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Virginia Code Commission

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

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.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; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Don L. Scott, Jr.; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.

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PUBLICATION SCHEDULE AND DEADLINES

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

May 2022 through June 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Monday)	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023
39:11	December 27, 2022 (Tuesday)	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Local and Regional Jails conducted a periodic review and a small business impact review of **6VAC15-26, Regulations for Human Subject Research**, and determined that this regulation should be repealed. The department is publishing its report of findings dated April 12, 2022, to support this decision

This regulation is not necessary under 6VAC15. Due to changes in §§ 53.1-5.1 and 53.1-10 of the Code of Virginia made by Chapter 759 of the 2020 Acts of the Assembly, the board has no authority to issue this regulation. Therefore, the regulation will be repealed. However, this regulation is essential to safeguard human subject research and effectuate the provisions under Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia for human research, as defined in § 32.1-162.16 of the Code of Virginia. A new regulation will be issued under 6VAC16 as appropriate.

On March 16, 2022, the board voted unanimously to repeal this regulation. Repealing this regulation will have no negative impact on small businesses.

Contact Information: Tracey Jenkins, Grant Administrator and Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Local and Regional Jails conducted a periodic review and a small business impact review of **6VAC15-45, Regulations for Private Management and Operation of Prison Facilities**, and determined that this regulation should be repealed. The department is publishing its report of findings dated April 12, 2022, to support this decision.

This regulation is not necessary under 6VAC15. Due to changes in §§ 53.1-10 and 53.1-266 of the Code of Virginia made by Chapter 759 of the 2020 Acts of the Assembly, the board has no authority to issue this regulation. Therefore, the regulation will be repealed. However, this regulation does guide the administration and operation of private prisons and the provision of services for inmates and is necessary to meet the intent of § 53.1-266 of the Code of Virginia. Therefore, a new regulation will be issued under 6VAC16 as appropriate.

On March 16, 2022, the board voted unanimously to repeal this regulation. Repealing this regulation will have no negative impact on small businesses.

Contact Information: Tracey Jenkins, Grant Administrator and Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 1, 2022, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect public health and safety as it relates to public swimming pools, saunas, and other similar facilities located at tourist establishments. The regulation was reviewed, and it has been determined it is essential to protecting public health.

The regulation helps fulfill the statutory mandate from the General Assembly by administering and enforcing standards that require standards for the operation and maintenance of swimming pool facilities operated in conjunction with a tourist facility. The regulation addresses, among other things, disinfection equipment, chemical composition (alkalinity, chlorine, pH level, etc.) of pool water and recommended safe levels, lighting, fences, pumps, waste discharge, and facility location.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable. Lastly, the regulation achieves its objective in the most efficient and cost effective manner.

The agency is recommending that the regulation be amended.

The Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools was amended in a fast track rulemaking action in October 2019 to remove conflicts with Virginia Uniform Statewide Building Code (13VAC5-63). Otherwise, the regulation has remained unchanged since its promulgation in 1962. The regulation, in its current form, may not reflect changes in industry standards, best practices as it

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relates to public safety, or accurately represent regulatory or statutory citations.

Chapter 2 (§ 35.1-11 et seq.) of Title 35.1 of the Code of Virginia mandates the board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety as it pertains to public swimming pools, saunas, and other similar facilities located at tourist establishments. The continued need for the regulation is established in the Code of Virginia and is not discretionary. Comments received regarding the regulation appear to highlight areas where the current requirements may not meet current industry standard and additional review is warranted.

Several sections of the regulation may not reflect or reference current industry standards. In October 2019 the regulation was not evaluated for technology, economic conditions, or other factors that may impact the regulant population or the general public. Federal and other industry associations provide up to date information and guidance on the operation, maintenance, and management of aquatic facilities, including pools and hot tubs. The Model Aquatic Health Code (MAHC) is based on the latest science and industry best practices to promote health and safety in public pools, hot tubs, and water playgrounds. The MAHC is intended to assist states in adopting the guidelines or drafting similar processes and applying them to any applicable regulations or management plans. The Pool and Hot Tub Alliance encourages commercial pool and spa owners to follow the ANSI/APSP/ICC-11 2019 American National Standard for Water Quality in Public Pools and Spas and provides a variety of resources and guidance documents reflective of current industry standards and best practices. Virginia pool regulations are not currently aligned with these or other association's guidance and practices and exhibit significant deviations from industry standards and science.

On August 31, 2020, the agency published a Notice of Intended Regulatory Action (NOIRA) for this regulation. The NOIRA expressed an intent to conduct a full review and modernization of the regulation. Due to the amount of time lapsed since this stage's publication, the State Board of Health has withdrawn this action and will initiate a new regulatory action in response to the most recent periodic review through a new NOIRA.

Since the agency has already begun work to amend the regulation, staff will continue to engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public. Public comments received during this review will be incorporated for discussion with stakeholders.

Contact Information: Kristin Marie Clay, Senior Policy Analyst, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7474.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Test Results**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 1, 2022, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect public health and safety as it relates to water quality at public recreational water facilities. The regulation was reviewed and it was determined it is essential to protecting public health.

The regulation helps fulfill the statutory mandate from the General Assembly by administering and enforcing standards that require the daily posting of water quality test results at swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa. The regulation also requires, among other things, the posting of water quality data regarding the current pH level, disinfectant type and concentration, and water temperature, and the recommended safe levels of each.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable. Lastly, the regulation is designed to achieve its objective in the most efficient and cost effective manner.

The agency is recommending that the regulation be amended.

The Swimming Pool Regulations Governing the Posting of Water Quality Results has not undergone a comprehensive review since its initial administrative codification in 1994. The regulation, in its current form, may not reflect changes in industry standards and best practices for public safety, or accurately represent regulatory or statutory citations.

Chapters 1 (§ 32.1-1 et seq.) and 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia mandate the board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety as it pertains to water quality at certain public recreational water facilities. The continued need for the regulation is established in regulation and is not discretionary. Comments received regarding the regulation appear to highlight areas where the current requirements may not meet industry standard and additional review is warranted.

Several sections in the regulation may not reflect or reference current regulatory or industry standards. It does not appear an evaluation to which technology or other factors that may impact the regulant population or the general public has taken place since that time. Federal and other industry associations provide up to date information and guidance on the operation,

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maintenance, and management of aquatic facilities, including pools and hot tubs. The Model Aquatic Health Code (MAHC) is based on the latest science and industry best practices to promote health and safety in public pools, hot tubs, and water playgrounds. The MAHC is intended to assist states in adopting the guidelines or drafting similar processes and applying them to any applicable regulations or management plans. The Pool and Hot Tub Alliance encourages commercial pool and spa owners to follow the ANSI/APSP/ICC-11 2019 American National Standard for Water Quality in Public Pools and Spas and provides a variety of resources and guidance documents reflective of current industry standards and best practices. Virginia pool regulations are not currently aligned with these or other association's guidance and practices and exhibit significant deviations from industry standards and science.

