



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the

expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

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

## STATEMENT

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

## CITATION TO THE VIRGINIA REGISTER

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

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

**Members of the Virginia Code Commission:** John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## December 2023 through December 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:8	November 14, 2023	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 27, 2024	December 16, 2024

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Initial Agency Notice

**Title of Regulation: 18VAC90-27. Regulations for Nursing Education Programs.**

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

**Name of Petitioner: Leah Jaquez.**

**Nature of Petitioner's Request:**

The petitioner requests that the Board of Nursing amend 18VAC90-27-60 A 4 to allow nurses with 20 years or more of experience to serve as faculty for nursing education programs.

**Agency Plan for Disposition of Request:**

The petition for rulemaking will be published in the Virginia Register of Regulations on November 20, 2023. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens November 20, 2023, and closes December 20, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for January 23, 2024. The petitioner will be notified of the board's decision after that meeting.

**Public Comment Deadline: December 20, 2023.**

**Agency Contact: Jay P. Douglas, RN, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 367-4520, or email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).**

VA.R. Doc. No. PFR24-13; Filed October 18, 2023, 3:26 p.m.

### BOARD OF COUNSELING

#### Agency Decision

**Title of Regulation: 18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.**

**Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.**

**Name of Petitioner: Alesha R. Perkins.**

**Nature of Petitioner's Request:**

The petitioner requests that the Board of Counseling amend 18VAC115-80-80 C to automatically approve an individual or a business as a continuing education provider for qualified mental health professionals (QMHPs) if the

individual or business can provide proof that the individual or business is qualified to provide continuing education to QMHPs.

**Agency Decision: Request denied.**

**Statement of Reason for Decision:**

At its meeting on October 27, 2023, the board voted to take no action on the petition as the board believes that the current process for evaluating and approving continuing education providers is sufficient, and the board is unwilling to change it at this time. The board invites the petitioner to seek approval to provide continuing education through the processes listed in the regulations and available on the board website.

**Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 367-4406, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).**

VA.R. Doc. No. PFR24-16; Filed July 03, 2023, 10:03 a.m.

### BOARD OF VETERINARY MEDICINE

#### Agency Decision

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

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

**Name of Petitioner: Virginia Veterinary Medical Association.**

**Nature of Petitioner's Request:**

The petitioner requests that the Board of Veterinary Medicine amend 18VAC150-20-70 B, which provides requirements for continuing education to renew a license, to (i) allow up to four hours required for renewal of a veterinary license and one hour required for renewal of a veterinary technician license to be satisfied through delivery of veterinary services, volunteer or compensated, at high-volume spay and neuter clinics provided by non-for-profit animal welfare organizations; and (ii) allow up to three hours required for renewal of a veterinary license and one hour required for renewal of a veterinary technician license to be satisfied through delivery of veterinary services in the form of vaccinations, volunteer or compensated, at a rabies clinic organized by a local health department. It is further requested that, for services at spay and neuter clinics, one hour may be credited for two hours of providing services, and for rabies clinics, one hour may be credited for three hours of service.

**Agency Decision: Request denied.**

**Statement of Reason for Decision:**

The board considered this petition at its October 26, 2023, meeting. The board decided to take no action on the petition as

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# Petitions for Rulemaking

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the board believes medical learning requirements contained in current continuing education requirements should not be reduced.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 597-4130, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

VA.R. Doc. No. PFR24-14; Filed January 18, 2023, 4:51 p.m.

## Agency Decision

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

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

Name of Petitioner: Gerald Blackburn.

Nature of Petitioner's Request:

The petitioner requests that the Board of Veterinary Medicine amend subdivision 2 of 18VAC150-20-120 to require documentation of one year of the last four in active practice for licensure by endorsement as a veterinarian.

Agency Decision: Request granted.

Statement of Reason for Decision:

At its meeting on October 26, 2023, the board voted to initiate a rulemaking to implement the request and to reduce licensure by endorsement requirements in other parts of the regulation. The board will file a notice of intended regulatory action to begin the regulatory process for change.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA, 23233, telephone (804) 597-4130, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

VA.R. Doc. No. PFR24-15; Filed August 11, 2023, 2:38 p.m.



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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## 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 **12VAC5-550, Board of Health Regulations Governing Vital Records**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 19, 2023, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare because the regulation protects personal health information by providing the framework for the uniform administration and governance of the system of vital records. There is room for improvement in the clarity and understandability of the regulation.

The board has decided to amend the regulation as the regulation has not undergone a comprehensive revision for more than 10 years. Amendments are needed to (i) improve consistency within the chapter, (ii) incorporate statutory requirements, (iii) update language to provide clarity, and (iv) align with the current use of electronic technologies in the purview of vital records.

There is a continued need for the regulation as the board is mandated to install, maintain, and operate the only system of vital records throughout the Commonwealth, including the promulgation of regulations and the appointment of a State Registrar of Vital Records. No public comments were received during the comment period following the notice of periodic review.

The regulation is not overly complex and does not conflict, duplicate, or overlap with federal or state laws or regulations. Evaluations of the regulation were conducted in 1995, 2003, and 2004 when amendments to processes and text language occurred. Subsequent amendment of 12VAC5-550-330 in 2009 specifically updated the regulatory text to reflect gender-neutral language and provided a gender-neutral form for birth certificates. The board approved a fast-track regulatory action for select sections of the regulation during the June 2023 State Board of Health meeting to conform those sections to recent changes to the Code of Virginia.

Technology has changed since the last regulatory evaluations were conducted, with further digitization of vital records, online applications for vital record copy requests, and electronic submission processes for vital record forms. Commonwealth residents have experienced an overall rise in cost since the last evaluation of the regulation; however, the cost for amending a vital record or obtaining a copy for a vital record has remained unchanged at \$10 for an amendment to a vital record and \$12 for a certified copy of a vital record since 2004. There has been no change to the existing revenue share agreement between the system of vital records and local health departments since its implementation. The board may consider an increase to the

administrative fee to amend a record to better align the fee charged for amendment with the service cost to amend a certified vital record.

There is no fiscal impact on small businesses in Virginia; however, there would be a fiscal impact on registrants and families if the administrative fee for an amendment to a vital record is changed. The board will consider all opportunities to minimize any adverse fiscal impact of the regulation, including on small businesses, during the development of the regulatory action to implement this periodic review result.

Contact Information: Rilee Bennett, Policy Analyst, Virginia Department of Health, 2001 Maywill Street, Suite 101, Richmond, VA 23230, telephone (804) 662-6258, or email [rilee.bennett@vdh.virginia.gov](mailto:rilee.bennett@vdh.virginia.gov).

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC35-225, Requirements for Virginia Early Intervention System**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 20, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).



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# Periodic Reviews and Small Business Impact Reviews

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects conducted a periodic review and a small business impact review of **18VAC10-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 27, 2023, to support this decision.

The board's public participation guidelines mirror the Department of Planning and Budget's model public participation guidelines. The guidelines, having the status of a regulation, are necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On August 4, 2023, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from the Department of Planning and Budget.

The board did not receive any comments or complaints during the public comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any federal or other state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no economic impact on small businesses.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects conducted a periodic review and a small business impact review of **18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations**, and

determined that this regulation should be retained as is. The board is publishing its report of findings dated October 25, 2023, to support this decision.

The regulation contains the requirements for (i) obtaining a license or certification; (ii) renewal and reinstatement of licenses and certificates; (iii) standards of professional conduct to ensure competence and integrity of all licensees and certificate holders; and (iv) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

On August 4, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-201 of the Code of Virginia mandates that the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are licensed or certified. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

There were no comments or complaints received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a periodic review and a small business impact review of **18VAC80-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 1, 2023, to support this decision.

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## Periodic Reviews and Small Business Impact Reviews

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The board's public participation guidelines mirror the Department of Planning and Budget's model public participation guidelines. The guidelines, having the status of a regulation, are necessary to promote public involvement in the development, amendment, or repeal of regulations. Further, the regulation is clearly written and understandable.

On August 16, 2023, the board voted to retain this regulation without amendment. The regulation continues to mirror the model public participation guidelines from the Department of Planning and Budget.

The board did not receive any comments or complaints during the public comment period. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with any federal or other state laws or regulations. The regulation was last evaluated in 2019 and does not rely on technology, economic conditions, or any other factors due to the nature of public participation. This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation. The board determined the regulation has no economic impact on small businesses.

**Contact Information:** Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a periodic review and a small business impact review of **18VAC80-20, Hearing Aid Specialists Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 1, 2023, to support this decision.

The regulation contains the requirements for (i) obtaining a license or certification; (ii) renewal and reinstatement of licenses and certificates; (iii) standards of professional conduct to ensure competence and integrity of all licensees and certificate holders; and (iv) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

On August 16, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-201 of the Code of Virginia mandates that the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the

regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are licensed or certified. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

There were no comments or complaints received during the public comment period. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

**Contact Information:** Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a periodic review and a small business impact review of **18VAC80-30, Opticians Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 1, 2023, to support this decision.

The regulation contains the requirements for (i) obtaining a license or certification; (ii) renewal and reinstatement of licenses; (iii) standards of professional conduct to ensure competence and integrity of all licensees; and (iv) administering the regulatory program in accordance with Chapters 2 (§ 54.1-200 et seq.) and 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

On August 16, 2023, the board voted to retain the regulation without amendment. In accordance with the Governor's Executive Directive Number One (2022), the board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Section 54.1-201 of the Code of Virginia mandates that the board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an optician license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

Based on the comments received during the public comment period, there does not appear to be a reason to repeal the



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# Periodic Reviews and Small Business Impact Reviews

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regulation. There also does not appear to be a reason to amend the regulation at this time. The regulation is clearly written and easily understandable and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2019. Currently, the board is conducting a comprehensive review of the regulation.

Contact Information: Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov).

## BOARD OF MEDICINE

### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC85-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

## BOARD OF COUNSELING

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling conducted a periodic review and a small business impact review of **18VAC115-11, Public Participation Guidelines**, and determined that this regulation

should be retained as is. The board is publishing its report of findings dated October 27, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it sets for the requirements for licensure and standards of practice for counseling. This regulation is necessary to continue to renew licenses for counseling and to issue new licenses for counseling, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. This regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The board has reviewed this regulation and determined that it is clearly written and understandable.

The board voted to retain the regulation as is. Public participation guidelines language is only changed when the Department of Planning and Budget has new model regulations for all agencies to adopt, which it does not. As a result, no changes are necessary.

The regulation has no impact on small businesses.

Contact Information: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling conducted a periodic review and a small business impact review of **18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 27, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it sets the requirements for licensure and standards of practice for rehabilitation providers. This regulation is necessary to continue to renew licenses for rehabilitation providers and to issue new licenses for rehabilitation providers, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. This regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The board has reviewed this regulation and determined that it is clearly written and understandable.

The board decided to retain the regulation as is. This regulation has been addressed regularly, with the most recent regulatory action finishing late 2021. At this point, there is no need to further alter the regulation as it is effective in safely and competently regulating rehabilitation providers in Virginia.

The regulation has no impact on small businesses.

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# Periodic Reviews and Small Business Impact Reviews

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Contact Information: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

## BOARD OF VETERINARY MEDICINE

### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC150-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

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## TITLE 19. PUBLIC SAFETY

### DEPARTMENT OF STATE POLICE

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **19VAC30-115, Reporting and Tracing Firearms Confiscated or Recovered by Law-Enforcement Agencies; 19VAC30-170, Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry; 19VAC30-230, Verification Checks on Firearm Transfers to Dealers; and 19VAC30-240, Regulations Governing the Virginia Community Policing**

**Act.** The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 22, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Matthew T. Patterson, Criminal Justice Information Services Officer, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2023, or email [matthew.patterson@vsp.virginia.gov](mailto:matthew.patterson@vsp.virginia.gov).

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-221, Additional Daily Supervision Rate Structure**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

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# Periodic Reviews and Small Business Impact Reviews

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public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Lora Smith Hughes, Foster Care Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7538, or email [lora.smith@dss.virginia.gov](mailto:lora.smith@dss.virginia.gov).

## Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-601, Supplemental Nutrition Assistance Program**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Celestine Jackson, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7172, or email [celestine.jackson1@dss.virginia.gov](mailto:celestine.jackson1@dss.virginia.gov).

## Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a

manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins November 20, 2023, and ends December 11, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Shannon Hartung, Child Protective Services Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 629-7125, or email [shannon.hartung1@dss.virginia.gov](mailto:shannon.hartung1@dss.virginia.gov).



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-401, Change of Limited Access Control**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 18, 2023, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare. Limited access highways can provide greater vehicle capacity and improved safety over nonlimited access highways by reducing the number of interactions with vehicles entering or exiting the highway and by prohibiting pedestrians and other nonmotorized traffic from the highway. This regulation specifies the procedures by which CTB and the Virginia Department of Transportation will change or adjust the limited access boundaries of such highways under certain circumstances. Adjustments take into consideration factors such as impact on traffic, changes in abutting land use, environmental impacts, and support from affected localities, and thus are effective in furthering safety and the purposes of limited access control. CTB believes that the regulation is clearly written and easily understandable.

CTB is proposing to retain this regulation without amendment. The regulation continues to promote the health, safety, and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

There is continued need for the regulation for purposes of complying with state and federal laws and regulations

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## Periodic Reviews and Small Business Impact Reviews

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regarding changes of limited access control on all limited access control roadways. No complaints have been received. The regulation is not overly complex and does not duplicate or conflict with federal or state laws. The regulation was last amended in 2014 and the last periodic review of this regulation was conducted in 2019. The regulation does not negatively impact small businesses.

**Contact Information:** JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-580, Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 18, 2023, to support this decision.

The regulation provides for the restriction of trucks from using a segment of highway where they pose a safety risk or are incompatible with the character of the roadway environment. The regulation continues to be necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

The CTB is proposing to retain this regulation without amendment. The regulation continues to promote the health, safety, and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

No complaints have been received. The regulation is not overly complex and does not duplicate or conflict with federal or state laws. The regulation was adopted in 2003 and was amended in 2020 as a result of the last periodic review conducted. Trucking companies, which are small businesses, could be affected by the process provided by this regulation through the additional time and fuel necessary for a truck to drive an alternative route. Other small businesses that rely on trucks to transport and deliver goods could also be impacted if delivery times are delayed or if shipping costs increase due to the rerouting. However, the regulation requires that the termini of the proposed restriction be identical to the alternate routing to allow a time and distance comparison to be conducted and that the alternate routing not create an undue hardship for trucks in reaching their destination. These requirements ensure that the potential economic impacts to small businesses from any restriction imposed under the regulation are considered and minimized.

**Contact Information:** JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and a small business impact review of **24VAC30-620, Rules, Regulations, and Rates Concerning Toll and Bridge Facilities**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 18, 2023, to support this decision.

The regulation is necessary for the protection of the public health, safety, and welfare because it ensures that toll rates charged at Virginia Department of Transportation toll facilities are fixed by a process that allows for public input and that toll collection may be suspended during emergencies or other events where it is in the public interest to allow for free, efficient movement of vehicles through toll facilities. The regulation is clearly written and easily understandable.

The CTB is proposing to retain this regulation without amendment. The regulation continues to promote the health, safety, and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

No complaints have been received. The regulation is not overly complex and does not duplicate or conflict with federal or state laws. The regulation was amended in 2021 as a result of the last periodic review in 2020. The regulation does not negatively impact small businesses.

**Contact Information:** JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Action Withdrawn

Title of Regulation: **1VAC20-20. General Administration.**

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

The State Board of Elections has WITHDRAWN the regulatory action for **1VAC20-20, General Administration**, which was published as an exempt Proposed Action in [31:15 VA.R. 1370-1371 March 23, 2015](#). This action is being withdrawn because the board is no longer pursuing this action as it is outdated. Therefore this action from 2015 is being withdrawn.

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

VA.R. Doc. No. R15-4077; Filed October 20, 2023, 2:49 p.m.

#### Action Withdrawn

Title of Regulation: **1VAC20-50. Candidate Qualification.**

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

The State Board of Elections has WITHDRAWN the regulatory action for **1VAC20-50, Candidate Qualification**, which was published as an exempt Proposed Action in [36:7 VA.R. 987 November 25, 2019](#). This action is being withdrawn because the action is outdated and would require reapproval from the current State Board of Elections. Therefore this action from 2019 is being withdrawn.

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

VA.R. Doc. No. R20-6232; Filed October 20, 2023, 2:53 p.m.

#### Action Withdrawn

Title of Regulation: **1VAC20-60. Election Administration.**

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

The State Board of Elections has WITHDRAWN the regulatory action for **1VAC20-60, Election Administration**, which was published as an exempt Proposed Action in [32.21](#)

[VA.R. 2524 June 13, 2016](#). This action is being withdrawn because the action is outdated and would require reapproval from the current State Board of Elections. Therefore this 2016 action is being withdrawn.

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

VA.R. Doc. No. R16-4743; Filed October 20, 2023, 2:51 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: **4VAC20-1410. Utility Line Encroachments Beneath or Over State-Owned Subaqueous Beds (adding 4VAC20-1410-10, 4VAC20-1410-20, 4VAC20-1410-30).**

Statutory Authority: §§ 28.2-103 and 28.2-1204 of the Code of Virginia.

Effective Date: November 1, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

#### Summary:

*The amendments establish Utility Line Encroachments Beneath or Over State-Owned Subaqueous Beds (4VAC20-1410), a general permit regulation to increase efficiency in the review and approval of projects involving the installation of utility lines in a manner that does not require instream construction activities upon state-owned subaqueous beds by eliminating the public interest review in cases where no direct impacts on natural resources under Marine Resources Commission regulatory*



*authority exist. The new chapter includes definitions, applicability and procedures, and permit conditions.*

Chapter 1410

Utility Line Encroachments Beneath or Over State-Owned Subaqueous Beds

**4VAC20-1410-10. Definitions.**

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

"Aerial utility line" means a utility line suspended above a waterway by attachment to structures located in the uplands or wetlands in such a manner as to prevent the utility line from coming into contact with the waterway.

"Bored" means the practice of installing a utility crossing under a stream using construction methodology that does not impact the waterway itself to include horizontal directional drilling, micro-tunneling, conventional bore, and guided conventional bore.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of the Virginia Marine Resources Commission or the commissioner's designee.

"Frac-out plan" means a written policy by the applicant that describes how the construction crews will monitor for inadvertent releases of drilling lubricants in the soils and streams of the project area and how the applicant will contain and mitigate those spills.

"Joint Permit Application" means the documents used by the Virginia Marine Resources Commission, U.S. Army Corps of Engineers, Virginia Department of Environmental Quality, and local wetland boards to evaluate projects involving submerged beds, wetlands, and coastal primary sand dunes and beaches for permit review.

