The Order Establishing Proceeding and the proposed regulation were published in the June 21, 2021 issue of the Virginia Register of Regulations.

<sup>6</sup>On July 1, 2021, the Petitioner filed a Certificate of Service stating that it had mailed a copy of the Procedural Order to each member of the Underground Damage Prevention Advisory Committee as well as each Virginia Local Natural Gas Distribution Company.

**20VAC5-309-150. Requirement for trenchless excavation.**

A. Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. Except as provided in subsection B of this section, these steps shall include, ~~but are not limited to~~ the following:

1. The excavator should verify that all utility lines in the area are marked;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose all utility lines that will be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore. For a parallel type bore, unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;

7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;

8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and

9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the hole or pit can be hand excavated further to maintain a visual inspection of the drill head.

B. Notwithstanding the requirements of subdivision A 6 of this section, any person conducting trenchless excavation crossing any gravity fed sewer main or combination storm/sanitary sewer system utility lines need not expose such utility lines by hand digging if, in addition to meeting the other applicable requirements set forth in subsection A of this section, the following steps are taken:

1. Prior to commencing a trenchless excavation project, the excavator shall receive documentation from the utility line operator (such as, but not limited to, documentation through the permitting process) documenting that the operator has been notified of the proposed trenchless excavation and that trenchless excavation will be used to cross its underground utility line. The scope of a trenchless excavation project shall not exceed the scope of a single notice of excavation;
2. Prior to commencing the boring process, the excavator shall determine (i) the depth of the utility line through appropriate locating technology and (ii) the diameter and condition of the utility line using a sewer system camera with video recording capability;
3. The excavator shall ensure that a clearance of at least three feet is maintained between the bore path and the utility line;
4. ~~Using the same type of video equipment identified in subdivision B 2 of this section, after~~ After the trenchless excavation project has been completed, the excavator [ or ] a qualified contractor shall use a closed circuit sewer system video camera to determine the condition of the utility line and ensure that no cross bore or other damage has occurred;
5. The excavator [ or qualified contractor ] shall immediately notify the utility line operator of any damage found; and
6. After the bore has been completed, the excavator [ or qualified contractor ] shall make all video documentation available to the utility line operator and the division upon request. Such video documentation shall be maintained and made available for 12 months from the time of the notice of excavation.

C. The provisions of subsection B of this section shall apply only to gravity fed sewer mains or combination storm/sanitary systems that are considered "utility lines" as that term is defined in § 56-265.15 of the Act.

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# Regulations

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DOCUMENTS INCORPORATED BY REFERENCE  
(20VAC5-309)

~~Virginia Underground Utility Marking Standards, March 2004, Virginia State Corporation Commission, Division of Utility and Railroad Safety.~~

[Virginia Underground Utility Marking Standards, February 2020, Virginia State Corporation Commission, Division of Utility and Railroad Safety](#)

V.A.R. Doc. No. R21-6795; Filed December 1, 2021, 11:37 a.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

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

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

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Work Incentives Specialist Advocate \(WISA\) Manual.](#)

Public Comment Deadline: January 19, 2022.

Effective Date: January 20, 2022.

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

### DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: [Obtaining a Virginia Driver Privilege Card.](#)

[Obtención de una Tarjeta de Privilegio de Conductor en Virginia.](#)

Public Comment Deadline: January 19, 2022.

Effective Date: January 20, 2022.

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

### COMMONWEALTH TRANSPORTATION BOARD

Titles of Documents: [Office of Land Use Guide to Highway System Changes.](#)

[Locally Administered Projects Manual.](#)

Public Comment Deadline: January 19, 2022.

Effective Date: January 20, 2022.