Since the agency is recommending to amend the regulation, staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public. Public comments received during this review will be incorporated for discussion with stakeholders.

Contact Information: Kristin Marie Clay, Senior Policy Analyst, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7474.

REGULATIONS

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

Symbol Key

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

TITLE 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: **1VAC20-70. Absentee Voting (amending 1VAC20-70-40).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: May 6, 2022.

Agency Contact: Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 393-0493, or email daniel.davenport@elections.virginia.gov.

Summary:

The amendments add requirements for localities for the pre-processing of absentee ballots, including at least two pre-processing meetings in the seven days before election day.

1VAC20-70-40. Alternative processing procedures for absentee ballots returned before election day.

Each general registrar in taking the measures as needed to expedite counting absentee ballots under § 24.2-709.1 of the Code of Virginia shall ensure that:

1. The general registrar staff assigned follow ~~all previously prescribed~~ the instructions in this section for processing and verifying absentee ballots.

2. Each locality holds a mandatory pre-processing meeting on the seventh day immediately preceding the election and on either the Friday or Saturday immediately preceding the election. At each of those pre-processing meetings, the general registrar's office should pre-process all absentee ballots that were in their office's possession at the beginning of that day.

3. In the event that the general registrar's office is unable to process all ballots in their possession on the morning of either the Friday or Saturday before election day, then the general registrar's office should hold a final pre-processing meeting on the Monday immediately preceding the election.

~~4.~~ All absentee ballots are secured at the end of each day following principles of dual control and chain of custody.

~~3- 5.~~ The general registrar staff assigned follow carefully all the requirements of § 24.2-709.1 of the Code of Virginia, including the requirement that at least two officers of election, one representing each party, be present during all hours that the expedited procedures are used.

~~4- 6.~~ Notice is given to the local political party chairs of the times and places for processing absentee ballots in sufficient time to allow for the authorized party representatives to be present.

VA.R. Doc. No. R22-7182; Filed April 28, 2022, 3:37 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 4VAC20-620-50).**

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

Effective Date: May 1, 2022.

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

Summary:

The amendment lowers to 16 inches the minimum size of summer flounder harvested by recreational fishing gear, including hook and line, rod and reel, and spear and gig.

4VAC20-620-50. Minimum size limits.

A. The minimum size for summer flounder harvested by commercial fishing gear shall be 14 inches in total length.

B. The minimum size of summer flounder harvested by recreational fishing gear, including hook and line, rod and reel, spear and gig, shall be ~~16.5~~ 16 inches in total length, except

that the minimum size of summer flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person to possess any summer flounder smaller than the designated minimum size limit.

D. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R22-7171; Filed April 27, 2022, 12:19 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: 4VAC20-910. **Pertaining to Scup (Porgy) (amending 4VAC20-910-30).**

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

Effective Date: May 1, 2022.

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

Summary:

The amendment raises to nine inches the minimum size limit of scup harvested by recreational fishing gear, including hook and line, rod and reel, spear, and gig.

4VAC20-910-30. Minimum size limits.

A. The minimum size limit of scup harvested by commercial fishing gear shall be nine inches in total length.

B. The minimum size limit of scup harvested by recreational fishing gear including hook and line, rod and reel, spear, and gig shall be ~~eight~~ nine inches in total length.

C. It shall be unlawful for any person to catch and retain possession of any scup of smaller than the designated minimum size limit, as described, respectively, in subsections A and B of this section.

D. It shall be unlawful for any person to sell, trade, barter, or offer to sell, trade, or barter any scup less than nine inches in total length.

VA.R. Doc. No. R22-7170; Filed April 27, 2022, 12:20 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: 4VAC20-950. **Pertaining to Black Sea Bass (amending 4VAC20-950-30, 4VAC20-950-45).**

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

Effective Date: May 1, 2022.

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

Summary:

The amendments (i) raise to 13 inches the minimum size of black sea bass harvested by recreational gear, including hook and line, rod and reel, spear and gig; and (ii) move to to December 11 the closing date for the open recreational fishing season for black sea bass.

4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches in total length. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches in total length, except as described in 4VAC20-950-70.

B. The minimum size of black sea bass harvested by recreational gear, including hook and line, rod and reel, spear and gig, shall be ~~12 1/2~~ 13 inches in total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section, except as described in 4VAC20-950-70.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

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C. The open recreational fishing season shall be from May 15 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

VA.R. Doc. No. R22-7172; Filed April 27, 2022, 12:17 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Action Withdrawn

Titles of Regulations: **12VAC5-90, Regulations for Disease Reporting and Control (repealing 12VAC5-90-150 through 12VAC5-90-180).**

12VAC5-101, Virginia Cancer Registry Regulations (adding 12VAC5-101-10 through 12VAC5-101-50).

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-90, Regulations for Disease Reporting and Control**, and **12VAC5-101, Virginia Cancer Registry Regulations**, which was published as a Notice of Intended Regulatory Action in [33:2 VA.R. 34 September 19, 2016](#). This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication. The agency will initiate a new regulatory action in the future that fully reflects the regulatory issues that should be addressed by the Virginia Cancer Registry.

Agency Contact: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 863-7253, or email robin.buskey@vdh.virginia.gov.

VA.R. Doc. No. R17-4857; Filed April 18, 2022, 3:00 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC5-220, Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-10, 12VAC5-220-105, 12VAC5-220-110, 12VAC5-220-180, 12VAC5-220-355; adding 12VAC5-220-95).**

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 8, 2022.

Effective Date: June 23, 2022.

Agency Contact: Erik Bodin, Director, Division of Certificate of Public Need, Virginia Department of Health, 9960 Mayland

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Basis: This regulation is promulgated under the authority of §§ 32.1-12 and 32.1-102.2 A 4 of the Code of Virginia. Section 32.1-12 of the Code of Virginia grants the State Board of Health the legal authority to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by the board, the commissioner, or the department.