"Utility line" means a cable or pipeline that conducts an essential community service, including water, sewer, electricity, telecommunications, natural gas, or other petroleum products.

**4VAC20-1410-20. Applicability and procedures.**

A. An application shall only qualify for a general permit under this chapter if the applicant meets all of the following criteria:

1. The work is for the installation of an aerial or bored crossing for a public or private utility line.
2. No instream work is proposed on state-owned subaqueous beds as part of the submitted Joint Permit Application.

3. The applicant has submitted a complete Joint Permit Application and any supplemental information deemed necessary by the commissioner.

4. The project will not impact navigation.

B. The commissioner shall oversee the administration of the provisions of this general permit.

C. The commissioner shall forward the application to the U.S. Army Corp of Engineers, the Virginia Department of Environmental Quality, and the local wetlands board or locality.

D. Once the commissioner determines the application is complete, completes a full evaluation, and determines that the project meets the specific permit criteria described in 4VAC20-1410-30, the commissioner shall issue the permit after all permit fees and royalties have been paid in accordance with § 28.2-1206 of the Code of Virginia.

E. This general permit shall not relieve the applicant from the applicant's obligation to comply with any other federal, state, or local permitting requirements or laws governing the proposed activity.

**4VAC20-1410-30. Permit conditions.**

After the commissioner reviews the completed Joint Permit Application and determines that the application qualifies for a general permit under this chapter, the project shall be authorized to encroach under or over state-owned submerged bottomland subject to the following conditions:

1. The project authorized by this general permit shall be completed within five years of the issuance of the permit. Upon proper request by the permittee, the permit may be extended to allow for the completion of the project.
2. The permit grants no authority to the permittee to encroach on property rights, including riparian rights, of others.
3. The duly authorized agents of the commission shall have the right to inspect the work authorized by the permit and to evaluate compliance with the terms and conditions of the permit.
4. The permittee shall comply with the water quality standards as established by the Virginia Department of Environmental Quality, Water Division and all other applicable laws, ordinances, and regulations affecting the conduct of the project. The granting of this permit shall not relieve the permittee of the responsibility of complying with any other applicable federal, state, or local law.
5. The permit may not be transferred without the written permission of the commissioner.
6. The permit shall not affect the right vouchsafed to the people of Virginia concerning navigation, fishing, fowling, and the catching of and taking of oysters and other shellfish

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# Regulations

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except as is necessary for safe construction or maintenance of the project, and any such impacts shall be minimized to the greatest extent practicable. The permittee shall notify the commissioner a week before beginning construction and before any maintenance activities that will impact navigation or other uses of the waterway.

7. The permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.

8. This permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions in this chapter or the Code of Virginia.

9. The issuance of this permit does not confer upon the permittee any interest or title to the beds of the waters.

10. All structures authorized by this permit that are not maintained in good repair shall be completely removed from over or under state-owned bottomland within three months after notification by the commission.

11. The permittee agrees to comply with all of the terms and conditions set forth in this permit and that the project will be accomplished within the boundaries as outlined in the plans in its Joint Permit Application.

12. This permit authorizes no claim to archaeological artifacts that may be encountered during the course of construction. If archaeological remains are encountered, the permittee agrees to notify the commission, which will in turn notify the Department of Historic Resources. The permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

13. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia and any applicable locality from any liability arising from the establishment, operation, or maintenance of the project.

14. For any work that includes borings that utilizes a lubricating fluid under state-owned subaqueous beds, the permittee shall submit to the commission a frac-out plan by which the permittee agrees to abide.

15. The permittee agrees to coordinate with the Virginia Department of Conservation and Recreation, Division of Natural Heritage Karst Protection Coordinator if karst features, such as additional undocumented sinkholes, caves, disappearing streams, and large springs, are encountered during the project to document and minimize adverse impacts.

16. This general permit shall be retained by the permittee for the life of the project as evidence of authorization.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1410)

[Joint Permit Application \(rev. 8/2023\)](#)

VA.R. Doc. No. R24-7694; Filed October 24, 2023, 1:45 p.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Action Withdrawn

Titles of Regulations: **6VAC20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations.**

**6VAC20-70. Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections.**

Statutory Authority: § 9.1-102 of the Code of Virginia.

The Criminal Justice Services Board has WITHDRAWN the regulatory action for **6VAC20-30, Rules Relating to Compulsory in-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations,** and **6VAC20-70, Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections,** which was published as a Notice of Intended Regulatory Action in [34:7 VA.R. 722 November 27, 2017](#). This action is being withdrawn because no developments on this regulation have occurred since 2017.

Agency Contact: Kristi Shalton, Law-Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email [kristi.shalton@dcjs.virginia.gov](mailto:kristi.shalton@dcjs.virginia.gov).

VA.R. Doc. No. R18-5304; Filed October 25, 2023, 8:45 a.m.

## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA WORKERS' COMPENSATION COMMISSION

#### Fast-Track Regulation

**Title of Regulation: 16VAC30-50. Rules of the Virginia Workers' Compensation Commission (amending 16VAC30-50-10 through 16VAC30-50-50, 16VAC30-50-70 through 16VAC30-50-110, 16VAC30-50-140; repealing 16VAC30-50-150).**

**Statutory Authority:** § 65.2-201 of the Code of Virginia.

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

**Public Comment Deadline:** December 20, 2023.

**Effective Date:** January 4, 2024.

**Agency Contact:** Evelyn McGill, Executive Director, Virginia Workers' Compensation Commission, 333 East Franklin Street, Richmond, VA 23219, telephone (804) 205-3060, FAX (804) 823-6945, or email [evelyn.mcgill@workcomp.virginia.gov](mailto:evelyn.mcgill@workcomp.virginia.gov).

**Basis:** The Virginia Workers' Compensation Commission administers the Virginia Workers' Compensation Act pursuant to § 65.2-201 of the Code of Virginia, which authorizes the commission to make rules and regulations for carrying out the provisions of Title 65.2 of the Code of Virginia.

**Purpose:** The goal of revising the regulation is to make the process of administering Virginia's workers' compensation benefits more efficient, which will protect the health, safety, and welfare of Virginia citizens.

**Rationale:** This rulemaking is expected to be noncontroversial because it primarily serves to make the Rules of the Virginia Workers' Compensation Commission (16VAC30-50) consistent with established Virginia Workers' Compensation Commission practices and procedures. Language changes were developed at the suggestion of and in cooperation with the Advisory Committee of the Virginia Workers' Compensation Inn of Court, consisting of members of both the claimant and defense Bars. The proposed amendments were approved by a majority vote of members of both Bars before submission to the commission for formal adoption. The proposed amendments clarify procedures applicable to the commission's hearing processes and correct internal inconsistencies in the existing regulation.

**Substance:** The amendments (i) update regulatory language; (ii) conform the outline labeling to Virginia Administrative Code style; and (iii) correct the title of the 16VAC30-50-140 table.

**Issues:** The primary advantage to the agency, the public, and the Commonwealth is that the proposed changes would make the process of administering the Virginia workers' compensation benefits more efficient. These regulatory

changes present no disadvantages to the agency, the public, or the Commonwealth.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Workers' Compensation Commission (commission) proposes numerous amendments to Rules of the Virginia Workers' Compensation Commission (16VAC30-50). The proposed changes that are likely to have an impact are described.

Background. This regulation provides procedures to identify and resolve disputed issues concerning injured workers claims for benefits through informal dispute resolution or a hearing.

The following are proposed amendments that are likely to have an impact:

**Rule 1. Prehearing procedures.** Under the current regulation, if the employer's application for a hearing is rejected, the commission informs the parties of the reason for rejection and compensation is to be reinstated immediately. If the employer's application for a hearing is accepted, the current regulation does not require the commission to provide reasons. The commission proposes to add the following text: "the commission shall inform the parties of the reason for the acceptance."

The current regulation states that "A proposed compromise settlement shall be submitted to the commission in the form of a petition setting forth:" followed by a list of items. The commission proposes to add "A statement on the claimant's Medicare status" to the list.

The commission proposes to eliminate the current requirement that the claimant notarize the affidavit attesting the claimant's understanding of and voluntary compliance with the terms of the settlement, and instead state that the affidavit is "sworn under penalty of perjury."

The current regulation states that "Answers under oath to each interrogatory are to be filed within 21 days after service." (Interrogatories are written questions that are formally put to one party in a case by another party and that must be answered.) The commission proposes to add ", unless otherwise agreed by the parties."

The commission proposes to add to the regulation that no motion outside of a live evidentiary hearing shall be filed with the commission for any purpose unless the moving party or their counsel has made a reasonable effort to confer and resolve the matter with the opposing party. Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected

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parties in an effort to resolve the dispute without commission action. Further, The commission proposes to add that such motion shall be in writing and the commission shall give the opposing side three business days to respond before ruling on the motion, except for those motions to compel initial discovery responses, or, unless on the face of the motion, it appears that exigent or emergency circumstances call for an earlier decision.

**Rule 2. Hearing procedures.** For when it appears that there is no material fact in dispute as to any contested issue, the current regulation states that "the parties shall be given 20 days to submit written statements and evidence..." For good cause shown additional time may be allowed." The commission proposes to reduce 20 days to 15 days.

**Rule 4. Filing documents.** The current and proposed regulation state that "All agreements as to payment of compensation shall be reduced to writing by the employer and promptly filed with the commission." The Commission proposes to add that<sup>3</sup> if an agreement is offered to a claimant by the carrier and it is signed and returned unchanged to the carrier within 14 days, then the carrier must either reject the agreement in writing or sign and file the agreement with the commission within 14 days of its receipt or be subject to the penalties from § 65.2-701 B of the Code of Virginia.

## Estimated Benefits and Costs.

**Rule 1. Prehearing procedures.** The proposal to require that the commission inform the parties of the reason for the acceptance of the employer's application for a hearing could be useful information for the involved parties. According to the commission, it would only require a small amount of its staff attorneys' time, and no new staff would be required. Thus, the benefits likely exceed the cost.

As stated, the commission proposes to add "A statement on the claimant's Medicare status" to the list of items to be included in the proposed compromise settlement petition. According to the commission, this is currently required later in the process. By including the requirement here, it would speed up the process in that it would not have to be requested later and the time spent waiting to receive it later would be saved. There is no apparent cost to requesting the information at this point rather than later.

The proposal to eliminate the current requirement that the claimant notarize the affidavit attesting to the claimant's understanding of and voluntary compliance with the terms of the settlement would save the claimant the time and effort of obtaining notarization. The commission believes that notarization is not necessary.

As stated, the current regulation requires answers under oath to each interrogatory within 21 days. The commission believes that allowing more than 21 days if agreed by the parties would likely reduce litigation. If all parties agree to allowing more than 21 days for a specific interrogatory, then there would appear to be no cost. Thus, this proposed change would likely produce a net benefit.

The commission believes that requiring that "Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without commission action" may increase the likelihood that the issue is resolved without going to the commission. To the extent that this proposed requirement would increase the likelihood that some disputes would be resolved without going to the commission, it would be beneficial.

According to the commission, the proposed requirement that the opposing side be given three business days to respond before a ruling on the motion is designed to prevent judges from making quick decisions without hearing from both sides.

**Rule 2. Hearing procedures.** Concerning the proposal to reduce from 20 days to 15 days the amount of time that the parties have to submit written statements and evidence when there are no material facts in dispute as to any contested issue, the commission believes that 15 days is more than sufficient in most cases. The commission believes that at times some parties use up to 20 days when they have no genuine need. The current and proposed text do indicate that "For good cause shown additional time may be allowed." Thus, to the extent that additional time is granted when there is genuine need, this proposed amendment should provide a net benefit in that it may speed up the process.

**Rule 4. Filing documents.** Section 65.2-701 B of the Code of Virginia requires insurance carriers to file written agreements among the parties with the commission within 14 calendar days of the date of its complete written execution. It further indicates that the carrier may be subject to a fine not to exceed \$1,000 and to any other appropriate sanctions of the commission if it fails to meet this requirement. The commission believes the proposed new regulatory text concerning this issue would help it enforce the statutory requirement.

**Businesses and Other Entities Affected.** The proposed amendments potentially affect injured workers who make compensation claims (23,509 in 2022), their employers (8,810 in 2022), insurance carriers (507 in 2022), and the commission.<sup>4</sup>

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. No entity appears to encounter an increase in net cost or reduction in net revenue from the proposed amendments overall. Thus, no adverse impact is indicated.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>8</sup> Affected.<sup>9</sup>** The proposed amendments are unlikely to disproportionately affect any particular localities or affect costs for local governments.

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

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

<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> In the current regulation, the section called "Filing documents" is Rule 3.

<sup>3</sup> Section 65.2-701 B of the Code of Virginia states that: "An employer or insurance carrier which fails to file a memorandum of such agreement with the Commission within fourteen calendar days of the date of its complete written execution as indicated thereon may be subject to a fine not to exceed \$1,000 and to any other appropriate sanctions of the Commission."

<sup>4</sup> Data source: Virginia Workers' Compensation Commission

<sup>5</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Virginia Workers' Compensation Commission concurs with the economic impact analysis performed by the Department of Planning and Budget.

**Summary:**

*The amendments (i) update regulatory language pertaining to prehearing procedures, hearing procedures, posthearing procedures, filing documents, award of attorney fees under § 65.2-714 of the Code of Virginia, employer responsibilities, self-insurance, payment of compensation, and x-ray evidence for coal workers' pneumoconiosis claims; (ii) corrects the title of the Table of Percentage of Loss of Visual Acuity; (iii) repeals Rule 14, Definition of Community; and (iv) relabels the outline form of the regulation to conform to Virginia Administrative Code style.*

**16VAC30-50-10. Definitions.**

~~These rules are~~ This chapter is issued to provide procedures to identify and resolve disputed issues promptly through informal dispute resolution or hearing.

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

"Act" means the Virginia Workers' Compensation Act.

"Commission" means the Virginia Workers' Compensation Commission.

"Employer" includes the employer's insurance carrier unless the context otherwise requires.

"Jurisdiction claim number" or "JCN" is the case number assigned by the commission and should be on all documents filed with the commission. This is different than the claim number from an insurance carrier.

"Signature" is a person's endorsement and may be handwritten, typed, electronic, or any other form allowed by the Code of Virginia.

**16VAC30-50-20. Rule 1. Prehearing Procedures.**

~~4. A.~~ Employee's original claim for benefits. An employee's original claim for benefits shall be filed within the applicable statutes of limitation. ~~A.~~ An original claim for benefits shall be in writing, signed, and should set forth the following:

1. Employee's name and address;
2. Employer's name and address;
3. Date of accident or date of communication of occupational disease;
4. Nature of injury or occupational disease;
5. Benefits sought: temporary total, temporary partial, permanent total, permanent partial, or medical benefits; and
6. Periods of disability, if appropriate.



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~~B. An original claim will not be docketed until medical evidence to support the claim is filed.~~ 2. Employee's claim on the ground of change in condition or other relief.

~~A. 1. A change in condition claim must be in writing and state the change in condition relied upon. A copy of the claim should be sent to the employer, should include all elements for a claim as set forth in subsection A of this section, and should include the jurisdiction claim number or sufficient information to identify the claims.~~

~~B. 2. Additional compensation may not be awarded more than 90 days before the filing of the claim with the commission. Requests for cost of living supplements are not subject to this limitation.~~

~~C. A claim for change in condition will not be docketed until medical evidence is filed to support the change in condition.~~

~~D. Any other claim shall specify the relief sought and will not be docketed until supporting evidence is received.~~

3. C. Dismissal upon failure to file supporting evidence. If supporting evidence is not filed within 90 days after an employee's claim is filed, it may be dismissed upon motion of the employer after notice by the commission to the parties.

4. D. Employer's application for hearing.

A. 1. An employer's application for hearing shall be in writing and shall state the grounds and the relief sought. At the time the application is filed with the commission, a copy of the application and supporting documentation shall be sent to the employee and a copy to the employee's attorney, if represented.

B. 2. Each change in condition application filed by an employer under § 65.2-708 of the Code of Virginia shall:

1. a. Be in writing;
2. b. Be under oath;
3. c. State the grounds for relief; and
4. d. State the date for which compensation was last paid.

C. 3. Compensation shall be paid through the date the application was filed, unless:

1. a. The application alleges the employee returned to work, in which case payment shall be made to the date of the return.
2. b. The application alleges a refusal of selective employment or medical attention or examination, in which case payment shall be made to the date of the refusal or 14 days before filing, whichever is later.
3. c. The application alleges a failure to cooperate with vocational rehabilitation, in which case payment must be made through the date the application is filed.
4. d. An employer files successive applications, in which case compensation shall be paid through the date required by the first application. If the first application is rejected,

payment shall be made through the date required by the second application.

5. e. The same application asserts multiple allegations, in which case payment is determined by the allegation that allows the earliest termination date.

~~D. 4.~~ An employer may file a change in condition application while an award is suspended.

~~E. 5.~~ No change in condition application under § 65.2-708 of the Code of Virginia shall be accepted unless filed within two years from the date compensation was last paid pursuant to an award.

~~F. 6.~~ A change in condition application may be accepted and docketed when payment of compensation continues.

5. E. Acceptance or rejection of claim or application.

A. 1. After receipt, the commission shall review the claim or application for compliance with the Workers' Compensation Act (§ 65.2 of the Code of Virginia) and ~~Rules of the Commission~~ this chapter.

B. 2. The commission may order the employer to advise whether the employee's claim is accepted or to provide reasons for denial.

1. a. Response to the order shall be considered a required report pursuant to § 65.2-902 of the Code of Virginia.

2. b. The employer's response to this order shall not be considered part of the hearing record.

~~C. If the employer's application is technically acceptable, the~~ 3. The opposing party shall be permitted up to 15 days from the date the application was filed to present evidence in opposition to the application.

1. ~~Pending acceptance or rejection of the application, the employer may suspend or modify compensation payments as of the date for which compensation was last paid.~~ 2. a. If rejected, the commission shall ~~advise the employer~~ inform the parties of the reason for rejection, and compensation shall be reinstated immediately.

3. b. If accepted, the commission shall inform the parties of the reason for the acceptance, and the application shall be referred:

- a. (1) For alternative dispute resolution,
- b. (2) For decision on the record, or
- e. (3) For an evidentiary hearing.

6. F. Review of decision accepting or rejecting claim or application.

A. 1. A request for review of a decision accepting or rejecting a change in condition claim or application shall be filed within 20 days from date of the decision. No oral argument is permitted.