Agency Contact: Jo Anne P. Maxwell, Regulatory Coordinator, Policy Division, Department of Transportation, 11th Floor, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Redbud Run Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Frederick County

Redbud Run Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Frederick County. Redbud Run Solar will be located near the intersection of Woods Mill and Pine Roads, approximately three miles southeast of the Town of Stephenson. Latitude and longitude coordinates are 39.193333, -78.095556. The project's maximum generating capacity will be 30 megawatts, and it is sited on approximately 180 acres of land currently used for pasture, hayfield, and timberland. The proposed site layout consists of approximately 68,000 photovoltaic modules within the fenced project area. The project's point of interconnection (POI) is a direct connection into a 34.5-kilovolt Rappahannock Electric Cooperative line located approximately 0.5 miles north of the site. Power will be delivered to the POI via an underground medium voltage power collection cable.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

### Riverstone Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Buckingham County

Riverstone Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Buckingham County. Riverstone Solar will be located north of Bridgeport Road, east of Route 20, and west of Hardware Road. Latitude and longitude coordinates are 37.730000, -78.450000. Riverstone Solar is proposed as an approximately 149.5 megawatts, alternating current, solar photovoltaic generating facility, consisting of approximately 375,000 solar panels located on approximately 1,996 acres of privately owned land.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Draft Pharmacy Provider Manual Available

The draft Pharmacy Provider Manual Chapter IV and Appendix D are now available on the Department of Medical

Assistance Services website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/>.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for 4027 West Broad LLC

The State Water Control Board proposes to issue a consent special order to 4027 West Broad LLC for alleged violation of the State Water Control Law at 4027 West Broad Street, Richmond, VA 23230. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### Proposed Enforcement Action for Aadinath Petroleum LLC

The State Water Control Board proposes to issue a consent special order to Aadinath Petroleum LLC for alleged violation of the State Water Control Law at 8001 Midlothian Turnpike, Chesterfield County, VA 23235 and 23822 Airport Street, Petersburg, VA 23803. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### Proposed Enforcement Action for Arihant Investment LLC

The State Water Control Board proposes to issue a consent special order to Arihant Investment LLC for alleged violation of the State Water Control Law at 5201 Oaklawn Boulevard, Hopewell, VA 23860. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for Arihant Oil LLC**

The State Water Control Board proposes to issue a consent special order to Arihant Oil LLC for alleged violation of the State Water Control Law at 5615 Boydton Plank Road, Petersburg, VA 23803. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for Arihant Petroleum LLC**

The State Water Control Board proposes to issue a consent special order to Arihant Petroleum LLC for alleged violation of the State Water Control Law at 501 Southpark Boulevard, Colonial Heights, VA 23834. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for the City of Franklin**

An enforcement action has been proposed for the City of Franklin for violations of the State Water Control Law and regulations at the City of Franklin wastewater treatment plant located in Franklin, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or by postal mail from December 20, 2021, through January 19, 2021.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email [john.brandt@deq.virginia.gov](mailto:john.brandt@deq.virginia.gov).

### **Proposed Enforcement Action for Freedom Oil LLC**

The State Water Control Board proposes to issue a consent special order to Freedom Oil LLC for alleged violation of the State Water Control Law at 14008 Midlothian Turnpike, Chesterfield County, VA 23113. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for Jineshwar Oil LLC**

The State Water Control Board proposes to issue a consent special order to Jineshwar Oil LLC for alleged violation of the State Water Control Law at 1504 East Ridge Road, Henrico County, VA 23229. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for Parasnath LLC**

The State Water Control Board proposes to issue a consent special order to Parasnath LLC for alleged violation of the State Water Control Law at 915 Boulevard, Colonial Heights, VA 23834. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email or postal mail from December 20, 2021, to January 20, 2022.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

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

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## General Notices

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

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

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

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# ERRATA

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## STATE CORPORATION COMMISSION

Title of Regulation: **10VAC5-200. Short-Term Lending.**

Publication: 38:6 VA.R. 738-739 November 8, 2021.

Correction to Proposed Regulation:

Page 739, 10VAC5-200-10, column 2, definition of "Other dependent of a member of the military services of the United States" clause (i), after "individual" unstrike "under the age of" and delete "younger than" and after "18" delete "years of age"

VA.R. Doc. No. R22-7001; Filed November 29, 2021, 4:30 p.m.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.**

Publication: 37:24 VA.R. 3693-3722 July 19, 2021.

Correction to Final Regulation:

Page 3703, 18VAC10-20-310 B 1 a, after "a." replace "The Principles and Practice of Land Surveying" with "The board-approved surveyor photogrammetrist exam"

VA.R. Doc. No. R17-5025; Filed November 22, 2021, 12:34 p.m.

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# Errata

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