Chapter 1271 of the 2020 Acts of Assembly made extensive revisions to Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, which governs the Certificate of Public Need (COPN) program. Section 32.1-102.2 A 5 of the Code of Virginia previously granted the board the authority to establish a fee schedule for COPN applications, but the fees were capped at the lesser of 1.0% of the proposed expenditure for the project or \$20,000; this fee cap was created in 1996 and was an increase from the prior fee cap of \$10,000. With the amendments introduced by Chapter 1271, the authority to establish a fee schedule has been renumbered as § 32.1-102.2 A 5 of the Code of Virginia, expanded to include registration applications, and the fee cap removed. Chapter 1271 also increased the review interval for the State Health Services Plan from four years to two years and placed new requirements on the department to have a publicly available electronic inventory of COPN-authorized capacity.

Purpose: The rationale or justification of the amendments is that the COPN program should be primarily, if not entirely, supported by fee revenue rather than general funds. The specific reasons the amendments are essential to protect the health, safety, or welfare of citizens is that the continued financial health of the COPN program ensures that the health care marketplace is not flooded with unneeded medical facilities or equipment and that charity care is being provided to indigent patients. There is a minimum patient volume needed to ensure continued competency of staff providing care, which is a consideration of COPN programs staff when evaluating COPN requests; COPNs are also conditioned on the provision of a prescribed amount of charity care to indigent patients, which allows health care to be accessible to more patients. The goal of the amendments is to ensure that the Virginia Department of Health receives sufficient revenue to support its COPN program and the mandated activities that the COPN program carries out. The problem the amendments are intended to solve is to update a fee cap that has not been changed in over 20 years and to create a fee for the registration process that currently lacks one.

Rationale for Using Fast-Track Rulemaking Process: It is anticipated that this action will be noncontroversial and therefore appropriate for the fast-track rulemaking process because the fee being charged for registration applications is nominal; the fee being charged for COPN applications retains a fee cap (although it has been adjusted higher) and still utilizes

a formula of the lesser of 1.0% of the proposed project expenditure or the fee cap.

Substance: The amendments repeal of the definition for application fee, add a new section that creates a fee schedule for COPN applications and registration applications, and specify that the registration has to be accompanied by the fee prescribed in 12VAC5-220-95, the newly added section.

Issues: The primary advantage to the public is a sufficiently funded COPN program that can regulate the health care marketplace that maintains and updates the State Health Services Plan and that monitors compliance with charity care conditions on COPNs. The primary disadvantage to the public is the assessment of higher fees for COPN projects if the project cost is in excess of \$2 million. The primary advantage to the department and the Commonwealth is that the COPN program will have sufficient fee revenue to support its current staff, the two new full-time employees, and the new mandates that the COPN program must meet. There is no primary disadvantage to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to Chapter 1271 of the 2020 Acts of Assembly,¹ the State Board of Health (Board) proposes to increase the cap on the fee for applications (application fee) for a Certificate of Public Need (COPN), and to establish a new fee for registrations (registration fee).

Background. This regulation requires health care providers seeking to open or expand a health care facility in Virginia to demonstrate that the community needs the services the facility would deliver and to receive approval from the State Health Commissioner. Approval is needed for projects involving services such as general acute care, perinatal, diagnostic imaging, cardiac, general surgical, organ transplantation, medical rehabilitation, psychiatric/substance abuse, mental retardation, and nursing facility.

The COPN program is supported by fees. Chapter 1271 removed the statutory restrictions on the application fee: a minimum fee of \$1,000 and a maximum fee of not more than one percent of the proposed expenditure for the project or \$20,000, whichever was less. This legislation also expanded the authority of the Board to assess a registration fee (in addition to the already existing application fee for certification). Moreover, the legislation decreased the review interval for the State Health Services Plan (formerly the State Medical Facilities Plan) from four years to two years, and placed new requirements on the Virginia Department of Health (VDH) to have a publicly available electronic inventory of COPN-authorized capacity.

According to the Board, the legislative changes require an additional two full-time-equivalent (FTE) positions. In order to support the existing COPN program, the new program obligations, and the new FTEs, the Board proposes to 1) revise the application fee to one percent of the proposed expenditure

for the project, but not less than \$1,000 and no more than \$60,000 and 2) establish a registration fee of \$70 for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment.

Estimated Benefits and Costs. According to the Board, the fiscal year (FY) 2020 budget to administer the COPN program was \$981,368. After adding two new FTEs (at \$85,417 each) and other adjustments, the program's "annual revenue target" for FY 2021 is now \$1,189,849. The number of applications received in the last five years has varied from a low of 38 to a high of 61, with 46 being the average. Based on historical data, setting the maximum application fee at \$60,000 would be \$4,751 short of the target in a year with the lowest expected number (38) of applications, and would exceed the target by \$244,743 in a year with an average number (46) of expected applications.

It appears the Board has used the lowest expected number of applications (38) as the basis for establishing the \$60,000 fee cap. This results in part from a limitation on program funding that prevents the program from retaining from one year to the next any unspent revenues in excess of one month's operating expenses. This limitation on "carryforward" is found in Item 300 A.1 of the 2020 Appropriation Act,² which provides that any application fees in excess of the amount required to operate the COPN program (less one month's operating expenses) shall not be retained by the program but shall instead be provided to the regional health planning agencies (RHPAs) as supplemental funding. For example, given the current statutory framework, if the actual number of applications turns out to be the average (46) rather than the lowest (38), the program would generate \$244,743 in excess revenues. Pursuant to the budget language, the program would be allowed to keep \$99,154 (one month's operating expenses) and would transfer the remaining \$145,589 to the RHPAs. According to the Board, there used to be five RHPAs statewide, but currently only one RHPA, the Health Systems Agency of Northern Virginia, remains active.

The main effect of the revised application fee schedule is to increase the fee cap from \$20,000 to \$60,000. As before, the actual amount of the fee would be equal to one percent of the project's costs. Therefore, the proposed change would have a larger effect as the cost of the project increases. Projects with capital expenditures of \$2 million or less would not be affected as they would continue to pay an application fee of no more than \$20,000. Projects with a cost of between \$2 million and \$6 million would be assessed an application fee that would exceed the previous cap of \$20,000, but would be less than the new cap of \$60,000. Lastly, projects with a cost of greater than \$6 million would be assessed an application fee of \$60,000, which would represent an additional \$40,000 in comparison to the fee that would have been charged under the previous cap of \$20,000. In FY 2020, 63% of projects seeking COPN authorization had estimated capital costs of greater than \$2 million, and thus would have paid a higher fee amount under the new cap proposed by the Board.