~~B. 2.~~ The letter requesting a review should specify each determination of fact and law to which exception is taken. A copy of the request shall be sent to the opposing party.

~~C. 3.~~ The opposing party shall have 10 days from the date the review request is filed to provide a written response to the commission.

~~D. 4.~~ Only information contained in the file at the time of the original decision along with the review request and any response from the opposing party will be considered. Additional evidence will not be accepted.

~~E. 5.~~ If rejection of a claim or application is affirmed on review, the penalty and interest provisions of §§ 65.2-524 and 65.2-707 of the Code of Virginia shall apply from the date the application was initially rejected.

7. G. Compromise settlement; lump sum payment.

~~A. 1.~~ A proposed compromise settlement shall be submitted to the commission in the form of a petition setting forth:

- ~~1. a.~~ The matters in controversy;
- ~~2. b.~~ The proposed terms of settlement;
- ~~3. c.~~ The total of medical and indemnity payments made to date of submission and the date through which all medical expenses will be paid;
- ~~4. d.~~ The proposed method of payment;
- ~~5. e.~~ Such other facts as will enable the commission to determine if approval serves the best interests of the claimant or the dependents; and
- f. A statement on the claimant's Medicare status.

~~B. 2.~~ The petition shall be signed by the claimant and, if represented, an attorney and by the other parties or their attorneys. An endorsing attorney must be licensed to practice in Virginia.

~~C. 3.~~ The petition shall be accompanied by:

- ~~1. a.~~ A medical report or record stating the claimant's current condition and whether the injuries have stabilized;
- ~~2. b.~~ An informational letter from the claimant or counsel stating whether the claimant is competent to manage the proceeds of the settlement and describing the plan for managing the proceeds;
- ~~3. A notarized~~ c. An affidavit sworn under penalty of perjury attesting the claimant's understanding of and voluntary compliance with the terms of the settlement; and
- ~~4. d.~~ A fee statement endorsed by the claimant and the claimant's attorney.

~~D. 4.~~ If the ~~proposed settlement contemplates payment in a lump sum, the petition~~ employee or the dependents are represented by counsel, the claimant's informational letter shall set forth in detail the facts relied upon to show that the best interests of the employee or the dependents will be served thereby.

a. If the employee or the dependents are not represented by counsel, the commission shall promulgate a form titled "Informational Letter" that must be submitted in order for the commission to make its determination as to whether the best interests of the employee or dependents will be served thereby.

b. If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment.

~~E. 5.~~ The parties shall submit ~~an original~~ a proposed petition and order, properly endorsed.

~~F. Payment shall be due within 10 days after entry of the order approving the compromise.~~

8. H. Discovery.

~~A. 1.~~ Scope and method. The scope of discovery shall extend only to matters ~~which that~~ that are relevant to issues pending before the commission and ~~which that~~ that are not privileged. It is not ~~grounds~~ ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained by oral or written deposition, interrogatories to parties, production of documents or things, requests for admission, inspection of premises, or other means of inquiry approved by the commission.

~~B. 2.~~ Limiting discovery. The commission may limit the frequency or extent of discovery if it is unreasonably cumulative, duplicative, or expensive or if the request was not timely made. The commission will consider the nature and importance of the contested issues, limitations on the parties' resources, and whether the information may be obtained more conveniently and economically from another source.

~~C. 3.~~ Stipulation to discovery. Except as specifically provided by ~~these rules~~ this chapter, the parties may by written stipulation agree to other methods of discovery or provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

~~D. 4.~~ Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement a response to include information thereafter acquired unless ~~such information materially affects a prior response~~ the responding party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrected information has not been otherwise timely made known to the other parties during the discovery process or in writing.

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~~E. 5.~~ Protective order. Upon good cause shown, the commission may enter an order limiting discovery to protect a party, a witness, or other person from embarrassment, oppression, or undue burden or expense.

~~F. 6.~~ Subpoenas. ~~A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit it to the commission for insertion of return date and clerk certification; a check or money order for service fee, payable to the appropriate sheriff's office, shall accompany the request. The commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise. 1. Subpoenaed records may be made returnable to the requesting party or, at the direction of the commission, to the clerk of the commission or to a regional office. If subpoenaed records contain medical reports they shall be filed with the commission pursuant to Rule 4.2. 2. Requests for subpoenas may be filed with the commission at Richmond or in the regional office assigned to hear the case. 1. Subpoenas may be issued by the commission or by an attorney licensed to practice in the Commonwealth of Virginia. Unrepresented workers or employers must request subpoenas through the commission.~~

a. Subpoenas issued by the commission. A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit it to the commission for certification. A check or money order for service fee payable to the appropriate sheriff's office shall accompany the request. The commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise.

b. Subpoenas issued by a Virginia attorney. A subpoena may be issued by an active licensed member of the Virginia State Bar as an officer of the court. An attorney-issued subpoena must be signed as a pleading and contain the attorney's address, telephone number, and Virginia State Bar identification number.

c. Subpoenas for witnesses. Requests Subpoenas should be filed at least 10 days prior to hearing or deposition, unless good cause is shown.

2. d. Subpoenas duces tecum. Requests should to the commission for subpoenas duces tecum shall be filed at least 15 days before hearing with sufficient time for response for a hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced. All such subpoenas are returnable 14 days following service of process.

e. Service. All requests for subpoenas duces tecum shall be served on each counsel of record, or the unrepresented party, by delivering or mailing a copy to each on or before the day of filing. Each request with the clerk or issuance by the attorney. Returns from service shall be filed with the commission, which shall have appended either acceptance of service or a certificate that copies were

served in accordance with the law, showing the date of delivery or mailing.

f. Objection to subpoenas. Any party or the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production or appearance should not be had. If an objection is made, the party issuing the subpoena shall not be entitled to the request for production except pursuant to an order of the commission in which the case is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production. The commission may quash, modify, or sustain the subpoena.

~~G. 7.~~ Depositions. After a claim or application has been filed, any party may take the testimony of any person, including a party, by deposition upon oral examination or upon written questions.

The attendance of witnesses may be compelled by subpoena. ~~The deposition of a party or physician may be taken without permission of the commission. Leave of the commission shall be obtained to take the deposition of any other persons.~~ Depositions shall be taken in accordance with the requirements and limitations of the Rules of the Supreme Court of Virginia governing actions at law unless the parties stipulate to discovery as set forth in ~~Rule 1.8 (C)~~ subdivision H 3 of this section, supra.

For good cause shown the deposition of an attending panel physician may be ordered to be taken at the expense of the employer if the physician has not prepared and completed an Attending Physician's Report (~~Form 6~~) on the commission's prescribed form or has not otherwise prepared written reports ~~which that~~ that are sufficient to answer questions concerning injury, diagnosis, causation, disability, and other matters not stipulated and deemed by the commission to be material to a claim or to a defense. The expenses of such depositions are subject to the approval of the commission

~~Depositions~~ All depositions of medical providers, if transcribed, shall be filed with the commission and. Depositions of other parties and witnesses shall not be filed with the commission or be made a part of the record, except upon motion of a party for good cause shown or as ordered by the commission.

~~H. 8.~~ Interrogatories and requests for production of documents to parties. After a claim or application has been filed, or an award entered, interrogatories and requests for production of documents limited to contested issues may be served by one party on another party, more than 21 days before hearing without prior commission approval, or at any other time on motion to the commission for good cause shown.

Answers under oath to each interrogatory and responses to document requests are to be ~~filed~~ served within 21 days after service, unless otherwise agreed by the parties. Objections must be included with answers. If the party serving the interrogatories or requests for production of documents agrees to extend the period within which to file answers under oath, the filing of objections is likewise extended until the new date the answers are due. If there is objection to an interrogatory or document request and the party serving the interrogatory or document request moves the commission for relief, ~~the hearing officer~~ a deputy commissioner shall enter an order resolving the issue, after giving the parties an opportunity to state their positions in writing.

No party shall serve upon any other party, at one time or cumulatively, more than ~~15~~ 20 interrogatories and 30 requests for production of documents, including all parts and subparts, without leave of the commission for good cause shown. Leave shall be timely requested in writing. Relevant interrogatories should be served promptly upon commencement of a contested claim.

~~It is not necessary to file interrogatories~~ Objections by any party to the propounding of more than 20 interrogatories or 30 requests for production of documents, without leave of the commission for good cause shown, shall be filed with the answers to the interrogatories and document requests, at which time the deputy commissioner shall enter an order resolving the issue, after giving the parties an opportunity to state their position in writing. Interrogatories or answers shall not be filed with the commission unless they are the subject of a motion.

~~I. 9.~~ Request for admission. After a claim or application has been filed or an award entered, a party may serve upon any other party a written request for the admission of the truth of any material matter.

Each request must be numbered and set forth separately. Copies of documents shall be served with the request unless they have been furnished or made available for inspection and copying.

An admission under this ~~rule~~ subsection may be used only for providing evidence in the proceeding for which the request was made and shall not have force or effect with respect to any other claim or proceeding. An admission or denial must be offered in evidence to be made part of the record. A party is required to respond within ~~30~~ 21 days or be subject to compliance under ~~Rule 1.8 (K)~~ subdivision H 11 of this section or sanctions under ~~Rule 1.12~~ subsection L of this section.

~~J. 10.~~ Production of wage information. If ~~the average weekly wage is contested~~ a claim seeking indemnity is filed, the employer shall timely file a fully completed wage chart on the form prescribed by the commission, showing all wages earned by an employee in its employment for the term of

employment, not to exceed one year before the date of injury.

If an employee has earned wages in more than one employment, the employee shall have responsibility for filing information concerning wages earned in an employment other than the one in which claim for injury is made.

~~K. 11.~~ Failure to make discovery; to produce documentary evidence; to comply with request for admission. ~~A~~ Following a reasonable attempt to resolve a discovery dispute by the parties or their counsel, a party, upon reasonable notice to other parties and all persons affected thereby, may request an order compelling discovery as follows:

a. A timely request in writing in the form of a motion to compel discovery may be made to the commission or to such regional office of the commission where an application is assigned to be heard.

b. Failure of a deponent to appear or to testify, failure of a party on whom interrogatories have been served to answer, failure of a party or other person to respond to a subpoena for production of documents or other materials, or failure to respond to a request for admission shall be the basis for an order addressing a request to compel compliance or for sanctions, or both.

~~L. Disposition of discovery material. Any discovery material not admitted in evidence and filed in the commission may be destroyed by the clerk of the commission after one year from entry of a final decision of the commission or appellate court.~~

~~9. Informal~~ I. Alternative dispute resolution. At the request of either party, or at the commission's direction, contested claims and applications for hearing will be evaluated and may be referred for ~~informal~~ alternative dispute resolution. When it appears that a claim may be resolved by ~~informal~~ alternative dispute resolution, the commission will refer the case to a ~~commission representative who~~ the Alternative Dispute Resolution Department, which may schedule the parties for personal appearance or telephone conference. The commission will attempt to identify disputed issues and to bring about resolution through agreement. Parties need not be represented by counsel. If agreement is reached it shall be reduced to writing and shall be binding.

Examples of limited issues often subject to prompt resolution are:

- ~~A. 1.~~ Average weekly wage;
- ~~B. 2.~~ Closed periods of disability;
- ~~C. 3.~~ Change in treating physician;
- ~~D. 4.~~ Contested medical issues including bills;
- ~~E. 5.~~ Permanent disability ratings;

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~~F.~~ 6. Return to work;

~~G.~~ 7. Failure to report incarceration, change in address, or return to work; or

~~H.~~ 8. Attorney fee disputes.

If there is no agreement between the parties and there is no material fact in dispute, issues may be referred for decision on the record. If it is determined that material issues of fact are in dispute or that oral testimony will be required, the case will be referred to the docket for evidentiary hearing.

~~10.~~ J. Willful misconduct. If the employer intends to rely upon a defense under § 65.2-306 of the ~~Act~~ Code of Virginia, it shall give to the employee and file with the commission no less than 15 days prior to the hearing, a notice of its intent to make such defense together with a statement of the particular act relied upon as showing willful misconduct.

~~11.~~ K. Prehearing statement. The commission may require a prehearing statement by the parties as to the particulars of a claim and the grounds of defense.

~~12.~~ L. Enforcement of the Act and ~~Rules of the Commission this chapter~~; sanctions. In addition to the statutory authority of the commission to levy fines, to assess attorney fees and punish contempt, the commission may enforce ~~its rules this chapter~~ and the provisions of the Workers' Compensation Act upon motion of a party, or upon its own motion, after giving a party or other interested person the opportunity to be heard, by imposition of the following sanctions:

~~A.~~ 1. Rejection of a pleading including, ~~but not limited to,~~ all or part of a claim ~~and~~ or application or grounds of defense;

~~B.~~ 2. Exclusion of evidence from the record; or

~~C.~~ 3. Dismissal of a claim or application.

M. Motions practice. No motion outside of a live evidentiary hearing shall be filed with the commission for any purpose unless the moving party or the moving party's counsel has made a reasonable effort to confer and resolve the matter with the opposing party. Any motion filed shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without commission action. Such motion shall be in writing and the commission shall give the opposing side three business days to respond before ruling on the motion, except for those motions to compel initial discovery responses, or, unless on the face of the motion, it appears that exigent or emergency circumstances call for an earlier decision. In such exigent circumstances, the commission may make a good faith effort to schedule a telephone conference to hear from both sides before ruling, or may proceed with the ruling.

## 16VAC30-50-30. Rule 2. Hearing procedures.

A. At the request of either party, or at the commission's direction, contested issues not resolved informally through prehearing procedures or alternative dispute resolution will be referred for decision on the record or evidentiary hearing.

~~2-1.~~ B. Decision on the record. When it appears that there is no material fact in dispute as to any contested issue, determination will proceed on the record. After each party has been given the opportunity to file a written statement of the evidence supporting a claim or defense, the commission shall enter a decision on the record.

~~A- 1.~~ 1. Written statements. When the commission determines that decision on the record is appropriate, the applicant parties shall be given 20 15 days from the date of the order to submit written statements and evidence. Ten additional days shall be given to respond. The responding party shall be given an additional 15 days (30 days from the date of the order) to respond with a written statement and evidence in reply. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be ~~furnished~~ filed to the commission and served on all parties.

~~B- 2.~~ 2. Review. Request for review of decision on the record shall proceed under § 65.2-705 of the Code of Virginia and ~~Rule 3~~ 16VAC30-50-40.

~~2-2.~~ C. Evidentiary hearing. An evidentiary hearing by the commission shall be conducted as a judicial proceeding. All witnesses shall testify under oath, and a record of the proceeding shall be made. Except for rules ~~which that~~ the commission promulgates, ~~it the commission is not~~ neither bound by statutory or common law rules of pleading or evidence nor by technical rules of practice.

The commission will take evidence at hearing and make inquiry into the questions at issue to determine the substantial rights of the parties, and to this end hearsay evidence may be received. ~~The party having the burden of proof shall have the right to open and close. Each party shall be allowed 20 minutes in which to present evidence unless prior arrangement is made through the commission to extend hearing time.~~

~~A- 1.~~ 1. Continuances. The parties should be prepared to present evidence at the time and place scheduled for hearing. A motion to continue will be granted ~~only when it appears that material or irreparable harm may result if not granted at the discretion of the commission on a showing of good cause.~~

~~B- 2.~~ 2. Evidence.

1. a. Stipulations to agreed facts shall be included in the record. Each exhibit offered shall be marked and identified, and the record shall show whether it was admitted in evidence.



~~2. b.~~ Reports and records of ~~physicians,~~ depositions of health care providers, and reports of medical care directed by physicians ~~may~~ shall be admitted in evidence as ~~testimony by physicians or medical care providers.~~ Upon timely motion, any party ~~shall have~~ has the right to cross-examine the source of a medical document offered for admission in evidence.

~~3. c.~~ The parties, by the beginning of the hearing, shall specifically designate, with a chronological table of contents, by author, deponent, and date, medical reports, ~~or records or depositions~~ to be received in evidence. ~~Those portions of a deposition to be included in the record must be specifically identified by page and line.~~ Depositions will only be made part of the record pursuant to 16VAC30-50-20 H 7 The requirements of this provision may be modified or waived for pro se litigants.

~~4. Medical reports, records or deposition portions designated by the parties or included by the commission will be admitted into evidence.~~

~~2.3. D.~~ Expedited hearing.

~~A. Scope.~~ 1. An employee may request an expedited hearing before the commission when the employer has submitted an application for hearing pursuant to Rule 1.4 16VAC30-50-20 D and probable cause has been found to suspend benefits pending a hearing on the matter. An employee may also seek expedited determination of any disputed claim arising after the initial compensability of the accident has been determined by the commission.

~~B. 2.~~ Written request. An employee seeking an expedited hearing must file a written request with the clerk's office, and a copy of the request shall be sent to the employer. The request must include, by way of description, attachment or enclosure, evidence sufficient to find that, without an expedited proceeding to determine the merits of the dispute, the employee will be caused to suffer severe economic hardship. What constitutes severe economic hardship will be determined by the commission on a case-by-case basis. A copy of the employee's accepted request will be sent to the employer's counsel of record, the designated third-party administrator, and the carrier, along with a Notice of Request for Expedited Hearing, ~~by priority mail.~~

~~C. 3.~~ Loss of income. When the employee alleges that ~~he~~ the employee is not receiving compensation benefits, and is unemployed, unable to work, or only partially employed because of an injury compensable under the Act, the employee must establish that failure to grant an expedited hearing will result in severe, immediate economic hardship. In this regard, the commission will consider, but is not limited in considering, the following evidence:

~~1. a.~~ Whether, and to what extent, the employee is presently employed, and what other sources of income are available to support the employee;

~~2. b.~~ Whether the employee has dependents for whom the employee's wages, salary ~~and/or,~~ or other income were the sole or primary source of financial support;

~~3. c.~~ Whether the employee has received notices of imminent or threatened foreclosure or eviction actions, or the employee is in a state of homelessness;

~~4. d.~~ Whether the employee has received notices of imminent repossession of personal vehicles necessary for employment or medical treatment visits;

~~5. e.~~ Whether the employee's financial difficulties were caused by the termination of workers' compensation benefits by prior adjudication, caused by other circumstances, or both; and

~~6. f.~~ Any other evidence demonstrating that the employee's immediate ability to provide food, clothing and shelter will be threatened by failure to grant an expedited hearing.