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The Board also proposes to establish a new \$70 registration fee for certain capital expenditures, the addition of medical equipment and services, and replacement of existing medical equipment. Currently, registration is required, but no fee is assessed. In the past five years, VDH has issued an average of 30 registrations per year. As a result, it appears that in a typical year only \$2,100 in new revenues would be collected from the proposed registration fee; this equates to 0.18% of the program's \$1,189,849 "annual revenue target." It is understandable that registration process results in costs that are separate and apart from the application process, and as such these costs could be estimated from available data and so assessed. However, the introduction of a brand new fee would also be accompanied by administrative complexities in assessing it, keeping track of it, depositing it, and correcting any errors in its administration both for VDH and the regulated entities. It is not clear whether the administrative costs to assessing a new fee, given the small revenue impact relative to overall program revenues, would outweigh the benefits from implementing it.

Businesses and Other Entities Affected. The individuals, businesses, or other entities likely to be directly affected by the regulatory change are those that seek to apply for a COPN for projects that are valued at more than \$2 million, and also those that seek registration of qualified projects. This potentially includes hospitals, nursing homes, intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and some physician's offices. There are 104 general hospitals, 65 outpatient surgical hospitals, eight psychiatric hospitals, 283 nursing homes, 61 ICF/IIDs, and 37,567 doctors of medicine in the Commonwealth. In the past five years, the number of COPN applications ranged from a low of 38 to a high of 61 per year, 46 being the average. Of those, 63% were projects with greater than \$2 million capital expenditures. In addition, approximately 30 registrations have been issued per year on average. An adverse economic impact³ on such affected entities is therefore indicated.

Additionally, to the extent proposed fee changes result in excess revenue more than the program's one month's operating expenses, the RHPA may receive supplemental funding.

Small Businesses⁴ Affected.

Types and Estimated Number of Small Businesses Affected. According to VDH, no data are available to indicate how many doctors of medicine operate a physician's office, and how many of that number would be engaging in services or utilizing equipment that would require either COPN application or registration; however, it is likely that all doctors of medicine would qualify as a small business if they did operate a physician's office. Over the past five years, COPN requests from physician groups made up an average of 18.85 of all requests, which translates to an average of 8.8 requests per year.

Costs and Other Effects. The costs and other effects on doctors of medicine that would qualify as a small business if they did

operate a physician's office would be the additional fees for applications involving more than \$2 million and the \$70 registration fee for services or equipment requiring registration as discussed.

Alternative Method that Minimizes Adverse Impact. Given the small relative size of the expected revenue from the registration fee as a portion of total program revenues and the implied recordkeeping costs and other administrative complexities, it appears this fee could be eliminated without any discernible negative impact on the COPN program.

Localities⁵ Affected.⁶ A locality would be affected by the proposed changes to the extent it is involved in medical services or equipment requiring COPN application or registration. According to VDH, there are no pending applications involving a locality. However, there were three COPN authorizations in the past 25 years that could be identified as issued to a locality: in 2003 to Bedford County for nursing home beds, in 2004 to Orange County for nursing home beds, and in 2005 to the City of Virginia Beach for a 24 bed ICF/IID.

Projected Impact on Employment. The proposed amendments would provide direct funding for two full time program staff at VDH.

Effects on the Use and Value of Private Property. The proposed increase in COPN application fees and the establishment of a new registration fee would add to the costs of projects requiring such fees. Consequently, the value of the entities subject to the higher application fee and the new registration fee may be moderately reduced. The proposed amendments do not appear to directly affect real estate development costs.

¹<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1271>

²<https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/300/>

³Adverse 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.

⁴Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁵"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.

⁶Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health (VDH) has reviewed the economic impact analysis (EIA) prepared by the Department of Planning and Budget (DPB). VDH concurs in part and disagrees in part with the EIA. VDH disagrees with the DPB's EIA to the extent that it asserts the \$70 registration fee for services or equipment requiring registration should be eliminated. DPB contends that eliminating this \$70 registration fee would not have "any discernible impact on the Certificate of Public Need (COPN) program" because the expected

revenue from this fee is small by comparison to the other application fees proposed in this regulatory action. VDH believes that any "implied recordkeeping costs and other administrative complexities" would be covered by the \$70 registration fee. VDH also asserts that there is an intangible benefit of the \$70 registration fee, namely that the assessment of a fee conveys the level of importance attached to the action and accounts for the Commonwealth's time in processing the registration that benefits the constituent facility. Fees, including the registration fees, were set at the minimum amount to cover the cost to the agency for performing the tasks. While the proposed registration fees are nominal, they do support the concept that the regulated facility pays for the process of regulation, rather than relying on general funds from taxpayers.

Summary:

Pursuant to Chapter 1271 of the 2020 Acts of Assembly, the amendments create a fee schedule for the Certificate of Public Need program and revise the fee cap on applications.

12VAC5-220-10. Definitions.

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

"Acquisition" means an expenditure of \$600,000 or more that changes the ownership of a medical care facility. It shall also include the donation or lease of a medical care facility. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock. See 12VAC5-220-120.

"Amendment" means any modification to an application that is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in this chapter. An amendment shall not include a modification to an application that serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

~~"Application fees" means fees required for a project application and application for a significant change. Fees shall not exceed the lesser of 1.0% of the proposed capital expenditure or cost increase for the project or \$20,000.~~

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility that, under generally accepted accounting principles, is not properly chargeable as an expense

of operation and maintenance. Such expenditure shall also include a series of related expenditures during a 12-month period or a financial obligation or a series of related financial obligations made during a 12-month period by or in behalf of a medical care facility. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. ~~See definition of "person."~~

"Certificate of public need" means a document that legally authorizes a medical care facility project as defined herein and ~~which that~~ is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive, or palliative procedure as defined in § 32.1-102.1 of the Code of Virginia.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities that are proposed for the same planning district or medical service area and ~~which that~~ are in the same review cycle. See 12VAC5-220-220.

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means that a project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the Virginia Department of Health.

"Designated medically underserved areas" means (i) areas designated as medically underserved areas pursuant to § 32.1-122.5 of the Code of Virginia; (ii) federally designated Medically Underserved Areas (MUA); or (iii) federally designated Health Professional Shortage Areas (HPSA).

"Ex parte" means any meeting that takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10

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days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in clause (i) and staff of the department.

"Gamma knife surgery" means stereotactic radiosurgery, where stereotactic radiosurgery is the noninvasive therapeutic procedure performed by directing radiant energy beams from any source at a treatment target in the head to produce tissue destruction. ~~See definition of "project."~~

"Health planning region" means a contiguous geographical area of the Commonwealth as defined in § 32.1-102.1 of the Code of Virginia.

"Informal fact-finding conference" means a conference held pursuant to § 2.2-4019 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including ~~but not limited to:~~ nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation, and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facility" means any institution, place, building, or agency as defined in ~~§ 32.1-102.1~~ § 32.1-3 of the Code of Virginia.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement, or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility that, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. See definition of "owner."

"Other plans" means any ~~plan(s) which plan that~~ is formally adopted by an official state agency or regional health planning agency and ~~which that~~ provides for the orderly planning and development of medical care facilities and services and ~~which that~~ is not otherwise defined in this chapter.

"Owner" means any person who has legal responsibility and authority to construct, renovate, or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association, or any other legal entity, whether governmental or private. Such person may also include the following:

1. The applicant for a certificate of public need;
2. The regional health planning agency for the health planning region in which the proposed project is to be located;
3. Any resident of the geographic area served or to be served by the applicant;
4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;
5. Any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. of the Code of Virginia that is located in the health planning region in which the project is proposed and that provides services similar to the services of the medical care facility project under review;
6. Third party payors who provide health care insurance or prepaid coverage to 5.0% or more patients in the health planning region in which the project is proposed to be located; and
7. Any agency that reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned, or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, ~~which that~~ is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive, or palliative to ambulatory patients and ~~which that~~ does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office. ~~See definition of "medical care facility."~~

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development as set forth in § 15.2-4202 of the Code of Virginia, except that for purposes of this chapter, Planning District 23 shall be divided into two planning

districts: Planning District 20, consisting of the counties of Isle of Wight and Southampton and the ~~cities~~ Cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach; and Planning District 21, consisting of the ~~counties~~ Counties of James City and York and the ~~cities~~ Cities of Hampton, Newport News, Poquoson, and Williamsburg.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, ~~but is not limited to,~~ soil testing, clearing, grading, extension of utilities, and power lines to the site.

"Primary medical care services" means first-contact, whole-person medical and health services delivered by broadly trained, generalist physicians, nurses, and other professionals, intended to include, without limitation, obstetrics/gynecology, family practice, internal medicine, and pediatrics.

"Progress" means actions that are required in a given period of time to complete a project for which a certificate of public need has been issued. See 12VAC5-220-450, Demonstration of progress.

"Project" means any plan or proposal as defined in § 32.1-102.1 of the Code of Virginia that is subject to Certificate of Public Need approval.

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application that is the subject of the proceeding and for which a verbatim record is made. See subsection A of 12VAC5-220-230.

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency as defined in § 32.1-102.1 of the Code of Virginia.

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the ~~United States~~ U.S. Department of Commerce, Economics and Statistics Administration.

"Schedule for completion" means the timetable that identifies the major activities required to complete a project as identified by the applicant and set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification, or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing ~~which that~~:

1. Changes the site;

2. Increases the capital expenditure amount authorized by the commissioner on the certificate of public need issued for the project by 10% or more;

3. Changes the ~~service(s)~~ service proposed to be offered; or

4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See 12VAC5-220-440 and 12VAC5-220-450.

"Standard review process" means the process utilized in the review of all certificate of public need requests with the exception of:

1. Certain bed relocations as specified in 12VAC5-220-280; or

2. Certain projects that involve an increase in the number of beds in which nursing facility or extended care services are provided as specified in 12VAC5-220-325.

"State Medical Facilities Plan" means the planning document as contained in Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, used to make medical care facilities and services needs decisions.

12VAC5-220-95. Fee schedule.

A. Unless otherwise provided, fees established by the board in this chapter shall not be refundable.

B. The fee for any application that requests a certificate of public need shall be 1.0% of the proposed expenditure for the project but not less than \$1,000 and no more than \$60,000.

C. The fee for any application that requests registration of certain capital expenditures under 12VAC5-220-110 shall be \$70.

D. The fee for any application that requests registration of the addition of medical equipment and services shall be \$70.

E. The fee for any application that requests registration of replacement of existing medical equipment shall be \$70.

12VAC5-220-105. Requirements for registration of the replacement of existing medical equipment.

Within 30 days of any person contracting to make, or otherwise legally obligating to make, a capital expenditure for the replacement of medical equipment or otherwise acquiring replacement medical equipment for the provision of services listed in subdivision 7 of the definition of "project" in 12VAC5-220-10, the person shall register in writing such equipment replacement with the commissioner and the appropriate regional health planning agency. Such registration shall be made on forms provided by the department. The registration shall identify the specific unit of equipment to be replaced and the estimated capital cost of the replacement ~~and,~~ shall include documentation that the equipment to be replaced

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has previously been authorized or exempted as allowed by law, and shall include the fee prescribed by subsection E of 12VAC5-220-95.

12VAC5-220-110. Requirements for registration of certain capital expenditures.

A. At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility as defined in this chapter that has not been previously authorized by the commissioner, such expenditure shall be registered in writing with the commissioner. The threshold amount for capital expenditure project registration shall be determined using the formula contained in subsection B of this section.

B. The threshold contained in subsection A of this section shall be adjusted annually using the percentage increase listed in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent year as follows:

$$A \times (1 + B)$$

where:

A = the capital expenditure threshold amount for the previous year

and

B = the percent increase for the expense category "Medical Care" listed in the most recent year available of the CPI-U of the U.S. Bureau of Labor Statistics.

C. ~~The format for application requesting registration shall include information concerning the purpose of such expenditure and the projected impact that the expenditure will have upon the charges for services, and the fee prescribed by subsection C of 12VAC5-220-95.~~ For purposes of registration, the owner shall include any person making the affected capital expenditure. See definition of "project."

D. Annually, the department shall (i) publish the threshold amount in the General Notices section of the Virginia Register of Regulations and (ii) post the threshold amount on its website.

12VAC5-220-180. Application forms.

A. Letter of intent. An applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency, by the later of (i) 30 days prior to the submission of an application for a project included within a particular batch group or (ii) 10 days after the first letter of intent is filed for a project within a particular batch group for the same or similar services and facilities which are proposed for the same planning district or medical service area. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. The department shall transmit application forms to the applicant within seven days of the

receipt of the letter of intent. A letter of intent filed with the department shall be considered void one year after the date of receipt of such letter. (See 12VAC5-220-310 C.)

B. Application fees. The department shall collect application fees for applications that request a certificate of public need. ~~The applicant shall pay the fee required prescribed by subsection B of 12VAC5-220-95 for an any application shall be 1.0% of the proposed expenditure for the project, but not less than \$1,000 and no more than \$20,000 that requests a certificate of public need.~~

No application will be deemed to be complete for review until the required application fee is paid. (See 12VAC5-220-310 C.)

C. Filing application forms. Applications must be submitted at least 40 days prior to the first day of a scheduled review cycle to be considered for review in the same cycle. In order to verify the date of the department's and the appropriate regional health planning agency's receipt of the application, the applicant shall transmit the document electronically, or prepare in triplicate two copies to be submitted to the department and one copy to be submitted to the appropriate regional health planning agency and sent by certified mail or a delivery service, return receipt requested, or by hand, with a signed receipt to be provided. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency. (See 12VAC5-220-200.)