~~D. Notwithstanding subdivisions 3 a through 3 f of this subsection, upon the employee's return to work with the employer at a wage less than the preinjury wage while on a current award for temporary total benefits if, within 20 days after said return, the employer has not either presented agreed forms for entry of an award for temporary partial benefits for same or paid an agreed amount voluntarily pending entry of an award, the employee may request an expedited hearing. Upon such request, there will be a presumption of entitlement to such a hearing when in fairness to both the employer and employee the hearing can be limited to that issue and the commission shall also promptly schedule a conference to discuss both a hearing date for same or whether the matter can be resolved without a hearing.~~

4. Medical expenses. When the employee seeks an expedited hearing, asserting that authorization of, or payment for recommended medical treatment has been denied by the employer or insurer, the employee must establish that failure to grant an expedited hearing will result in severe economic hardship. In this regard, the commission will consider, but is not limited in considering the following evidence:

~~1. a.~~ The general nature of the employee's injuries;

~~2. b.~~ Whether, if authorization is being sought for recommended treatment not already obtained, the employee's physician has stated that the procedure must be performed on an emergent basis; and failure to do so will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;

~~3. c.~~ Whether, if payment or reimbursement for medical expenses already incurred is being sought, reasonable and necessary ongoing medical treatment will be withheld for failure to pay for prior medical treatment; and that the withholding of such treatment will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;

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4. ~~d.~~ The cost of the medical treatment in dispute; and the employee's ability to pay for it; and

5. ~~e.~~ Any other evidence demonstrating that failure to grant an expedited hearing on this issue will result in severe economic hardship.

~~E.~~ 5. Employer response. Upon receipt of the commission's Notice of Request for Expedited Hearing, the employer shall have 14 days to investigate the basis for the employee's expedited hearing request. Prior to, or at the expiration of the ~~fourteenth~~ 14th day, the employer shall file with the commission, by hand-delivery, electronic filing, or certified mail, a written statement indicating whether the employer will or will not agree to the employee's request for expedited hearing. If the employer will not agree to proceed on an expedited basis, it must state, with specificity, the basis for its inability to proceed pursuant to an expedited hearing schedule. Filing shall be effective upon receipt by the commission or its agent, or by placing the statement in certified mail.

~~F.~~ 6. Informal conference. Once the commission has received the employer's response statement, or 14 days pass without a filed response from the employer, the commission shall schedule, as expeditiously as possible, an informal conference with the parties, whether in person, by teleconference, or by other electronic transmission. With regard to expedited claims for payment of medical expenses pursuant to ~~Rule 2.2 (D) subdivision D 4 of this section~~, no informal conference will be scheduled until the employee submits medical evidence to the employer and the commission supporting both the underlying claim and the necessity of expedited proceedings. During the informal conference, the commission will discuss issues relevant to the ~~grant~~ granting or denial of an expedited hearing including, ~~but not limited to~~, discovery between the parties, the timing and scheduling of depositions, and the parties' ability to secure other relevant evidence in an expedited manner. The commission will discuss the issues raised by the claim, and try to limit the scope of any matter ultimately referred to the expedited hearing docket by facilitating agreements between the parties. The commission will confer with the parties about scheduling a hearing date at the informal conference, or by teleconference after the informal conference.

~~G.~~ 7. Granting or denial of expedited hearing. During the informal conference, or within seven days of its completion, the commission will determine whether the claim underlying the request for expedited hearing is appropriate for the expedited hearing docket. If the request for an expedited hearing is granted, the commission will advise the parties of this decision during the informal conference, or in writing within seven days, ~~by priority mail~~. If the commission determines that the matter is not appropriate for the expedited docket, the parties will be

advised of the commission's determination, and the matter will be referred for regular processing.

~~H.~~ 8. Scheduling and continuances. The matter will be set for a hearing no less than 10 days, and no more than 28 days after the expedited hearing was granted. Ordinarily, once the matter is set down for an expedited hearing, neither party will be granted a continuance. A continuance will be granted only for good cause shown, involving exceptional circumstances beyond the control of the party, or the party's attorney. Any claim pending on the expedited docket that is continued or nonsuited at the request of the employee will be removed from the expedited docket, and shall not be reinstated for expedited proceedings.

~~I.~~ 9. Closing the record. The record shall close at the end of the expedited hearing unless, for good cause shown, one or both parties are unable to present necessary medical or factual evidence.

~~J.~~ 10. Decision. The deputy commissioner hearing the case will issue an opinion within 14 days after the record closes in an expedited hearing proceeding. ~~The opinion shall be sent to the parties by priority mail.~~

~~K.~~ 11. Expedited review. Either party may seek an expedited review of the decision to grant or deny an expedited hearing. Parties seeking expedited review must file a written request within seven days of ~~receipt~~ the date of the decision to grant or deny an expedited hearing. The written request must include a statement explaining the grounds for review, and must enclose all information the party believes is necessary for consideration of the request. A copy of the Request for Expedited Review shall be furnished to the opposing party. The commission shall provide notice of the request for expedited review within three days of its receipt. The opposing party shall have seven days from ~~receipt~~ the date of the commission's notice to file a written statement addressing the merits of the review request, and enclosing all information it believes is necessary for consideration on review. The commission shall review the decision to grant or deny an expedited hearing, and will issue a decision by order within seven days.

~~L.~~ 12. Review after expedited hearing. Review of a deputy commissioner's decision following an expedited hearing shall proceed according to the provisions of ~~Rule 3.1 16VAC30-50-40 A.~~ and § 65.2-705 of the Code of Virginia.

## E. Video hearings.

### 1. Prefiling of exhibits and medical records designations mandatory.

a. Filing deadline. A copy of each party's medical designation, as well as all proposed exhibits, must be filed no later than seven days before the scheduled hearing. The medical records designation must be filed in accordance with the commission's July 1, 2013, Order Clarifying Commission Rules 2.2 B.3 and 4.2. A copy of this order

may be found at <http://www.workcomp.virginia.gov/documents/order-regarding-medical-records-and-designations>. Any other proposed exhibits must be filed with a numerical table of contents, which must include title, author, and date. All proposed exhibits must be preceded by a separator page and numbered to identify the document following in accordance with the table of contents.

b. Objections. Objections to any item in the medical designation or to a proposed exhibit must be filed with the commission by any opposing party no later than four days prior to the scheduled hearing.

c. Late filings. Any medical record or exhibit submitted less than seven days before the hearing, other than a response to a record timely submitted under this order for which leave is granted to file a response, will be excluded from evidence or may serve as a basis for the continuance of the hearing, in the sole discretion of the deputy commissioner.

d. Copies required for witnesses. If a party anticipates questioning an adverse party or witness about a particular exhibit or medical record, identical electronic and paper copies of the exhibit must be sent by the questioning party to the adverse party or the witness so the party or witness may view the documents while testifying. No other written explanatory or instructive materials may accompany the documents. Failure to provide the witness with such copies will be grounds for excluding the anticipated testimony from the record. It is not considered an improper ex parte contact for a party to provide to the adverse party or witness a particular exhibit or medical record with an accompanying cover letter as long as no additional instructive or explanatory materials are provided. A copy of the cover letter must be filed with the commission. Alternatively, parties may agree which party will produce exhibits and medical records to an adverse party or witness. Under this provision, it is expected that parties will send exhibits and medical records to their own witnesses.

2. Oaths required. Witnesses will be sworn remotely and all witnesses must aver prior to their testimony that they shall not receive any undisclosed or other assistance from any source while testifying.

3. Witnesses. Parties must provide the commission with the name, telephone number, and, if possible, email address of all witnesses they expect to call to testify no less than seven days prior to the scheduled hearing. Further, parties who receive a Webex meeting invitation to the hearing from the commission must forward that invitation to any witnesses the parties expect to call to testify to allow for ease of connecting to the video hearing. Failure to do so may result in exclusion of witness testimony, at the discretion of the deputy commissioner. Continuances will not be granted solely because a witness fails to appear because the calling

party failed to provide this information, subject to the discretion of the deputy commissioner. Nothing in this order shall preclude the parties from obtaining evidence by de bene esse deposition or as otherwise permitted by the commission.

4. Minimum technical requirements. Parties and witnesses attending the video hearing must participate remotely using a PC, laptop, tablet, or smartphone equipped with a video camera and microphone. All parties and witnesses should use up-to-date browsers and operating systems with a reliable high-speed internet connection, and participation in the hearing will be subject to such other technical requirements as are published from time to time. Parties and witnesses are strongly encouraged to test their systems as instructed in advance of the hearing date. Parties must notify the commission as soon as possible, and not less than 14 days prior to the hearing without good cause being shown, if they or any of their witnesses cannot meet the minimum requirements for participation in the video hearing, so that alternate arrangements for the participation of such attendees may be arranged. Deputy commissioners have broad discretion to continue or cancel the hearing if attendees cannot meet the minimum technical requirements for participants.

5. Recording prohibited. Parties and witnesses attending the video hearing may not record the hearing by any means except upon advance leave granted by the deputy commissioner. The commission's recording of the hearing will be the sole official record of the proceedings.

6. Proper decorum required. Parties and witnesses attending a video hearing are attending a formal judicial proceeding and must dress appropriately just as if personally appearing in court. All attendees must participate from a quiet location free of distractions. Deputy commissioners have broad discretion to continue or cancel hearings or exclude witnesses if noise or extraneous activity disrupts the proceedings and to impose contempt sanctions for inappropriate conduct where necessary.

## **16VAC30-50-40. Rule 3. Posthearing procedures.**

4. A. Request for review. A request for review of a decision, order, or award of the commission shall be filed by a party in writing with the clerk of the commission within ~~20~~ 30 days of the date of such decision, order, or award.

A request for review should assign as error specific findings of fact and conclusions of law. Failure of a party to assign any specific error in its request for review may be deemed by the commission to be a waiver of the party's right to consideration of that error. The commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues.

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A copy of the request for review shall be furnished to the opposing party. ~~Upon request to the clerk, a party may obtain a copy of the hearing transcript subject to an appropriate charge.~~

~~2. B. Written statements. The commission will advise the parties of the schedule for filing ~~brief~~ written statements supporting their respective positions. The statements shall address all errors assigned, with particular reference to those portions of the record ~~which that~~ support a party's position. No schedules for written statements shall be issued in connection with interlocutory appeals, appeals of award orders issued pursuant to agreements, or appeals of decisions accepting or rejecting a change in condition claim or application. However, where a decision accepting or rejecting a change in condition claim or application has been appealed, the non-appealing party shall have 10 days from the date the request for review was filed to provide a written response.~~

~~3. C. Additional testimony. No new evidence may be introduced by a party at the time of review except upon agreement of the parties. A petition to reopen or receive after-discovered evidence may be considered only upon request for review.~~

~~A petition to reopen the record for additional evidence on review will be favorably acted upon by the full commission only when it appears to the commission that such course is absolutely necessary and advisable and also when the party requesting the same is able to conform to the rules prevailing in the courts of this state for the introduction of after-discovered evidence.~~

~~4. D. Oral argument. A party may request oral argument at the time of application the request for review, and the commission may grant it subject to whatever terms and conditions the commissioners apply to the case. Otherwise, the review shall proceed on the record.~~

~~If oral argument is requested and the commission considers it necessary or of probable benefit to the parties or to the commission in adjudicating the issues, the parties will be scheduled to present oral argument.~~

~~Any party may request the commission to schedule argument by telephone conference by giving notice to the clerk of the commission and to opposing counsel at least five days before the scheduled date for argument.~~

~~Each side will be limited to no more than 15 minutes for presentation of oral argument.~~

~~If oral argument is requested and the requesting party fails to appear in person or by scheduled telephone conference, the commission may impose sanctions in the absence of good cause shown.~~

## **16VAC30-50-50. Rule 3, 4. Filing documents.**

1. A. Agreements. All agreements as to payment of compensation shall be reduced to writing by the employer and promptly filed with the commission. If the claim is denied the employer shall notify the employee and the commission promptly in writing.

2. If an agreement is offered to a claimant by the carrier, and the agreement is signed and returned unchanged to the carrier within 14 days, then the carrier must either reject the agreement in writing or sign and file the agreement with the commission within 14 days of its receipt or be subject to the penalties from § 65.2-701 B of the Code of Virginia.

~~B. Medical reports. The original or a legible copy of all medical reports received by an employer or an employee relating to a claim shall be filed immediately with the commission. A copy of all reports shall be furnished to the opposing party. All medical reports relevant to a claim shall be required reports subject to provisions of § 65.2-902 of the Code of Virginia. Failure by a party to file a medical report shall be grounds for imposing sanctions. Required reports shall also include:~~

- ~~A. Commission Form 6 or equivalent;~~
- ~~B. Attending physician's notes and reports;~~
- ~~C. Emergency room reports;~~
- ~~D. Operative notes;~~
- ~~E. Hospital admission and discharge summaries;~~
- ~~F. Cumulative progress notes; and~~
- ~~G. Return to work or disability slips.~~

Each party shall promptly provide the other parties with copies of any medical records each party receives as each party receives them. Copies may be provided electronically, by postal mail, or by facsimile transmission. Unless otherwise directed by the commission or this chapter, the parties shall not file medical records with the commission until a hearing request is filed. The requesting party shall promptly file medical records supporting the request if applicable. After a hearing request has been filed, the parties shall file with the commission only medical records that are related to the hearing request.

Without leave of the commission, the parties shall not file with the commission any of the following medical records.

1. Laboratory reports;
2. Routine nursing notes;
3. X-rays or other diagnostic imagery films (except in pulmonary cases);
4. Physical therapy records;
5. Routine hospital patient observation notes; and

6. Health provider bills or statements of account (unless the claim is brought by a health care provider or the application seeks payment of specific medical expenses).

Medical records filed in accordance with this section shall be filed upon receipt by the party filing them, and they are required reports subject to the provisions of § 65.2-902 of the Code of Virginia.

A party is not required to file copies of medical records that another party has already filed.

A ~~medical~~ health care provider attending an injured employee shall, upon request ~~from an employer or an employee~~, furnish a copy of ~~required~~ the medical reports, at no cost except for a nominal copying charge.

A ~~medical~~ health care provider is entitled to a reasonable fee for preparation of a narrative report written in response to a request from a party if the report requires significant professional research or preparation.

**16VAC30-50-70. Rule 6. Award of attorneys attorney fees under § 65.2-714 of the Code of Virginia.**

~~1- A.~~ A. Agreement between parties as to a fee. An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if agreement is reached and an order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee, is submitted to the commission.

~~2- B.~~ B. Parties fail to agree on a fee.

~~A- 1.~~ A. 1. An attorney's attorney fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the parties cannot agree, upon filing of a statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested, and certification that:

~~1- a.~~ a. The claim was contested or that the defense was abandoned;

~~2- b.~~ b. Prior to the filing of a request with the commission the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;

~~3- c.~~ c. The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made; ~~4- and~~

d. A copy of the motion has been sent to each carrier and health care provider identified.

~~B- 2.~~ 2. If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice must state the amount of the medical charge recovered for the carrier or provider, the

amount of the ~~attorney's attorney~~ fee requested, and the time and place of the hearing.

**16VAC30-50-80. Rule 7. Employer responsibilities.**

~~1- A.~~ A. Proof of insurance coverage. Every employer subject to the Act shall file with the commission proof of compliance with the insurance provisions (§§ 65.2-800 and 65.2-801 ~~of the Code of Virginia~~) ~~of the Act~~ on such forms as may be required by the commission. A notice from the insurer (Form No. 45F) certifying this fact will be received as acceptable proof.

~~2- B.~~ B. Posting notices. Every employer subject to the Act shall post and keep posted, conspicuously, in the plant, shop, or place of business at a location frequented by employees, notice of compliance with the insurance provisions of the Act. ~~Such notice shall follow substantially the form prescribed on such forms as may be required~~ by the commission. The commission will supply employers with printed notices upon request. Failure by an employer to give such notice to an employee may constitute waiver of the notice defense pursuant to § 65.2-600 of the Code of Virginia.

**16VAC30-50-90. Rule 8. Self-insurance.**

~~1- A.~~ A. The Commonwealth of Virginia, its municipalities, and political subdivisions. Permission for self-insurance will be granted by the commission to the Commonwealth and its political subdivisions and to Virginia municipalities upon application for certification, without submission of proof of financial ability and without deposit of bond or other security. However, the premium tax provided for in § 65.2-1006 of the ~~Act~~ Code of Virginia shall be paid.

~~2- B.~~ B. Confidentiality of self-insurer information. No record of any information concerning the solvency and financial ability of any employer acquired by a commissioner or ~~his~~ the commissioner's agent by virtue of ~~his~~ the commissioner's or commissioner's agent's powers under the Act shall be subject to inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a commissioner or ~~his~~ a commissioner's agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from ~~him~~ the employer, in accordance with provisions of the Act, shall continue to be paid.

**16VAC30-50-100. Rule 9. Payment of compensation.**

~~1- A.~~ A. Waiting period. If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

~~2- B.~~ B. Direct payment. All compensation due an injured employee or compensation awarded on account of death under the Act must

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be paid directly to the beneficiary in accordance with the award. This ruling applies whether or not the employee is represented.

Compensation awarded shall be paid promptly and in strict accordance with the award issued by the commission. When an award provides for an attorney fee, the employer shall pay the fee directly to the attorney unless there is alternative provision in the award.

## 16VAC30-50-110. Rule 10. X-ray evidence for coal workers' pneumoconiosis claims.

1- A. Limitation on x-ray submissions. In any claim for first, second, or third stage pneumoconiosis under § 65.2-504 of the Code of Virginia, the employer and the employee each shall be limited to submission of not more than three medical interpretations (readings) of x-ray evidence without regard to the number of x-rays. For good cause shown, additional interpretations may be received as evidence if deemed necessary by the commission.

2- B. Reading by ~~pulmonary committee~~ Pulmonary Committee. Any party to a contested claim, or the parties upon agreement, may submit the x-ray evidence to the commission for interpretation by the Pulmonary Committee. If a party agrees to accept the x-ray reading of the Pulmonary Committee as the binding classification, the costs of evaluation shall be borne by the commission.

3- C. Appointment of Pulmonary Committee. The commission shall appoint a Pulmonary Committee to be composed of at least three qualified physicians certified as B readers under standards promulgated by the International Labour Organization (ILO).

## 16VAC30-50-140. Rule 13. Table of ~~Percentage~~ percentage of loss of visual acuity.

Table of percentage of loss of visual acuity.

SNELLEN'S SNELLEN CHART	
Snellen Chart Readings	Percentage of Loss of Visual Acuity
20/20	0
20/25	5
20/30	10
20/40	20
20/50	25
20/60	33-1/2
20/70	40
20/80	50
20/90	62-1/2
20/100	75

20/110	80
20/120	85
20/130	87
20/140	89
20/150	91
20/160	93
20/170	95
20/180	97
20/190	99
20/200	100

Any other deviation from normal vision caused by the injury shall be considered.