12VAC5-220-355. RFA project application forms.

A. Letter of intent. ~~An~~ RFA project applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency by the letter of intent deadline specified in the RFA. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent. A letter of intent filed with the department shall be considered void if an application is not filed for the project by the application deadline specified in the RFA.

B. Application fees. The department shall collect application fees for RFA applications that request a certificate of public need. ~~The applicant shall pay the fee required for an application is 1.0% of the proposed capital expenditure for the project but no less than \$1,000 and no more than \$20,000 prescribed by subsection B of 12VAC5-220-95.~~ No application will be deemed to be complete for review until the required application fee is paid.

C. Filing application forms. Applications must be submitted to the department and the appropriate regional health planning agency by the application filing deadline specified in the RFA. In order to verify the department and the appropriate regional health planning agency's receipt of the application, the

applicant shall transmit the document electronically, or prepare in triplicate two copies to be submitted to the department and one copy to be submitted to the appropriate regional health planning agency and sent by certified mail or a delivery service, return receipt requested, or by hand, with a signed receipt to be provided. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

VA.R. Doc. No. R22-6433; Filed April 14, 2022, 9:42 a.m.

Action Withdrawn

Title of Regulation: **12VAC5-230. State Medical Facilities Plan.**

Statutory Authority: § 32.1-102.2 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-230, State Medical Facilities Plan**, which was published as a Notice of Intended Regulatory Action in [35:14 VA.R. 1840 March 4, 2019](#). This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication and the need to include different amendments to this chapter in the next regulatory action on the chapter. The agency will pursue all necessary amendments to the chapter in an upcoming regulatory action.

Agency Contact: Erik Bodin, Director, Division of Certificate of Public Need, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-1889, or email erik.bodin@vdh.virginia.gov.

VA.R. Doc. No. R19-5768; Filed April 7, 2022, 2:17 p.m.

Action Withdrawn

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia.**

Statutory Authority: §§ 32.1-123 and 32.1-127 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-410, Regulations for the Licensure of Hospitals in Virginia**, which was published as a Notice of Intended Regulatory Action in [32:12 VA.R. 1892 February 8, 2016](#). This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication. The agency will include any related amendments that are still necessary or appropriate in an upcoming regulatory action.

Agency Contact: Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

VA.R. Doc. No. R16-4620; Filed April 7, 2022, 2:19 p.m.

Action Withdrawn

Title of Regulation: **12VAC5-460. Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools.**

Statutory Authority: §§ 35.1-11, 35.1-13, 35.1-16, and 35.1-17 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**, which was published as a Notice of Intended Regulatory Action in [37:1 VA.R. 10 August 31, 2020](#). This action is being withdrawn because of the time elapsed since the last stage's publication. The agency will initiate a new regulatory action in response to the most recent periodic review through a new NOIRA.

Agency Contact: Julie Henderson, Director, Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TDD (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

VA.R. Doc. No. R21-6474; Filed April 7, 2022, 2:03 p.m.

Action Withdrawn

Title of Regulation: **12VAC5-612. Regulations to Implement the Onsite Indemnification Fund (adding 12VAC5-612-10 through 12VAC5-612-100).**

Statutory Authority: § 32.1-164.1:01 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-612, Regulations to Implement the Onsite Sewage Indemnification Fund**, which was published as a Proposed Regulation in [25:20 VA.R. 3563-3568 June 8, 2009](#). This action is being withdrawn because of the long amount of time that has elapsed since the last stage's publication. The Onsite Sewage Indemnification Fund has been effectively administered directly from the Code of Virginia, and the department has determined that this regulatory action is no longer necessary.

Agency Contact: Lance Gregory, Director, Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email lance.gregory@vdh.virginia.gov.

VA.R. Doc. No. R8-1125; Filed April 8, 2022, 2:30 p.m.

Action Withdrawn

Title of Regulation: **12VAC5-613. Regulations for Alternative Onsite Sewage Systems.**

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

The State Board of Health has WITHDRAWN the regulatory action for **12VAC5-613, Regulations for Alternative Onsite Sewage Systems**, which was published as a Notice of Intended Regulatory Action in [35:20 VA.R. 2310 May 27, 2019](#). This

Regulations

action is being withdrawn because of the long amount of time elapsed since the last stage's publication. The agency will initiate a new periodic review, and any outstanding necessary amendments to the regulation will be made in the action to implement the periodic review result.

Agency Contact: Lance Gregory, Director, Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, or email lance.gregory@vdh.virginia.gov.

VA.R. Doc. No. R19-5991; Filed April 14, 2022, 9:31 a.m.



TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Notice of Objection to Fast-Track Rulemaking Action

REGISTRAR'S NOTICE: Pursuant to § 2.2-4012.1 of the Code of Virginia, the Board of Historic Resources has filed a notice of objection to the fast-track rulemaking action published in [38:15 VA.R. 2128-2132 March 14, 2022](#). The board intends to proceed with the standard promulgation process set out in Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia, with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Title of Regulation: **17VAC5-40. Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans (adding 17VAC5-40-10 through 17VAC5-40-50).**

Statutory Authority: § 10.1-2204 of the Code of Virginia.

The board received more than the requisite 10 objections to the amendments. The objections pertained to the use of fast-track rulemaking process. Due to the objections, the board has discontinued using the fast-track rulemaking process. The board will proceed with adoption of the amendments using the standard process under Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and the publication on March 14, 2022, will serve as the Notice of Intended Regulatory Action in accordance with § 2.2-4012.1 of the Code of Virginia.

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

VA.R. Doc. No. R22-6919; Filed April 15, 2022, 3:28 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

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.

Titles of Regulations: **18VAC160-30. Waterworks and Wastewater Works Operators Licensing Regulations.**

18VAC160-40. Onsite Sewage System Professionals Licensing Regulations.

Agency Contact: Joseph Haughwout, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpor.virginia.gov.

FORMS (18VAC160-30)

~~Waterworks Operator License Application, A436-1955EXLIC v1 (eff. 4/2017)~~

~~Provisional Waterworks Operator License Application, A436-1955PLIC v2 (eff. 4/2017)~~

~~Wastewater Works Operator License Application, A436-1965EXLIC v2 (eff. 4/2017)~~

~~Provisional Wastewater Works Operator License Application, A436-1965PLIC v2 (eff. 4/2017)~~

~~Waterworks and Wastewater Works Operator Provisional License Change in Classification Application, A436-1955_65CHG v1 (eff. 4/2017)~~

[Waterworks Operator License Application, A436-1955EXLIC-v2 \(eff. 12/2021\)](#)

[Provisional Waterworks Operator License Application, A436-1955PLIC-v3 \(eff. 12/2021\)](#)

[Wastewater Works Operator License Application, A436-1965EXLIC-v3 \(eff. 12/2021\)](#)

[Provisional Wastewater Works Operator License Application, A436-1965PLIC-v3 \(eff. 12/2021\)](#)

[Waterworks and Wastewater Works Operator - Provisional License Change in Classification Application, A436-1955_65CHG-v2 \(eff. 12/2021\)](#)

[Out-of-State Facility Description and Experience Verification Application, A436-19STATE_EXP-v3 \(eff. 4/2015\)](#)

[Waterworks and Wastewater Works Operator Virginia Experience Verification Application, A436-19WWEXP-v4 \(eff. 4/2017\)](#)

[Provisional Description and Experience Verification Application, A436-1955_65PEXP-v3 \(eff. 12/2014\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

[Training Course Approval Application, A465-19CRS-v5 \(eff. 2/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4, \(eff. 4/2017\)](#)

[Wastewater Works Operator Class 4 Application - Department of Corrections Apprenticeship Program, A436-1965APLIC-v3 \(eff. 6/2019\)](#)

FORMS (18VAC160-40)

~~[Conventional Onsite Soil Evaluator License Application, A465-1940CONLIC v1 \(eff. 4/2017\)](#)~~

~~[Alternative Onsite Soil Evaluator License Application, A465-1940ALTLIC v1 \(eff. 4/2017\)](#)~~

~~[Conventional Onsite Sewage System Installer License Application, A465-1944CONLIC v1 \(eff. 4/2017\)](#)~~

~~[Alternative Onsite Sewage System Installer License Application, A465-1944ALTLIC v1 \(eff. 4/2017\)](#)~~

~~[Conventional Onsite Sewage System Operator License Application, A465-1942CONLIC v1 \(eff. 4/2017\)](#)~~

~~[Alternative Onsite Sewage System Operator License Application, A465-1942ALTLIC v2 \(eff. 4/2018\)](#)~~

~~[Waiver of Examination - Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV v2 \(eff. 4/2017\)](#)~~

[Conventional Onsite Soil Evaluator License Application, A465-1940CONLIC-v2 \(eff. 12/2021\)](#)

[Alternative Onsite Soil Evaluator License Application, A465-1940ALTLIC-v2 \(eff. 12/2021\)](#)

[Onsite Soil Evaluator Experience Verification Application, A436-1940EXP-v1 \(eff. 11/2021\)](#)

[Conventional Onsite Sewage System Installer License Application, A465-1944CONLIC-v2 \(eff. 12/2021\)](#)

[Alternative Onsite Sewage System Installer License Application, A465-1944ALTLIC-v2 \(eff. 12/2021\)](#)

[Conventional Onsite Sewage System Operator License Application, A465-1942CONLIC-v2 \(eff. 12/2021\)](#)

[Alternative Onsite Sewage System Operator License Application, A465-1942ALTLIC-v3 \(eff. 12/2021\)](#)

[Waiver of Examination - Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV-v3 \(eff. 12/2021\)](#)

[Onsite Sewage System Operator/Installer Experience Verification Application, A436-1942_44EXP-v1 \(eff. 11/2021\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

[Training Course Approval Application, A465-19CRS-v5 \(eff. 2/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4 \(eff. 4/2017\)](#)

~~[Onsite Sewage System Applicant Experience Verification Application, A436-19OSSPEXP v4 \(eff. 4/2017\)](#)~~

VA.R. Doc. No. R22-7126; Filed April 15, 2022, 11:10 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

BOARD FOR BARBERS AND COSMETOLOGY

Title of Document: [Application Review Matrix Criminal History and Prior Disciplinary Action.](#)

Public Comment Deadline: June 8, 2022.

Effective Date: June 9, 2022.

Agency Contact: Trisha L. Lindsey, Agency Regulatory Coordinator, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, or email trisha.lindsey@dpor.virginia.gov.

BOARD OF MEDICINE

Title of Document: [Policy on U.S. Medical Licensing Examination Step Attempts.](#)

Public Comment Deadline: June 8, 2022.

Effective Date: June 9, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: [Economic Development Program Access Guide.](#)

Public Comment Deadline: June 8, 2022.

Effective Date: June 9, 2022.

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

GENERAL NOTICES

STATE AIR POLLUTION CONTROL BOARD

Public Comment Opportunity - Draft Permit from the Department of Environmental Quality to Limit Air Pollution Emitted by a Facility in Brunswick County, Virginia

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on a draft permit to limit air pollution emitted by a facility in Brunswick County, Virginia.

Public comment period: April 13, 2022, to May 13, 2022.

Permit name: Federal Operating Permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Applicant name and address: Virginia Electric and Power Company, 600 Canal Street, Richmond, VA.

Facility name, address, and registration number: Dominion Energy, Brunswick County Power Station, 20100 Governor Harrison Parkway, Freeman, VA; #PRO52404.

Project description: Virginia Electric and Power Company has applied for a new permit for the Dominion Energy Brunswick County Power Station. The facility is located at 20100 Governor Harrison Parkway in Brunswick County. The facility is classified as a major source of air pollution. The permit would allow the source to operate a natural gas-fired electric generation facility.

How to comment or request a public hearing: DEQ accepts comments and requests for public hearing by hand-delivery, email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter or requester and of all persons represented by the commenter or requester. A request for public hearing must also include (i) the reason why a public hearing is requested; (ii) a brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requestor, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. Please note this draft permit is being concurrently reviewed as a proposed permit by the U.S. Environmental Protection Agency. A public hearing may be held, including another comment period, if public response is significant, based on individual requests for a public hearing, and there are substantial, disputed issues relevant to the permit.

Contact for public comments, document requests, and additional information and the DEQ office where the public may review the draft permit and application or may request copies of the documents from the contact person are listed.

Contact Information: Alison M. Sinclair, Department of Environmental Quality, Piedmont Regional Office, 4949-A

Cox Road, Glen Allen, VA 23060, telephone (804) 489-1008, FAX (804) 698-4178, or email alison.sinclair@deq.virginia.gov.

Public Comment Opportunity - Draft Permit from the Department of Environmental Quality to Limit Air Pollution Emitted by a Facility in Henry County, Virginia

Purpose of notice: To seek public comment on a draft permit from the Department of Environmental Quality (DEQ) to limit air pollution emitted by a facility in Henry County, Virginia.

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on a draft permit to limit air pollution emitted by a facility in Henry County, Virginia.