## 16VAC30-50-150. Rule 14. Definition of community. (Repealed.)

~~For the purpose of § 65.2-605 of the Code of Virginia, the word "community" shall mean one or more planning districts as set forth below.~~

Community Planning District(s)	
1	Districts 1 and 2
2	District 3
3	District 4
4	District 5
5	Districts 11 and 13
6	District 12
7	District 6
8	District 7
9	District 16
10	Districts 9 and 10
11	District 8
12	Districts 17 and 18
13	Districts 22 and 23
14	Districts 14 and 15
15	District 19

~~Whenever an employee receives treatment outside of the Commonwealth, the commission will determine the appropriate community in the state or territory where the~~



~~treatment is rendered upon application of either the employee, employer (or its representative), or medical provider.~~

~~When the commission deems appropriate, it may consider additional data to determine the prevailing community rate.~~

VA.R. Doc. No. R24-7594; Filed October 18, 2023, 2:19 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BRANCH PILOTS

#### Proposed Regulation

Title of Regulation: **18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-40, 18VAC45-20-50).**

Statutory Authority: § 54.1-902 of the Code of Virginia.

Public Hearing Information:

December 11, 2023 - noon - Virginia Port Authority, 600 World Trade Center, Norfolk, VA 23510

Public Comment Deadline: January 19, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov).

Basis: Section 54.1-902 of the Code of Virginia states enumerates the legal authority for the Board for Branch Pilots to administer the licensure program for branch pilots.

Purpose: The General Assembly has charged the board with the responsibility of regulating those who perform the duties of a branch pilot by requiring that such individuals obtain a license in order to perform these duties, and that such individuals adhere to minimum standards of conduct. These standards of conduct include a pilot being fit to safely discharge piloting duties. To the extent a pilot is unfit to perform piloting, the health, safety, and welfare of the public would be at risk. The board determined it was imperative to ensure that marijuana was included in the testing for an incident, extension of route, initial or renewal of a license, or random test screens. A branch pilot who is impaired by any substance poses a risk to not only the commercial cargo ship the pilot is piloting, but also to the crew, any citizens using the waterways, and the port. The board seeks to ensure that pilots are aware that a test positive for marijuana could result in disciplinary action by the board to the extent it may impair the safe discharge of a pilot's duty to pilot a vessel. The goal of the regulatory change is to clarify that marijuana is reportable in random drug tests and the board has a basis to take action if a pilot were to test positive for marijuana, to include denial of a license, denial of renewal of a license, or disciplinary action.

Substance: 18VAC45-20-40 is amended to provide that a regulant's performing or attempting to perform the duties of the regulant's office or job while under the influence of marijuana is grounds for denial of a license, denial of renewal of a license, or discipline of a licensee. 18VAC45-20-50 is amended to require that a medical review officer report to the licensee and to the board any time the medical review officer finds the presence of marijuana that may impair the pilot from safely discharging any duty to the extent the pilot is unfit to perform those duties.

Issues: The primary advantage of the regulatory change is clarification to regulants and to the public that marijuana is reportable in random drug tests and the board has a basis to take action if a pilot were to test positive for marijuana, to include denial of a license, denial of renewal of a license, or disciplinary action. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board for Branch Pilots (board) proposes to make clear that being under the influence of marijuana while on duty is grounds for denial of initial licensure, denial of license renewal, or discipline of existing branch pilot licensees. Additionally, the board proposes to make clear that the medical review officer shall report findings of on-duty branch pilots testing positive for marijuana that may impair the safe discharge of their duties to the licensee and president or vice president of the board and to the board's administrator.

Background. Branch pilots are responsible for safe passage of ships in Virginia's major shipping lanes and waterways. On-duty branch pilots are subject to random chemical testing. Among other items, the current regulation lists the following as grounds for denial of initial licensure, denial of license renewal, or discipline of existing branch pilot licensees:

15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;
16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job;

Chapter 550 of the 2021 Acts of Assembly (Chapter 550)<sup>2</sup> eliminated criminal penalties for simple possession of marijuana and modified several other provisions of law related to marijuana. Prior to this, marijuana would have clearly fallen under "illegal drugs" as mentioned in the grounds for denial of

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initial licensure, denial of license renewal, or discipline when on duty and found to be under the influence. Since enactment of Chapter 550, marijuana could potentially no longer be considered an illegal drug. Consequently, the Board proposes to add "marijuana" to 16. so that it reads: "16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol, marijuana, or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job;"

The regulation defines "medical review officer" or "MRO" as "a Virginia licensed physician with a current valid certification from the American College of Occupational and Environmental Medicine or the American Association of Medical Review Officers whose duties, authorities and responsibilities are delineated by these organizations." Among the responsibilities of the MRO, the current regulation states that: "Any time the MRO finds the presence of a drug or alcohol that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator." The board proposes to add "or marijuana" to that sentence so that it reads: "Any time the MRO finds the presence of a drug, alcohol, or marijuana that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator."

**Estimated Benefits and Costs.** According to the Department of Professional and Occupational Regulation, random chemical testing has continued to include marijuana. The proposed amendments would not change what occurs in practice. Nevertheless, it is beneficial to clarify the authority to test for marijuana and the consequences for being under the influence of marijuana while on duty. Like alcohol, marijuana slows reaction time and ability to make decisions, impairs coordination, and distorts perception.<sup>3</sup> An on-duty branch pilot who is impaired by any substance poses a risk to not only the commercial cargo ship the pilot is piloting, but to also the crew, any citizens using the waterways, other watercraft, properties adjacent to and in the waterways, and the port.

**Businesses and Other Entities Affected.** The proposed amendments pertain to the 38 licensed branch pilots in the Commonwealth, all of whom work for small businesses.<sup>4</sup>

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments do not increase net cost or reduce in net revenue. Thus, no adverse impact is indicated.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments represent consistency with current practice and do not adversely affect small business.

**Localities<sup>8</sup> Affected.<sup>9</sup>** Branch pilots work within localities along navigable waterways, particularly the James and Potomac Rivers.<sup>10</sup> The proposed amendments do not introduce costs for local governments.

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

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

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://lis.virginia.gov/000/chapter550.pdf>.

<sup>3</sup> Source: U.S. Centers for Disease Control and Prevention <https://www.cdc.gov/marijuana/health-effects/driving.html>.

<sup>4</sup> Data source: Department of Professional and Occupational Regulation.

<sup>5</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>10</sup> Source: Department of Professional and Occupational Regulation.

**Agency's Response to Economic Impact Analysis:** The Board for Branch Pilots concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The proposed amendments (i) provide that performing or attempting to perform the duties of a regulant's office or job while under the influence of marijuana is grounds for denial of a license, denial of renewal of a license, or discipline of a licensee; and (ii) require that a medical review officer report to the licensee and to the Board for Branch Pilots any time the medical review officer finds the presence of marijuana, which may impair the pilot from safely discharging any duty to the extent the pilot is unfit to perform those duties.*

**18VAC45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.**

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. (i) a. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any ~~alcohol-~~ alcohol-related or drug-related offense, there being no appeal pending, therefrom or the time for appeal having elapsed.
- (ii) b. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor resulting from an arrest for any ~~alcohol-~~ alcohol-related or drug-related offense, there being no appeal pending therefrom or the time for appeal having elapsed.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within seven calendar days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude or any ~~alcohol-~~ alcohol-related or drug-related offense;
3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within seven calendar days of that report or action;
4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, or welfare;
5. Negligence or misconduct in the performance of duties;

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia or any regulation of the board;
7. Failing to, as soon as possible under the circumstances, report to the pilot officers ~~his~~ the licensee's finishing time and other required information relating to the particulars of the ship;
8. Failing to file immediately with the president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;
9. Failing to report to the board any physical or mental condition ~~which that~~ may affect ~~his~~ the licensee's ability to perform the duties of a pilot. Such reports shall be provided within seven calendar days of the onset of the condition;
10. Refusing to comply with the board's requirement for a chemical test. Such test is required immediately and no later than 12 hours after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;
11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;
12. Failing to send proof of any test required by subdivision 10 or 11 of this section to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;
13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;
14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

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15. Performing or attempting to perform any of the duties of ~~his~~ the licensee's office or job while under the influence of illegal drugs;

16. Performing or attempting to perform any of the duties of ~~his~~ the licensee's office or job while under the influence of alcohol, marijuana, or any medication (controlled substance or otherwise) to the extent that ~~he~~ the licensee was unfit for the performance of the duties of ~~his~~ the licensee's office or job; and

17. Failing to comply with any of the provisions of 18VAC45-20-50.

## 18VAC45-20-50. Random chemical testing.

A. All Virginia licensed branch pilots shall be subject to the random chemical testing as set forth in this chapter. Random chemical testing shall be conducted at an annual selection rate of not less than 30% and not more than 100% of total licensees. Licensees shall be responsible for all costs associated with random chemical testing. The chemical test shall be a comprehensive drug screen acceptable to the board that includes testing for controlled substances in Schedules I - through V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Only licensees on duty may be selected for random testing. A licensee selected for random chemical testing shall report for testing within two hours of notification. Failure to take a random chemical test is considered refusal to take the test.

### B. Duties of licensee.

1. All licensees of this board shall enroll and participate in a random chemical testing program that meets the criteria of this chapter.

2. An on-duty licensee selected for random chemical testing shall report for testing within two hours of notification that ~~he~~ the licensee has been selected.

3. Licensees who receive a prescription for any medication from any health care provider shall have the following duties:

a. Give the health care provider a copy of the licensee's job description as a Virginia pilot;

b. Give the health care provider a complete list of medications used within the 30 days preceding the current visit;

c. Obtain a written statement from the health care provider stating if the new prescription is for a controlled substance (Schedules II - through V of the Drug Control Act) and obtain a written statement from the health care provider as to the licensee's fitness to safely perform the duties found in the job description; and

d. If prescribed any medication containing a Schedule Schedules II - through V controlled substance that is to be used within 12 hours of being on duty, make certain the

MRO received by hand delivery or telefax each prescription written by any health care provider at the time such prescription is written along with a complete list of medications used by the licensee within the preceding 30 days.

### C. The medical review officer shall:

1. Be completely familiar with all duties of a Virginia pilot.

2. Receive, evaluate, and maintain records of all medications given to him by or on behalf of each Virginia pilot.

3. Receive, evaluate, and maintain a record of each random chemical test taken by a Virginia pilot.

4. Any time the MRO finds the presence of a drug ~~or~~, alcohol, or marijuana that may impair the safe discharge of any duty of a Virginia pilot such that ~~he~~ the licensee is unfit to perform those duties, report ~~his~~ the licensee's written findings to the licensee and president or vice president of the board and to the board's administrator.

5. Report in writing to the licensee, president or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested.

6. To the extent consistent with state and federal law, protect the confidentiality of all licensee records.

7. Judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history. Any time the MRO finds evidence that the Virginia pilot may be impaired in the safe discharge of any of ~~his~~ the pilot's duties such that ~~he~~ the pilot may be unfit to perform those duties, ~~his~~ the MRO's written finding shall be reported to the licensee and president or vice president of the board and to the board's administrator.

VA.R. Doc. No. R23-7318; Filed October 27, 2023, 8:14 a.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Proposed Regulation

Title of Regulation: **18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-200).**

Statutory Authority: § 54.1-1802.1 of the Code of Virginia.

#### Public Hearing Information:

December 19, 2023 - 2 p.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, 1st Floor Training Room, Richmond, VA 23233

Public Comment Deadline: January 19, 2024.

Agency Contact: Marjorie King, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA

23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

**Basis:** Section 54.1-201 of the Code of Virginia requires that powers and duties of regulatory boards shall be to promulgate regulations to ensure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system. Section 54.1-1802.1 of the Code of Virginia requires the department to administer and enforce the provisions of Chapter 18 (§ 54.1-1800 et seq. of the Code of Virginia), including the establishment of minimum qualifications for the operators of polygraphs and other detection devices.

**Purpose:** This regulatory change is needed to ensure that the regulation is consistent with applicable statute in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). The regulatory change will enhance the public welfare by ensuring that individuals who are examined by a licensed polygraph examiner are provided notice that the results of their polygraph examination are subject to disclosure under the Virginia Freedom of Information Act (FOIA) and can make an informed decision as to whether to proceed with an examination. The goal of the regulatory change is to amend the regulation so as to be consistent with previously amended provisions of FOIA.

**Substance:** 18VAC120-30-200 is amended to require that an examiner disclose to an examinee that the polygraph examination is subject to disclosure under FOIA.

**Issues:** There are no advantages or disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Department of Professional and Occupational Regulation (DPOR), based upon the recommendation of the Polygraph Examiners Advisory Board (board), proposes to update the regulatory text to require a polygraph examiner to disclose to an examinee that the polygraph examination is now subject to disclosure under the Virginia Freedom of Information Act (FOIA) following a legislative change in 2021.

Background. This regulation applies to polygraph examiners, interns, and training. According to DPOR, prior to 2021, law enforcement agencies were able to withhold polygraph reports which were requested pursuant to FOIA (§ 2.2-3700 et seq. of the Code of Virginia) because some case files were exempt from disclosure under FOIA. Chapter 483 of the 2021 Acts of Assembly, Special Session I,<sup>2</sup> expanded the public's access via

FOIA requests to some closed law enforcement cases. DPOR received a comment indicating that current provisions in the standards of practice and conduct in this regulation may be inconsistent with FOIA after the 2021 legislative change and that amendments to the regulation may be required with regards to provision of copies of polygraph examination to the public. DPOR consulted with its counsel and now proposes to amend the language to require a polygraph examiner to disclose to an examinee that the polygraph examination is subject to disclosure under FOIA.

Estimated Benefits and Costs. DPOR reports that following the 2021 legislative change, law enforcement agencies began providing polygraph exam reports for closed cases when requested under FOIA. However, the current regulatory language is silent about whether polygraph examinations are subject to FOIA. The board is proposing to add to the text a requirement that a polygraph examiner disclose to an examinee that the polygraph examination is now subject to disclosure.

The proposed text does not provide specific information on what exactly is subject to disclosure (i.e., only exam results, exam questions, etc.) or in which cases disclosure applies (i.e., active or closed cases), effectively leaving such questions to the interpretation of FOIA. Additionally, administration of all polygraph examinations regardless of type (e.g., criminal investigations or pre-employment check) require the examinee's consent. Thus, the possibility of disclosure under FOIA may dissuade some individuals from subjecting themselves to an exam; however, this effect would be a consequence of the legislative change and not this regulatory change. Instead, the regulation would only require the examiner to disclose to the examinee that the exam may be publicly accessible, thereby alerting the examinee to that potential.

Since polygraph exams have been subject to disclosure under FOIA since 2021, and the potential impact upon consent derives from the legislative change, the proposed regulatory text would not have a significant economic impact other than clarifying for the examiner and examinee that the exam can become public information.

Businesses and Other Entities Affected. This regulation applies to all licensed polygraph examiners and polygraph interns. As of April 1, 2023, there were 312 licensed polygraph examiners and 28 polygraph interns.<sup>3</sup> No regulants appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed language would incorporate practices into the regulation that have already been in effect since 2021 under Virginia law, and thus the main effect is clarification. Therefore, no adverse impact is indicated.



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# Regulations

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Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendment does not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendment does not introduce costs for local governments nor affect any locality more than others.

Projected Impact on Employment. The proposed amendment does not appear to affect employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor real estate development costs is expected.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0483>

<sup>3</sup> Source: Department of Professional and Occupational Regulation

<sup>4</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup> Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Professional and Occupational Regulation concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*The proposed amendments require a polygraph examiner to disclose to an examinee that the polygraph examination is subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).*

### **18VAC120-30-200. Polygraph examination procedures.**

A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

B. The examiner shall provide the examinee with a written explanation of the provisions of 18VAC120-30-200, 18VAC120-30-210, and 18VAC120-30-220 at the beginning of each polygraph examination.

C. The examinee may request a recording of the polygraph examination being administered. Each examiner shall maintain recording equipment and recording media adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep pursuant to 18VAC120-30-230. All recordings shall be made available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$35 only if the examinee requests and receives a copy of an examination.

D. The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination ~~which that~~ is prepared by the examiner and provided to any person or organization. The examinee shall make his request in writing to the examiner. The examiner shall comply within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

E. The provisions of subsections B, C, and D of this section shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section shall comply with subsection B of this section through a verbal explanation of the provisions of 18VAC120-30-210 and 18VAC120-30-220.

F. The examiner must disclose to the examinee that the examination is subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

VA.R. Doc. No. R23-7093; Filed October 26, 2023, 4:28 p.m.



**REAL ESTATE BOARD**

**Final Regulation**

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

**Title of Regulation:** **18VAC135-20. Virginia Real Estate Board Licensing Regulations (adding 18VAC135-20-65).**

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

**Effective Date:** January 1, 2024.

**Agency Contact:** Anika Coleman, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov).

**Summary:**

*Pursuant to Chapters 2 and 3 of the 2023 Acts of Assembly, which adopted universal license recognition (ULR), allowing regulatory boards to require a jurisprudential exam of ULR applicants if such exam is required of other applicants, the amendments add ULR provisions, including requiring ULR applicants to pass the Virginia Real Estate Exam.*

**18VAC135-20-65. Universal license recognition.**

A. Licensed in another state. The board will issue a salesperson or broker license under universal license recognition to an individual who meets the following qualifications:

1. The individual holds a current and valid license with a similar scope of practice in another state, territory, possession, or jurisdiction of the United States for at least three years;
2. The individual was licensed in the other state after having passed a state required exam and met education, training, or experience requirements to obtain the license;
3. The individual's other license is in good standing with no reported pending complaints;
4. The individual has met the requirements set in subdivision 4 of 18VAC135-20-30;
5. The individual has not been subject to professional discipline involving harm to the public or license probation, suspension, or revocation;
6. The individual pays the reciprocity application fee as listed in 18VAC135-20-80; and

7. The individual successfully passes the Virginia Real Estate Exam.

B. Experience in a state that does not require licensure. The board will hold an individual to have met all experience, training, and education requirements if the applicant has three years of experience in a state that does not require licensure.

1. To be exam eligible under universal license recognition an individual must have:

- a. Demonstrated at least three years of experience as a salesperson or broker in another state that does not issue an occupational or professional license for that respective profession;
- b. Met the requirements set in subdivision 4 of 18VAC135-20-30;
- c. Not been subject to professional discipline involving harm to the public or license probation, suspension, or revocation; and
- d. Paid the applicable application fee as listed in 18VAC135-20-80.

2. Under this subsection, individuals are required to pass all exams required of initial applicants for the license under 18VAC135-20-30.

V.A.R. Doc. No. R24-7502; Filed October 31, 2023, 1:29 p.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **20VAC5-201. Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities (amending 20VAC5-201-10, 20VAC5-201-20, 20VAC5-201-30, 20VAC5-201-90; adding 20VAC5-201-16; repealing 20VAC5-201-40, 20VAC5-201-85).**

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

**Effective Date:** January 1, 2024.

**Agency Contact:** Andrea Macgill, Division of Utility Accounting and Finance, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA

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23218, telephone (804) 371-9064, or email [andrea.macgill@scc.virginia.gov](mailto:andrea.macgill@scc.virginia.gov).

## Summary:

*The amendments remove the applicability of Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities (Chapter 201) to investor-owned gas utilities. The rules remain applicable to investor-owned water utilities.*

AT RICHMOND, OCTOBER 30, 2023

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2023-00006

Ex Parte: In the matter adopting new rules of the State Corporation Commission governing utility rate applications by investor-owned gas utilities

## ORDER ADOPTING REGULATIONS

On March 9, 2023, the State Corporation Commission ("Commission") initiated an Order for Notice and Comment ("Procedural Order") in this docket, establishing a proceeding to promulgate new rules governing utility rate applications and annual informational filings of investor-owned gas utilities ("Investor-owned Gas Utility Rate Case Rules"). In connection therewith, the Commission determined it would also consider limited revisions to the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities, 20 VAC 5-201-10 et seq. ("Existing Rate Case Rules") (together with Investor-owned Gas Utility Rate Case Rules, "Proposed Rules" or "Rules"), to remove their applicability to investor-owned gas utilities. Draft Proposed Rules prepared by the Commission Staff ("Staff") were appended to the Procedural Order.

The Procedural Order permitted interested persons to submit comments on or before May 26, 2023, which were permitted to include proposals and hearing requests. The Procedural Order further permitted Staff to file, on or before August 7, 2023, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

The Proposed Rules and Form Schedules for the Investor-owned Gas Utility Rate Case Rules were published in the Virginia Register of Regulations on April 10, 2023.<sup>1</sup> Comments on the Proposed Rules were filed by: (i) Virginia Natural Gas, Inc. ("VNG"); (ii) Columbia Gas of Virginia, Inc. ("CVA"); (iii) Washington Gas Light Company; and (iv) the Office of the Attorney General's Division of Consumer Counsel (collectively, "Comments"). No requests for hearing were received.

On August 7, 2023, Staff filed a Staff Report addressing the comments and concerns filed in this docket and included certain revisions to the Proposed Rules and Form Schedules proposed by Staff based on the Comments received.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:

As an initial matter, the Commission expresses appreciation to those who submitted Comments for our consideration. As stated in the Procedural Order, since the Existing Rate Case Rules were originally adopted, subsequent legislative amendments have, among other things, expanded the number and types of rate adjustment clauses that may be sought by gas utilities.<sup>2</sup> The Code sections allowing such filings have various statutory deadlines for the Commission to issue a final order, ranging from 90 days to 180 days after filing. These time periods limit the time available for discovery and analysis of the requested rate changes. The regulations adopted herein are intended to facilitate such analysis within the established time constraints.

The Commission finds that the rules appended hereto as Attachment A should be adopted, effective January 1, 2024.<sup>3</sup> The rules appended in Attachment A, hereto, contain minor modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on April 10, 2023.<sup>4</sup> These modifications follow our consideration of further proposed changes made by Staff in its Staff Report and the Comments filed in this proceeding. Although it will not comment on each rule in detail, the Commission provides the following discussion regarding environmental justice concerns.<sup>5</sup>

Proposed Rule 20 VAC 5-205-10 B 7 states as follows:

7. Provide a written narrative describing how the proposals contained in the application are consistent with the goals in the Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia) ["VEJA"]. Provide any documents or workpapers that support the assertions contained in the narrative, as applicable. Such documentation may include, but is not limited to, information from any federal, state, regional or local agency, or other source, related to population, median income, and any other factors that determine whether a community impacted by the proposals in the application is an "environmental justice community" or "fenceline community," as those terms are defined in § 2.2-234 of the Code of Virginia.

VNG took issue with proposed Rule 20 VAC 5-205-10 B 7, stating it "is committed to the policy and objectives of the [VEJA] and conducts business in ways that prioritize the environment, its customers, its neighbors, and its communities."<sup>6</sup> VNG asserts, however, that this new filing requirement "would apply to an overly broad set of natural gas utility rate applications that have no environmental, geographic, or siting implications, such that it is unclear how VNG or similarly situated companies could satisfy the proposed VEJA filing requirements for certain applications."<sup>7</sup> VNG states that "[a]s drafted, the VEJA requirement applies to all filings, many of which do not involve an environmental, geographic or siting component. For example, the requirement would apply to annual informational filings, annual accounting

updates to approved SAVE Riders, and expedited rate applications."<sup>8</sup> VNG further states that:

VEJA is new and its implementation in the Commonwealth is evolving. At this early stage, there is limited guidance from the Commission on its implementation and applicability, particularly in rate proceedings. Rather than establish a universal minimum filing requirement through the Rate Case Rules, Staff and interested parties could obtain relevant information through the discovery process – as they do today – and the Commission could issue guidance on the implementation and applicability of the [VEJA] to specific filings through its orders.<sup>9</sup>

The VEJA sets forth that "[i]t is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities."<sup>10</sup> As previously recognized by the Commission, the Commonwealth's policy on environmental justice is broad, including "the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy."<sup>11</sup>

The Commission finds the language originally proposed should be adopted but will modify the specific rules applicable to annual information filings and annual SAVE Rider accounting updates to omit such a requirement in those cases.<sup>12</sup> The Commission recognizes that responsive information will necessarily depend on the specific proposals contained in each application. Importantly, however, "environment" is broadly defined in the VEJA to include "the natural, cultural, social, economic, and political assets or components of a community."<sup>13</sup> The Commission previously found that "[i]n addition to addressing environmental justice in more specific contexts, such as requests for certificates of public convenience and necessity for particular facilities at known locations, the Commission finds that the [applicant] should address environmental justice in future [integrated resource plans] and updates, as appropriate. As one example, the [applicant] may consider the impact of unit retirement decisions on environmental justice communities or fenceline communities."<sup>14</sup> We similarly find here that addressing environmental justice should not be limited to cases involving specific siting decisions but should also extend to addressing environmental justice in the context of business policies and processes that are germane to the application being filed.

By way of example and not limitation, the Commission provides the following examples to illustrate how environmental justice may be addressed in cases not involving specific siting decisions. Such a responsive narrative and supporting materials may include, as germane to the application, discussion of the following:

- a utility's environmental justice policy and any related policies;

- a utility's consideration of the environmental justice impacts in the context of its capital project authorization process;
- a utility's consideration of environmental justice in the context of the utility's disconnection for non-payment policies;
- a utility's process of educating environmental justice communities and other low income communities regarding available programs to reduce demand through efficiency; and
- a utility's process of educating environmental justice communities and other low-income communities regarding billing assistance and other payment assistance.

These examples are not intended to be exhaustive but to provide examples to assist utilities in complying with this new filing requirement. For applications involving specific siting decisions, the consideration of environmental justice would necessarily include the utility's evaluation of site-specific impacts. Such would include a detailed description of the utility's environmental review process (including whether it was internal or external (consultants)); the extent to which environmental justice communities will be impacted including specific costs and benefits; and any enhanced public participation to ensure meaningful involvement by environmental justice communities.

With respect to annual information filings and annual SAVE Rider accounting updates, the Commission finds those types of cases are of a unique and limited nature and will not require the VEJA information to be filed therein at this time. For example, annual SAVE Rider cases are limited to accounting updates and have a short 90-day statutory deadline. The Commission does not find the opportunity to file an expedited rate application pursuant to Rule 20VAC5-205-20 to be similarly limited. The Commission adopts the following changes:

20VAC5-205-30. Annual informational filings.

Unless modified per a State Corporation Commission-approved alternative regulatory plan, each utility not requesting a base rate increase shall make an annual informational filing consisting of Schedules 1 through 7, 9, 11, 12, 14 through 18, 29, 36, and 40 as identified in 20VAC5-205-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the State Corporation Commission within 120 days after the end of the test period. Requirements found in 20VAC5-205-10 B 2, B 3, [ and ] B 4 [ , and B 7 ] may be omitted in annual informational filings.

20VAC5-205-75. Steps to Advance Virginia's Energy Plan filings.

An application filed pursuant to Chapter 26 (§ 56-603 et seq.) of Title 56 of the Code of Virginia for a new or

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amended Steps to Advance Virginia's Energy (SAVE) Plan or SAVE Rider, shall include Schedule 46 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used. [ Applications limited to requesting an accounting update to an existing SAVE Rider may omit the requirements of 20VAC5-205-10 B 7. ]

Lastly, we note that the Rules, as modified herein, continue to permit requests for waiver based on good cause shown.<sup>15</sup>

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Water Utilities, 20 VAC 5-201-10 et seq., and the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas Utilities, 20 VAC 5 205 5 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2024.

(2) A copy of this Order, with Attachment A, shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

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

(4) This case is dismissed.

Commissioner James C. Dimitri participated in this matter.

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

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<sup>1</sup> 39 Va. Regs. Reg. 17 (Apr. 10, 2023).

<sup>2</sup> The Existing Rate Case Rules include a section addressing filings under Chapter 25 of Title 56 of the Code of Virginia ("Code") (§ 56-600 et seq., "Natural Gas Conservation and Ratemaking Efficiency Act"). See 20 VAC 5-201-85. The General Assembly has subsequently amended Title 56 of the Code to add Chapter 26 (§ 56-603 et seq., "Steps to Advance Virginia's Energy Plan (SAVE) Act"), Chapter 27 (§ 56-605 et seq., "Qualified Projects of Natural Gas Utilities"), Chapter 28 (§ 56-610 et seq., "Natural Gas System Expansion Infrastructure"), and Chapter 30 (§ 56-625, "Biogas Supply Infrastructure Projects"). The Existing Rate Case Rules do not address these chapters in Title 56.

<sup>3</sup> The proposed limited revisions to the Existing Rate Case Rules indicated they would no longer apply to investor-owned gas utilities effective December 1, 2023. CVA requested that, "to ensure there is sufficient time and clarity around implementation of these rules," the Commission specify an implementation date of January 1, 2024. Staff did not oppose this request, and we find this modification to be reasonable.

<sup>4</sup> Other than minor edits to 20 VAC 5-201-16, no additional modifications to the Existing Rate Case Rules beyond those previously attached to the Procedural Order are being adopted. Accordingly, all references for the remainder of the Order to Proposed Rules or Rules refer to the Investor-owned Gas Utility Rate Case Rules.

<sup>5</sup> Unless otherwise stated, the Commission agrees with the analysis and recommendations contained in the Staff Report.

<sup>6</sup> VNG comments at 3.

<sup>7</sup> Id. at 2.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id. at 5.

<sup>10</sup> Code § 2.2-235.

<sup>11</sup> Code § 2.2-234; see, e.g., Application of Appalachian Power Company, For approval and certification of the Central Virginia Transmission Reliability Project under Title 56 of the Code of Virginia, Case No. PUR-2021-00001, 2021 S.C.C. Ann. Rept. 368, 372, Final Order (Sept. 9, 2021); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company, Case No. PUR-2020-00134, 2021 S.C.C. Ann. Rept. 242, 252, Final Order (Apr. 30, 2021); Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2020-00035, 2021 S.C.C. Ann. Rept. 190, 195, Final Order (Feb. 1, 2021).

<sup>12</sup> In so doing, the Commission disagrees with CVA's recommendation to truncate the sentence beginning with "Such documentation may include..." CVA comments at 2. This sentence provides examples of documentation that may be provided, if appropriate.

<sup>13</sup> Code § 2.2-234.

<sup>14</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2020-00035, 2021 S.C.C. Ann. Rept. 190, 195 (Feb. 1, 2021).

<sup>15</sup> 20 VAC 5-205-10 E.

## Chapter 201

### Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities

#### **20VAC5-201-10. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-201-20, ~~20VAC5-201-40,~~ ~~and 20VAC5-201-85~~ to the State Corporation Commission (commission) 60 days prior to the application filing date.

B. Applications pursuant to 20VAC5-201-20, 20VAC5-201-30, ~~20VAC5-201-40,~~ and 20VAC5-201-70 shall include:

1. The name and post office address of the applicant and the name and post office address of the applicant's counsel.
2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.
3. A statement of details of the objectives sought and the legal basis therefore.
4. All direct testimony by which the applicant expects to support the objectives sought.
5. Information or documentation conforming to the following general instructions:

a. Attach a table of contents of the company's application, including exhibits.

b. Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as follows:

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or

Schedule Number

c. The first page of all exhibits shall contain a caption that describes the subject matter of the exhibit.

d. If the accounting and statistical data submitted differ from the books of the applicant, then the applicant shall include in its filing a reconciliation schedule for each account or subaccount that differs, together with an explanation describing the nature of the difference.

e. The required accounting and statistical data shall include all work papers and other information necessary to ensure that the items, statements, and schedules are not misleading.

C. This chapter does not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in Earnings Test Filings made pursuant to ~~20VAC5-201-10~~ 20VAC5-201-20 or 20VAC5-201-30.

D. An application filed pursuant to 20VAC5-201-20, 20VAC5-201-30, ~~20VAC5-201-40~~, or 20VAC5-201-70, ~~or 20VAC5-201-85~~ shall not be deemed filed per Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

E. The commission may waive any part or all of this chapter for good cause shown.

F. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is simultaneously accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

G. Filings containing confidential (or redacted) information shall so state on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

H. Applicants shall file electronic media containing an electronic spreadsheet version of Schedules 1 through 5, 8 through 28, 36, 40, and 50, as applicable, with the commission's Division of Utility Accounting and Finance and the Division of ~~Energy Public Utility Regulation or the Division of Communications~~, as appropriate. Such electronic media containing calculations derived from formulas shall be provided in an electronic spreadsheet, including all underlying formulas and assumptions. Such electronic spreadsheet shall be commercially available and have common use in the utility industry. Additional versions of such schedules shall be made available to parties upon request.

I. All applications, including direct testimony and Schedules 1 through 28, 30 through 39, and 41 through 50, as applicable, shall be filed in an original and 12 copies with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. One copy of Schedules 29 and 40 shall be filed with the Clerk of the Commission. Applicants may omit filing Schedule 29 with the Clerk of the Commission in Annual Informational Filings. Additional copies of such schedules shall be made available to parties upon request.

Two copies of Schedules 29 and 40 shall be submitted to the Division of Utility Accounting and Finance ~~or the Division of Communications~~, as appropriate. Two copies of Schedule 40 shall be submitted to the Division of ~~Energy Public Utility Regulation~~.

J. For any application made pursuant to 20VAC5-201-20, ~~20VAC5-201-40~~, and 20VAC5-201-70, ~~and 20VAC5-201-85~~, the applicant shall serve a copy of the information required in subsection A and subdivisions B 1, B 2, and B 3 of this section, upon the attorney and chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request therefor orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia. All such service specified by this section shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served.

K. Nothing in ~~these~~ this chapter shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.



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## **20VAC5-201-16. Applicability to applications of investor-owned gas utilities.**

This chapter shall not apply to applications filed by investor-owned gas utilities on or after [ ~~December~~ January ] 1, [ ~~2023~~ 2024 ].

## **20VAC5-201-20. General and expedited rate increase applications.**

A. An application for a general or expedited rate increase pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia for a public utility having annual revenues exceeding \$1 million, shall conform to the following requirements:

1. Exhibits consisting of Schedules 1 through 43 and the utility's direct testimony shall be submitted. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in 20VAC5-201-90.
2. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 50 (this exhibit may include numerous subschedules labeled 50A et seq.).

B. The selection of a historic test period is up to the applicant. However, the use of overlapping test periods will not be allowed.

C. Applicants meeting each of the following criteria may omit Schedules 9 through 18 in rate applications: (i) ~~the applicant is not currently bound by a performance based regulation plan authorized by the commission pursuant to § 56-235.6 of the Code of Virginia that includes an earnings sharing mechanism or other attribute for which the commission has directed the performance of an Earnings Test,~~ (ii) the applicant has no Virginia jurisdictional regulatory assets on its books, and (iii) (ii) the applicant is not seeking to establish a regulatory asset.

D. If not otherwise constrained by law or regulatory requirements, an applicant who has not experienced a substantial change in circumstances may file an expedited rate application as an alternative to a general rate application. Such application need not propose an increase in regulated operating revenues. If, upon timely consideration of the expedited application and supporting evidence, it appears that a substantial change in circumstances has taken place since the applicant's last rate case, then the State Corporation Commission (commission) may take appropriate action, such as directing that the expedited application be dismissed or treated as a general rate application. Prior to public hearing, and subject to applicable provisions of law, an application for expedited rate increase may take effect within 30 days after the date the application is filed. Expedited rate increases may also take effect in less than 12 months after the applicant's preceding rate increase so long as rates are not increased as a result thereof more than once in any calendar year. An

applicant making an expedited application shall also comply with the following rules:

1. In computing its cost of capital, as prescribed in Schedule 3 in 20VAC5-201-90, the applicant shall use the equity return rate approved by the commission and used to determine the revenue requirement in the utility's most recent rate proceeding.
2. An applicant, in developing its rate of return statement, shall make adjustments to its test period jurisdictional results only in accordance with the instructions for Schedule 25 in 20VAC5-201-90.
3. The applicant may propose new allocation methodologies, rate designs, and new or revised terms and conditions provided such proposals are supported by appropriate cost studies. Such support shall be included in Schedule 40.

E. Rates authorized to take effect 30 days following the filing of any application for an expedited rate increase shall be subject to refund in a manner prescribed by the commission. Whenever rates are subject to refund, the commission may also direct that such refund bear interest at a rate set by the commission.

## **20VAC5-201-30. Annual informational filings.**

Unless modified per a ~~commission approved~~ State Corporation Commission-approved alternative regulatory plan, each utility not requesting a base rate increase shall make an annual informational filing consisting of Schedules 1 through 7, 9, 11, 12, 14 through 19, 21, 22, 24, 25, 27, 28, and 40 a and b as identified in 20VAC5-201-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the State Corporation Commission (commission) within 120 days after the end of the test period. Accounting adjustments reflected in Column (2) of Schedule 21 shall incorporate the ratemaking treatment approved by the commission in the utility's last rate case and shall be calculated in accordance with the Expedited Rules of Schedule 25. Requirements found in 20VAC5-201-10 B 2, B 3, and B 4 may be omitted in Annual Informational Filings.