Public comment period: April 14, 2022, to May 16, 2022.

Permit name: Federal Operating Permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Applicant name and address: Bassett Furniture Industries Inc., P.O. Box 626, Bassett, VA 24055.

Facility name, address, and registration number: BFI Bassett, 2611 Fairystone Park Highway, Bassett, VA 24055; 30284

Project description: Bassett Furniture Industries Inc. has applied for a renewal of their Title V Operating permit for BFI Bassett. The facility is classified as a major source of air pollution. There are no proposed changes in emissions. The permit would allow the source to continue to operate a furniture finishing operation.

How to comment or request a public hearing: DEQ accepts comments and requests for public hearing by hand-delivery, email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter or requester and of all persons represented by the commenter or requester. A request for public hearing must also include (i) the reason why a public hearing is requested; (ii) a brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requestor, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. Please note this draft permit is being concurrently reviewed as a proposed permit by the U.S. Environmental Protection Agency. A public hearing may be held, including another comment period, if public response is significant, based on individual requests for a public hearing, and there are substantial, disputed issues relevant to the permit.

Contact for public comments, document requests, and additional information and the DEQ office where the public

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may review the draft permit and application or may request copies of the documents from the contact person are listed.

Contact Information: Caitlin Spencer; Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 524-8336, FAX (804) 698-4178, or email caitlin.spencer@deq.virginia.gov.

Public Comment Opportunity - Draft Permit to Limit Air Pollution Emitted by a Facility in Pittsylvania County, Virginia

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on a draft permit to limit air pollution emitted by a facility in Pittsylvania County, Virginia.

Public comment period: April 14, 2022, to May 16, 2022.

Permit name: State Operating Permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Applicant name, address, and registration number: Milams Equipment Sales Inc., 5190 South Boston Highway, Sutherlin, VA 24594; Registration Number 21696.

Project description: Milams Equipment Sales Inc. has applied for a new permit for heavy equipment refurbishment at Milams Equipment Sales Inc. The permit would allow the source to operate spray coating equipment. The permit provision being presented for this public notice is the hazardous air pollutant (HAP) emission limit of 9.5 tons per year of any single HAP and 24.5 tons per year of any combination of HAPs contained in Conditions 8, 15, and 18 of the draft permit document.

How to comment or request a public hearing: DEQ accepts comments and requests for public hearing by hand-delivery, email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter or requester and of all persons represented by the commenter or requester. A request for public hearing must also include (i) the reason why a public hearing is requested; (ii) a brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requestor, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. A public hearing may be held, including another comment period, if public response is significant, based on individual requests for public hearing, and there are substantial, disputed issues relevant to the permit.

Contact for public comments, document requests, and additional information and the DEQ office where the public may review the draft permit and application or may request copies of the documents from the contact person are listed.

Contact Information: Blake Apo, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 759-6721, FAX (804) 698-4178, or email blake.apo@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

SolarGen of Virginia LLC WITHDRAWAL of Notice of Intent for Small Renewable Energy (Solar) Project - Isle of Wight County

SolarGen of Virginia LLC has withdrawn its notice of intent to submit the necessary application and documentation for a permit by rule for a small solar renewable energy project in Isle of Wight County. The original notice of intent was published in the Virginia Register on October 29, 2018.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Ho-Fel Solar Notice of Intent for Small Renewable Energy Project (Solar) - Isle of Wight County

Ho-Fel Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small solar renewable energy project in Isle of Wight County. Ho-Fel Solar LLC will be located adjacent to Lees Mill Road. Latitude and longitude coordinates are 36.673032, -76.882005.

Sited on approximately 350 acres, the project will have a maximum capacity of 40 megawatts alternating current and, depending on final design, will consist of approximately 95,000 solar photovoltaic modules installed on single-axis tracking racking structures and 13 inverters installed on approximately 13 separate concrete pads.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - COVID Vaccines, Testing, and Treatment

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC

§ 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of the notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries, on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to the contact provided and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/generalnotice.cfm>.

DMAS will be making the following changes:

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80)

The state plan is being revised to affirm compliance with federal statutes and regulations related to COVID vaccines, testing, and treatment.

The expected increase in annual aggregate expenditures resulting from the costs of COVID vaccines is \$95,268 in federal funds in federal fiscal year 2022.

The expected increase in annual aggregate expenditures resulting from the costs of COVID testing and treatment is \$3,128,788 in state general funds, \$1,520,662 in special funds, and \$16,772,409 in federal funds in federal fiscal year 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Notice of Enforcement Action for Adams Oil Company

The State Water Control Board proposes to issue a consent special order to Adams Oil Company for alleged violation of the State Water Control Law at 12829 Broad Street, Goochland County, Virginia. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office listed or online at www.deq.virginia.gov. The DEQ staff contact will accept comments by email or postal mail from May 9, 2022, to June 9, 2022.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for William A. Hamp III, Trustee for the William A. Hamp III Revocable Trust

An enforcement action has been proposed for William A. Hamp III, Trustee for the William A. Hamp III Revocable Trust for violations of the State Water Control Law and regulations and applicable permit at the Eastern Clearing, Inc. facility located in Bealeton, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from May 10, 2022, through June 9, 2022.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Notice of Enforcement Action for Harvey Oil Inc. d/b/a Get & Zip

The State Water Control Board proposes to issue a consent special order to Harvey Oil Inc. d/b/a Get & Zip for alleged violation of the State Water Control Law at the parcel of real property located at the corner of Main Street and Wiggins Avenue in Kilmarnock, Virginia (37.704 / -76.3786). A description of the proposed action is available at the Department of Environmental Quality (DEQ) office listed or online at www.deq.virginia.gov. The DEQ staff contact will accept comments by email or postal mail from May 9, 2022, to June 9, 2022.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Vico Construction Corporation

An enforcement action has been proposed for Vico Construction Corporation for violations of the State Water Control Law at the Vico Grind Yard and the Southern Pines Pit in the City of Chesapeake. 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. The staff contact person will accept comments by email or postal mail from May 9, 2022, through June 9, 2022.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-

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8060, FAX (757) 518-2000, or email russell.deppe@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

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

ERRATA

VIRGINIA LOTTERY BOARD

Title of Regulation: 11VAC5-90. Casino Gaming.

Publication: 38:13 VA.R. 1833-1977 February 14, 2022.

Correction to Final Regulation:

Page 1870, column 2, 11VAC5-90-100 C 7, line 3, after "occupation that" insert "the department" and after "has determined" insert "to be"

VA.R. Doc. No. R21-6662; Filed April 25, 2022, 2:07 p.m.

Errata