Applicants meeting each of the following criteria may omit Schedules 9, 11, 12, 14, and 15 through 18 in Annual Informational Filings: (i) ~~the applicant is not currently bound by a performance based regulation plan authorized by the commission pursuant to § 56-235.6 of the Code of Virginia that includes an earnings sharing mechanism or other attribute for which the commission has directed the performance of an Earnings Test,~~ (ii) the applicant has no Virginia jurisdictional regulatory assets on its books; and (iii) (ii) the applicant is not seeking to establish a regulatory asset.

## **20VAC5-201-40. ~~Optional performance based regulation applications. (Repealed.)~~**

~~An applicant that files an application for performance based~~



regulation pursuant to § 56-235.6 of the Code of Virginia shall file Schedules 1 through 32 and 34 through 43 as identified in 20VAC5-201-90.

**20VAC5-201-85. Conservation and ratemaking efficiency plans. (Repealed.)**

~~An applicant that files a conservation and ratemaking efficiency plan pursuant to Chapter 25 (§ 56-600 et seq.) of Title 56 of the Code of Virginia shall file Schedule 48 as identified and described in 20VAC5-201-90, and which shall be submitted with the utility's direct testimony.~~

**20VAC5-201-90. Instructions for schedules and exhibits for Chapter 201.**

The following instructions for schedules and exhibits including those specifically set forth in 20VAC5-201-95 (Schedules 1 through 14), 20VAC5-201-100 (Schedules 15 through 22), and 20VAC5-201-110 (Schedules 24 through 28 and 40) are to be used in conjunction with this chapter:

**Schedule 1 - Historic Profitability and Market Data**

Instructions: Using the format of the attached schedule and the following definitions, provide the data for the test year and four prior fiscal years. The information shall be compatible with the latest stockholder's annual report (including any restatements). Information in Sections A and B shall be compiled for the corporate entity that raises equity capital in the marketplace. Information in Section C shall be compiled for the subsidiary company that provides regulated utility service in Virginia.

Definitions for Schedule 1

Return on Year End Equity\* = Earnings Available for Common Shareholders/Year End Common Equity

Return on Average Equity\* = Earnings Available for Common Shareholders/The Average of Year End Equity for the Current & Previous Year

Earnings Per Share = Earnings Available for Common Shareholders/Average ~~No.~~ Number Common Shares Outstanding

Dividends Per Share = Common Dividends Paid per Share During the Year

Payout Ratio = ~~DPS~~ Dividends Per Share/EPS Earnings Per Share

Average Market Price\*\* = (Yearly High + Yearly Low Price)/2

Dividend Yield = Dividends Per Share /Average Market Price\*\*

Price Earnings Ratio = Average Market Price\*\*/EPS Earnings Per Share

\*Job Development Credits shall not be included as part of equity capital nor shall a deduction be made from earnings for a capital charge on these Job Development Credits in Schedule 1.

\*\*An average based on monthly highs and lows is also acceptable. If this alternative is chosen, provide monthly market prices and sufficient data to show how the calculation was made.

**Schedule 2 - Interest and Cash Flow Coverage Data**

Instructions: This schedule shall be prepared using the following definitions and instructions and presented in the format of the attached schedule. The information shall be provided for the test year and the four prior fiscal years based on information for the applicant and for the consolidated company if the applicant is a subsidiary.

- Interest (Lines 3, 4, and 5) shall include amortization of expenses, discounts, and premiums on debt without deducting an allowance for borrowed funds used during construction.

- Income taxes (Line 2) shall include federal and state income taxes.

- Allowance for Funds Used During Construction ("AFUDC") (Line 8), where applicable, is total AFUDC -- for borrowed and other funds.

- Preferred dividends (Line 13) for a subsidiary may need to be allocated from the parent's total preferred dividends. Specify the allocation factor and the methodology used in a footnote.

- Construction expenditures (Line 15) are net of AFUDC.

- Common dividends (Line 16) for a subsidiary shall be stated per books. If the subsidiary's dividend payout ratio differs from the consolidated company's payout ratio, show in a footnote the subsidiary's common dividends based on the consolidated company's payout ratio.

**Schedule 3 - Capital Structure and Cost of Capital Statement - Per Books and Average**

Instructions: This schedule shall show the amount of each capital component per balance sheet, the amount for ratemaking purposes, the percentage weight in the capital structure, and the component cost and weighted cost, using the format in the attached schedule. The information shall be provided for the test period, the four prior fiscal years, and on a 13-month average or five-quarter average basis for the test period. The data shall be provided for the entity whose capital structure was approved for use in the applicant's last rate case.

In Part A, the information shall be compatible with the latest Stockholders' Annual Report (including any restatements). In Parts B, C, and D, the methodology shall be consistent with that approved in the applicant's last rate case. Reconcile

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differences between Parts A and B for both end-of-test-period and average capital structures.

The amounts for short-term debt and revolving credit agreements (and similar arrangements) in Part B shall be based where possible on a daily average over the test year, or alternatively on a 13-month average over the test year. Except for the Part B amount for short-term debt and average amounts in Column (6), all other accounts are end-of-year and end-of-test period.

The component weighted cost rates equal the product of each component's capital structure weight for ratemaking purposes times its cost rate. The weighted cost of capital is equal to the sum of the component weighted cost rates. The Job Development Credits cost is equal to the weighted cost of permanent capital (long-term debt, preferred stock, and common equity).

## **Schedule 4 - Schedules of Long-Term Debt, Preferred and Preference Stock, Job Development Credits, and Any Other Component of Ratemaking Capital**

Instructions: For each applicable capital component, provide a schedule that shows, for each issue, the amount outstanding, its percentage of the total capital component, and effective cost based on the embedded cost rate. This data shall support the amount and cost rate of the respective capital components contained in Schedule 3, consistent with the methodology approved in the applicant's last rate case. In addition, a detailed breakdown of all job development credits should be provided that reconciles to the per books balance of investment tax credits. These schedules should reflect disclosure of any associated hedging/derivative instruments, their respective terms and conditions (instrument type, notional amount and associated series of debt or preferred stock hedged, period in effect, etc.), and the impact of such instruments on the cost of debt or preferred stock.

## **Schedule 5 - Schedule of Short-Term Debt, Revolving Credit Agreements, and similar Short-Term Financing Arrangements**

Instructions: ~~Utilities that are not subject to § 56-585.1 of the Code of Virginia shall provide~~ Provide data and explain the methodology, which should be consistent with the methodology approved in the applicant's last rate case, used to calculate the cost and balance contained in Schedule 3 for short-term debt, revolving credit agreements, and similar arrangements.

This schedule should also provide detailed disclosure of any hedging/derivative instruments related to short-term debt, their respective terms and conditions (instrument type, notional amount and associated series of debt hedged, period in effect, etc.), and the impact of such instruments on the cost of short-term debt.

## **Schedule 6 - Public Financial Reports**

Instructions: Provide copies of the most recent Stockholder's Annual Report, Securities and Exchange Commission Form 10-K, and Form 10-Q for the applicant and the consolidated parent company if the applicant is a subsidiary. If published, provide a copy of the most recent statistical or financial supplement for the consolidated parent company.

## **Schedule 7 - Comparative Financial Statements**

Instructions: If not provided in the public financial reports for Schedule 6, provide comparative balance sheets, income statements, and cash flow statements for the test year and the 12-month period preceding the test year for the applicant and its consolidated parent company if applicant is a subsidiary.

## **Schedule 8 - Proposed Cost of Capital Statement**

Instructions: Provide the applicant's proposed capital structure/cost of capital schedule. In conjunction, provide schedules that support the amount and cost of each component of the proposed capital structure, and explain all assumptions used.

## **Schedule 9 - Rate of Return Statement - Earnings Test - Per Books**

Instructions: Use format of attached schedule.

Schedule 9 shall reflect average rate base, capital, and common equity capital. Interest expense, preferred dividends, and common equity capital shall be calculated by using the average capital structure included in Schedule 3 B and average rate base.

## **Schedule 11 - Rate of Return Statement - Earnings Test - Adjusted to A Regulatory Accounting Basis**

Instructions: Use format of attached schedule.

Schedule 11 adjustments in Column (2) shall reflect any financial differences between Generally Accepted Accounting Principles ("GAAP") and regulatory accounting as prescribed by the ~~commission~~ State Corporation Commission. Each Column (2) adjustment shall be separately identified and reflected in Schedule 16.

A per books regulatory accounting adjustment to reflect Job Development Credit (JDC) Capital Expense shall be reflected in Schedule 11 Column (2), if applicable. Column (3) JDC Capital Expense shall be calculated as follows:

JDC Capital Expense = Rate Base (line 25) \* weighted cost of JDC Capital in Schedule 3

The associated income tax savings shall be reflected in lines 5 and 6, Column (2) as follows:

Associated income tax savings = total average rate base (line 25) \* weight of JDC capital (Sch. 3) \* weighted cost of debt component of the JDC cost component (Sch. 3) \* (Federal and State Income Tax rate \* -1)

Schedule 11 Line 15 other income/(expense) shown in Column (3) shall be the current amount of other income/(expense) categorized as jurisdictional in the applicant's last rate case.

**Schedule 12 - Rate Base Statement - Earnings Test - Per Books**

Instructions: Use format of attached schedule.

Applicants with jurisdictional per books operating revenues of more than \$150 million shall calculate cash working capital allowance using a lead/lag study. Schedules 17 and 18 shall be provided detailing the cash working capital computation for Schedule 12 Columns (1) and (3). Applicants with jurisdictional per books operating revenues between \$20 and \$150 million may include a zero cash working capital requirement rather than perform a lead/lag study. Applicants with jurisdictional per books operating revenues less than \$20 million may use a formula method to calculate cash working capital.

~~Utilities not subject to § 56-585.1 of the Code of Virginia may omit Schedule 13.~~

~~13 Columns (2) (3) shall reflect rate base information for each commission approved rate adjustment clause pursuant to §§ 56-585.1 A5 b, c and d or A6 of the Code of Virginia.~~

**Schedule 14 - Rate Base Statement - Earnings Test - Adjusted to Regulatory Accounting Basis**

Instructions: Use format of attached schedule.

Cash working capital allowance shall be calculated using the instructions in Schedule 12. Schedule 14 Column (2) shall reflect adjustments necessary to identify any financial differences between Generally Accepted Accounting Principles and regulatory accounting as prescribed by the commission State Corporation Commission.

**Schedule 15 - Schedule of Regulatory Assets and Per Books Deferral Pursuant to Enactment Clause 5 of Chapter 3 of the 2004 Acts of Assembly, Special Session I**

Instructions: If applicable per Schedules 9 and 12 instructions. Use format of attached schedule.

All regulatory assets shall be individually listed with associated deferred income tax. Indicate whether the regulatory asset is included in financial reporting or is currently recognized for ratemaking purposes only.

**Schedule 16 - Detail of Regulatory Accounting Adjustments**

Instructions: If applicable per Schedules 9 and 12 instructions.

Use format of attached schedule.

Each regulatory accounting adjustment shall be numbered sequentially beginning with ET-1 and listed under the

appropriate description category (Operating Revenues, Interest Expense, Common Equity Capital, etc.).

Each regulatory accounting adjustment shall be fully explained in the description column of this schedule. Regulatory accounting adjustments shall adjust from a financial accounting basis to a regulatory accounting basis. Adjustments to reflect going-forward operations shall not be included on this schedule.

Detailed workpapers substantiating each adjustment shall be provided in Schedule 29.

**Schedule 17 - Lead/Lag Cash Working Capital Calculation - Earnings Test**

Instructions: Use format of attached schedule.

Total Balance Sheet Net Source/Use of Average Cash Working Capital determined in Schedule 18 shall be included in the Total Cash Working Capital amount in this schedule.

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 12 and 14.

Utilities required to use a lead/lag study should perform a complete lead/lag analysis every five years. Major items, such as the revenue lag and balance sheet accounts, should be reviewed every year.

**Schedule 18 - Balance Sheet Analysis - Earnings Test**

Instructions: Use format of attached schedule.

All uses and sources of cash working capital shall be detailed in this schedule. The associated accumulated deferred income tax shall also be included as a use or source.

The Net Source/Use of Average Cash Working Capital determined in this schedule shall be included in Schedule 17.

Support for Schedule 18 shall include a list of all balance sheet subaccounts and titles. Indicate whether the account's impact is included in (i) the balance sheet analysis, (ii) the capital structure, (iii) the income statement portion of the lead/lag study, or (iv) excluded from cost of service.

**Schedule 19 - Rate of Return Statement - Per Books**

Instructions: Use format of attached schedule.

Column (1) interest expense, preferred dividends, and common equity capital shall be calculated by using the capital structure included in Schedule 3 or Schedule 8 and end of test year level rate base.

**Schedule 21 - Rate of Return Statement - Reflecting Ratemaking Adjustments**

Instructions: Use format of attached schedule.

Schedule 21 Column (2) adjustments shall be separately identified and reflected in Schedule 25.

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Interest expense, preferred dividends, and common equity capital shall be calculated by using the capital structure included in Schedule 3 or Schedule 8 and an adjusted level of rate base.

After ratemaking adjustments, JDC capital expense shall be calculated as follows:

Total rate base (line 29) \* weighted cost of JDC capital in Schedule 3 or Schedule 8

Applicants filing pursuant to 20VAC5-201-30 may omit Columns (4) and (5).

## **Schedule 22 - Rate Base Statement - Per Books**

Instructions: Use format of attached schedule.

Applicants with jurisdictional per books operating revenues more than \$150 million shall calculate cash working capital allowance using a lead/lag study. Schedules 27 and 28 shall be provided detailing the cash working capital computation for Columns (1), (3), and (7). Applicants with jurisdictional per books operating revenues between \$20 million and \$150 million may include a zero cash working capital requirement rather than perform a lead/lag study. Applicants with jurisdictional per books operating revenues less than \$20 million may use a formula method to calculate cash working capital.

## **Schedule 24 - Rate Base Statement - Adjusted - Reflecting Ratemaking Adjustments**

Instructions: Use format of attached schedule.

Cash working capital allowance shall be calculated using instructions in Schedule 22.

## **Schedule 25 - Detail of Ratemaking Adjustments**

Instructions: Use format of attached schedule.

Each adjustment shall be numbered sequentially and listed under the appropriate description category (Operating Revenues, Interest Expense, Common Equity Capital, etc.).

Ratemaking adjustments shall reflect a rate year level of revenues and expenses. Rate base adjustments may reflect no more than a rate year average. In Expedited Filings, Column (4) Ratemaking Adjustments shall reflect a rate year level of only those types of adjustments previously approved for the applicant.

Detailed workpapers substantiating each adjustment shall be provided in Schedule 29.

## **Schedule 26 - Revenue Requirement Reconciliation**

Instructions: Use format of attached lead schedule. An example of a supporting schedule is provided.

Provide a revenue reconciliation of each topic or subject that affects the revenue requirement. All components of each topic or subject shall be detailed (i.e., payroll and related = payroll,

benefits, payroll taxes, and related tax effect) on a supporting schedule. Cash working capital shall be considered a separate topic or subject rather than as a component of each topic or subject.

## **Schedule 27 - Lead/Lag Cash Working Capital Calculation - Adjusted**

Instructions: Use format of attached schedule.

Total Balance Sheet Net Source/Use of Average Cash Working Capital determined in Schedule 28 shall be included in the Total Cash Working Capital amount in this schedule.

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 22 and 24.

Utilities required to use a lead/lag study should perform a complete lead/lag analysis every five years. Major items such as the revenue lag and balance sheet accounts should be reviewed every year.

## **Schedule 28 - Balance Sheet Analysis - Adjusted**

Instructions: Use format of attached schedule.

All uses and sources of cash working capital shall be detailed in this schedule. The associated accumulated deferred income tax shall also be included as a use or source.

The Net Source/Use of Average Cash Working Capital determined in this schedule shall be included in Schedule 27.

Support for ~~the above~~ this schedule should include a list of all balance sheet subaccounts and titles. Indicate whether the account's impact is included in (i) the balance sheet analysis, (ii) the capital structure, (iii) the income statement portion of the lead/lag study, or (iv) excluded from cost of service. Include a brief description of the costs included in each account.

## **Schedule 29 - Workpapers for Earnings Test and Ratemaking Adjustments**

Instructions: Include a table of contents listing the work papers included in this schedule.

a. Provide a narrative explaining the purpose and methodology used for each adjustment identified in subsections b and d of these instructions that have not been addressed in the applicant's prefiled testimony. Such explanation shall reference any relevant Financial Accounting Standards Board ("FASB") statement or ~~commission~~ State Corporation Commission precedent if known or available.

b. Provide a summary calculation of each earnings test adjustment included in Schedule 16. Each summary calculation shall identify the source documents used to prepare such calculation.

c. Provide all relevant documents, references, and information necessary to support the summary calculation

required in subsection b of these instructions for each proposed earnings test adjustment. Amounts identified as per books costs shall include any documentation or references necessary to verify such amount to Schedule 40A. Working papers shall be indexed and tabbed for each adjustment and include the name of the primary employee ~~or employees~~ responsible for the adjustment. All documents and information as referenced ~~above in these instructions~~ should include general ledgers, payroll distributions, billing determinants, invoices, and actuarial reports. Supporting documentation that is voluminous may be made available at the applicant's office.

d. Provide a summary calculation of each rate year adjustment included in Schedule 25. Each summary calculation shall identify the source documents used to prepare such calculation.

e. Provide all relevant documents and information necessary to support the summary calculation required in subsection d of these instructions for each proposed rate year adjustment. Amounts identified as per books costs shall include any documentation necessary to verify such amount to Schedule 40b. Working papers shall be indexed and tabbed for each adjustment and include the name of the primary employees responsible for the adjustment. All documents and information referenced in subsections a through e of these instructions should include general ledgers, payroll distributions, billing determinants, invoices, and actuarial reports.

**Schedule 30 - Revenue and Expense Variance Analysis**

Instructions: Applicant shall quantify jurisdictional operating revenues and system operating and maintenance ("O&M") expenses by primary account as specified by the appropriate federal or state Uniform System of Accounts (Federal Energy Regulatory Commission, Federal Communications Commission, National Association of Regulatory Commissioners) (~~hereinafter referred to as "USOA account"~~) during the test period and the preceding 12 months. Also, provide jurisdictional sales volumes by customer class for the test period.

Applicants shall file a schedule detailing all revenue and expense accounts by month for the test period. Applicants shall provide a detailed explanation of all jurisdictional revenue and system expense increases or decreases of more than 10% during the test period compared to the previous 12-month period. The expense variance analysis applies to test period expense items greater than one-tenth of one percent (.001) of Operating & Maintenance expenses, ~~excluding purchased gas adjustment costs~~. Additionally, the applicant shall have an accounts payable ledger or schedule of all accounts payable for review at the applicant's office as of the date of the applicant's filing.

**Schedule 31 - Advertising Expense**

Instructions: A schedule detailing advertising expense by USOA account and grouped according to the categories identified in § 56-235.2 of the Code of Virginia shall be provided. Advertising costs that are not identifiable to any of those categories shall be included in a separate category titled "other." If applicant seeks rate relief, demonstrate that the applicant's advertising meets the criteria established in § 56-235.2.

**Schedule 34 - Miscellaneous Expenses**

Instructions: Provide a description of amounts paid and USOA accounts charged for each charitable and educational donation, each payment to associated industry organizations, and all other miscellaneous general expenses. Individual items aggregating to less than 5.0% of the total miscellaneous expense may be reflected in an "Other" line item. Advertising expenses included in Schedule 31 should be excluded from this schedule.

**Schedule 35 - Affiliate Services**

Instructions: For purposes of this schedule affiliate services shall be defined to include those services between regulated and nonregulated divisions of an incumbent utility. If any portion of the required information has been filed with the State Corporation Commission (commission) as part of an applicant's Annual Report of Affiliate Transactions, the applicant may reference such report clearly identifying what portions of the required information are included in the Annual Report of Affiliate Transactions.

Provide a narrative description of each affiliated service received or provided during the test period.

Provide a summary of affiliate transactions detailing costs by type of service provided (e.g., accounting, auditing, legal and regulatory, human resources, etc.) for each month of the test period. Show the final USOA account distribution of all costs billed to or by the regulated entity by month for the test period.

Identify all amounts billed to an affiliate and then billed back to the regulated entity.

Cost records and market analyses supporting all affiliated charges billed to or by the regulated entity/division shall be maintained and made readily available for commission staff review. This shall include supporting detail of costs (including the return component) incurred by the affiliated interest rendering the service and the allocation methodology. In situations when the pricing is required to be the higher (lower) of cost or market and market is unavailable, note each such transaction and have data supporting such a finding available for commission staff review.

If affiliate charges are booked per a pricing mechanism other than that approved by the commission, the regulated entity shall provide a reconciliation of books to commission-

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approved pricing, including an explanation of why the commission-approved pricing is not used for booking purposes.

## **Schedule 36 - Income Taxes**

Instructions: Provide a schedule detailing the computation of test period current state and federal income taxes on a total company and Virginia jurisdictional basis. Such schedule should provide a complete reconciliation between book and taxable income showing all individual differences. Additionally, provide a schedule detailing the computation of fully adjusted, current state and federal income taxes applicable to the Virginia jurisdiction.

Provide a schedule detailing the individual items of deferred state and federal income tax expense for the test period on a total company and Virginia jurisdictional basis. Additionally, provide a schedule detailing the computation of fully adjusted, deferred state and federal income tax applicable to the Virginia jurisdiction.

Provide a detailed reconciliation between the statutory and effective income tax rates for the test period. Schedule should quantify individual reconciling items by dollar amount and percentage. Individual items should include permanent differences (itemize), flow-through depreciation, excess deferred FIT amortization, and deferred Investment Tax Credit ("ITC") amortization.

Provide a detailed listing of individual accumulated deferred income tax and accumulated deferred ITC amounts as of the end of test period. Separately identify those items affecting the computation of rate base on both a total company and Virginia jurisdictional basis. Additionally, provide a detailed listing of individual accumulated deferred income tax and accumulated deferred ITC amounts for the earnings test rate base (if applicable), the end of test period rate base, and the fully-adjusted rate base, on a Virginia jurisdictional basis.

Provide a detailed reconciliation between the federal and state current tax expense on a stand-alone basis and the actual per book federal and state current tax expense for the test period on a total company and Virginia jurisdictional basis.

Provide a schedule depicting, by month, all federal and state income tax payments made during the test year. For each payment, identify the recipient.

Provide a detailed reconciliation between deferred federal and state income expense computed on a stand-alone basis and the actual per book deferred federal and state income tax expense, on a total company and Virginia jurisdictional basis.

Provide a detailed reconciliation between individual accumulated deferred federal and state income tax assets and liabilities computed on a stand-alone basis and the actual per book accumulated deferred income tax amounts as of the end of the test period, on a total company and Virginia jurisdictional basis. Additionally, provide a detailed listing of

individual accumulated deferred income tax assets and liabilities computed on a stand-alone basis for the earnings test rate base (if applicable), the end of test period rate base, and the fully-adjusted rate base on a Virginia jurisdictional basis.

## **Schedule 37 - Organization**

Instructions: Provide an organizational chart of the applicant and its parent company detailing subsidiaries and divisions. Provide details of any material corporate reorganizations since the applicant's last rate case. Explain the reasons and any ratemaking impact of each such reorganization.

## **Schedule 38 - Changes in Accounting Procedures**

Instructions: Detail any material changes in accounting procedures adopted by either the parent/service company or the utility since the applicant's last rate case. Explain any ratemaking impact of such changes.

Identify any write-offs or write-downs associated with assets (i.e., plant, tax accounts, etc.) that have been retained, transferred, or sold.

## **Schedule 39 - Out-of-Period Book Entries**

Instructions: Provide a summary schedule prepared from an analysis of journal entries showing "out-of-period" items booked during the test period. Show journal entry number, amount, USOA account, and explanation of charge.

## **Schedule 40 - Jurisdictional and Class Cost of Service Study**

Instructions: Use format of attached schedule.

- a. Provide detailed calculations for all jurisdictional allocations for each revenue, expense, and rate base USOA account used to create Schedule 9. Allocations should be based on test year average data. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor since the last rate case.
- b. Provide detailed calculations for all jurisdictional allocations for each revenue, expense, and rate base USOA account used to create Schedules 19 and 22. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor since the last rate case.
- c. Provide a class cost of service study showing the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is



proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor since the last rate case.

d. Applicant shall provide appropriate supporting cost data for new allocation methodologies or rate design proposals in expedited rate applications.

#### **Schedule 41 - Proposed Rates and Tariffs**

Instructions: Provide a summary of the rates designed to effect the proposed revenue increase. Provide a copy of all tariff pages that the applicant proposes to revise in this proceeding, with revisions indicated by a dashed line (--) through proposed deletions and by underlining proposed additions.

#### **Schedule 42 - Present and Proposed Revenues**

Instructions:

a. Provide the detailed calculations supporting total per books revenues in Column (3) of Schedule 21. The present revenues from each of the applicant's services shall be determined by multiplying the current rates times the test period billing units (by rate block, if applicable).

b. Provide a detailed calculation supporting total adjusted revenues in Column (5) of Schedule 21. The proposed revenues from each of applicant's services shall be determined by multiplying the proposed rates by the adjusted billing units (by rate block, if applicable). Detail by rate schedule all miscellaneous charges and other revenues, if applicable. Reconcile per books billing units to adjusted billing units itemizing changes such as customer growth, weather, ~~But~~ BTU content and miscellaneous revenues. The revenue changes for applicant's services should be subtotaled into the applicant's traditional categories.

#### **Schedule 43 - Sample Billing**

Instructions: ~~Natural gas and water~~ Water or sewer utilities shall provide a sample billing analysis detailing the effect on each rate schedule at representative levels of consumption.

#### **Schedule 48 - Conservation and Ratemaking Efficiency Plans**

Instructions: Applications made pursuant to § 56-602 A and B or § 56-602 A and C of the Code of Virginia shall file the following:

a. ~~Provide the revenue study or class cost of service study relied upon to establish annual per customer fixed costs on an intraclass basis.~~

b. ~~Provide detailed calculations supporting determinations of current class, normalized or proposed class revenues. Such calculations should clearly show current, normalized or proposed annual billing determinants (by rate block and class). Reconcile per books billing units to adjusted billing units itemizing changes such as customer growth, weather, and Btu content and miscellaneous revenues.~~

~~e. Provide detailed calculations supporting the revenues produced by the rates, tariff design or mechanism designed to effect the proposed conservation and ratemaking efficiency plan. Provide illustrative examples if necessary. Detail by rate schedule all miscellaneous charges and other revenues, if applicable. To the extent any of the information requested in this paragraph has been provided in subsection b of these instructions, it does not need to be restated.~~

~~d. Provide a sample billing analysis detailing the effect of the proposed rates, tariff design or mechanism designed to effect the proposed conservation or ratemaking efficiency plan on each rate schedule at representative levels of consumption.~~

~~e. Provide the detailed calculations showing that the rates, tariff design or mechanism designed to effect the proposed conservation and ratemaking plan is revenue neutral as defined in Chapter 25 (§ 56-600 et seq.) of Title 56 of the Code of Virginia.~~

~~f. Provide a copy of all tariff pages that the applicant proposes to revise in this proceeding, with deletions indicated by a dashed line ( - ) and additions indicated by an underscore.~~

~~g. Provide a detailed description and analysis of the proposed conservation program or programs and a cost benefit assessment of the program or programs using the Total Resource Cost Test, the Societal Test, the Program Administrator Test, the Participant Test, and the Rate Impact Measure Test. Detail and support all assumptions utilized in the cost benefit assessments.~~

~~h. Provide a detailed narrative describing the proposed normalization component that removes the effect of weather from the determination of conservation and energy efficiency results. Additionally, provide any supporting calculation of such component.~~

~~i. Provide a detailed narrative describing the proposed decoupling mechanism.~~

~~j. Provide a detailed narrative describing all proposed cost-effective conservation and energy efficiency plans.~~

~~k. Provide a detailed narrative describing the provisions addressing the needs of low income or low usage residential customers.~~

~~l. Provide a detailed narrative describing provisions ensuring that rates and services to nonparticipating classes of customers are not adversely impacted. Additionally, provide all studies or calculations supporting such conclusions.~~

#### **Schedule 50 - Additional Schedules**

Reserved for additional exhibits presented by the applicant to be labeled Schedule 50 et seq.

V.A.R. Doc. No. R23-7439; Filed October 30, 2023, 3:02 p.m.

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# Regulations

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## Final Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 20VAC5-205. Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Gas Utilities (adding 20VAC5-205-5 through 20VAC5-205-90).

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

**Effective Date:** January 1, 2024.

**Agency Contact:** Andrea Macgill, Division of Utility Accounting and Finance, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9064, or email [andrea.macgill@scc.virginia.gov](mailto:andrea.macgill@scc.virginia.gov).

**Summary:**

*The amendments establish a new regulation, Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Gas Utilities (20VAC5-205), for updated and revised requirements applicable only to investor-owned gas utilities, including (i) minimum filing requirements related to annual informational filings, rate case filings, and rate adjustment clause filings under Title 56 of the Code of Virginia; (ii) forms required for filings; and (iii) instructions for using the required forms.*

AT RICHMOND, OCTOBER 30, 2023

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2023-00006

Ex Parte: In the matter adopting new rules of the State Corporation Commission governing utility rate applications by investor-owned gas utilities

### ORDER ADOPTING REGULATIONS

On March 9, 2023, the State Corporation Commission ("Commission") initiated an Order for Notice and Comment ("Procedural Order") in this docket, establishing a proceeding to promulgate new rules governing utility rate applications and annual informational filings of investor-owned gas utilities ("Investor-owned Gas Utility Rate Case Rules"). In connection therewith, the Commission determined it would also consider limited revisions to the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities, 20 VAC 5-201-10 et seq. ("Existing Rate Case Rules") (together with Investor-owned Gas Utility Rate Case Rules, "Proposed Rules" or "Rules"), to remove their applicability to investor-owned gas utilities. Draft

Proposed Rules prepared by the Commission Staff ("Staff") were appended to the Procedural Order.

The Procedural Order permitted interested persons to submit comments on or before May 26, 2023, which were permitted to include proposals and hearing requests. The Procedural Order further permitted Staff to file, on or before August 7, 2023, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

The Proposed Rules and Form Schedules for the Investor-owned Gas Utility Rate Case Rules were published in the Virginia Register of Regulations on April 10, 2023.<sup>1</sup> Comments on the Proposed Rules were filed by: (i) Virginia Natural Gas, Inc. ("VNG"); (ii) Columbia Gas of Virginia, Inc. ("CVA"); (iii) Washington Gas Light Company; and (iv) the Office of the Attorney General's Division of Consumer Counsel (collectively, "Comments"). No requests for hearing were received.

On August 7, 2023, Staff filed a Staff Report addressing the comments and concerns filed in this docket and included certain revisions to the Proposed Rules and Form Schedules proposed by Staff based on the Comments received.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:

As an initial matter, the Commission expresses appreciation to those who submitted Comments for our consideration. As stated in the Procedural Order, since the Existing Rate Case Rules were originally adopted, subsequent legislative amendments have, among other things, expanded the number and types of rate adjustment clauses that may be sought by gas utilities.<sup>2</sup> The Code sections allowing such filings have various statutory deadlines for the Commission to issue a final order, ranging from 90 days to 180 days after filing. These time periods limit the time available for discovery and analysis of the requested rate changes. The regulations adopted herein are intended to facilitate such analysis within the established time constraints.

The Commission finds that the rules appended hereto as Attachment A should be adopted, effective January 1, 2024.<sup>3</sup> The rules appended in Attachment A, hereto, contain minor modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on April 10, 2023.<sup>4</sup> These modifications follow our consideration of further proposed changes made by Staff in its Staff Report and the Comments filed in this proceeding. Although it will not comment on each rule in detail, the Commission provides the following discussion regarding environmental justice concerns.<sup>5</sup>

Proposed Rule 20 VAC 5-205-10 B 7 states as follows:

7. Provide a written narrative describing how the proposals contained in the application are consistent with the goals in the Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia) ["VEJA"]. Provide any documents or

workpapers that support the assertions contained in the narrative, as applicable. Such documentation may include, but is not limited to, information from any federal, state, regional or local agency, or other source, related to population, median income, and any other factors that determine whether a community impacted by the proposals in the application is an "environmental justice community" or "fenceline community," as those terms are defined in § 2.2-234 of the Code of Virginia.

VNG took issue with proposed Rule 20 VAC 5-205-10 B 7, stating it "is committed to the policy and objectives of the [VEJA] and conducts business in ways that prioritize the environment, its customers, its neighbors, and its communities."<sup>6</sup> VNG asserts, however, that this new filing requirement "would apply to an overly broad set of natural gas utility rate applications that have no environmental, geographic, or siting implications, such that it is unclear how VNG or similarly situated companies could satisfy the proposed VEJA filing requirements for certain applications."<sup>7</sup> VNG states that "[a]s drafted, the VEJA requirement applies to all filings, many of which do not involve an environmental, geographic or siting component. For example, the requirement would apply to annual informational filings, annual accounting updates to approved SAVE Riders, and expedited rate applications."<sup>8</sup> VNG further states that:

VEJA is new and its implementation in the Commonwealth is evolving. At this early stage, there is limited guidance from the Commission on its implementation and applicability, particularly in rate proceedings. Rather than establish a universal minimum filing requirement through the Rate Case Rules, Staff and interested parties could obtain relevant information through the discovery process – as they do today – and the Commission could issue guidance on the implementation and applicability of the [VEJA] to specific filings through its orders.<sup>9</sup>

The VEJA sets forth that "[i]t is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities."<sup>10</sup> As previously recognized by the Commission, the Commonwealth's policy on environmental justice is broad, including "the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy."<sup>11</sup>

The Commission finds the language originally proposed should be adopted but will modify the specific rules applicable to annual information filings and annual SAVE Rider accounting updates to omit such a requirement in those cases.<sup>12</sup> The Commission recognizes that responsive information will necessarily depend on the specific proposals contained in each application. Importantly, however, "environment" is broadly defined in the VEJA to include "the natural, cultural, social,

economic, and political assets or components of a community."<sup>13</sup> The Commission previously found that "[i]n addition to addressing environmental justice in more specific contexts, such as requests for certificates of public convenience and necessity for particular facilities at known locations, the Commission finds that the [applicant] should address environmental justice in future [integrated resource plans] and updates, as appropriate. As one example, the [applicant] may consider the impact of unit retirement decisions on environmental justice communities or fenceline communities."<sup>14</sup> We similarly find here that addressing environmental justice should not be limited to cases involving specific siting decisions but should also extend to addressing environmental justice in the context of business policies and processes that are germane to the application being filed.

By way of example and not limitation, the Commission provides the following examples to illustrate how environmental justice may be addressed in cases not involving specific siting decisions. Such a responsive narrative and supporting materials may include, as germane to the application, discussion of the following:

- a utility's environmental justice policy and any related policies;
- a utility's consideration of the environmental justice impacts in the context of its capital project authorization process;
- a utility's consideration of environmental justice in the context of the utility's disconnection for non-payment policies;
- a utility's process of educating environmental justice communities and other low income communities regarding available programs to reduce demand through efficiency; and
- a utility's process of educating environmental justice communities and other low-income communities regarding billing assistance and other payment assistance.

These examples are not intended to be exhaustive but to provide examples to assist utilities in complying with this new filing requirement. For applications involving specific siting decisions, the consideration of environmental justice would necessarily include the utility's evaluation of site-specific impacts. Such would include a detailed description of the utility's environmental review process (including whether it was internal or external (consultants)); the extent to which environmental justice communities will be impacted including specific costs and benefits; and any enhanced public participation to ensure meaningful involvement by environmental justice communities.

With respect to annual information filings and annual SAVE Rider accounting updates, the Commission finds those types of cases are of a unique and limited nature and will not require the VEJA information to be filed therein at this time. For

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example, annual SAVE Rider cases are limited to accounting updates and have a short 90-day statutory deadline. The Commission does not find the opportunity to file an expedited rate application pursuant to Rule 20VAC5-205-20 to be similarly limited. The Commission adopts the following changes:

## 20VAC5-205-30. Annual informational filings.

Unless modified per a State Corporation Commission-approved alternative regulatory plan, each utility not requesting a base rate increase shall make an annual informational filing consisting of Schedules 1 through 7, 9, 11, 12, 14 through 18, 29, 36, and 40 as identified in 20VAC5-205-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the State Corporation Commission within 120 days after the end of the test period. Requirements found in 20VAC5-205-10 B 2, B 3, [ and ] B 4 [ , and B 7 ] may be omitted in annual informational filings.

## 20VAC5-205-75. Steps to Advance Virginia's Energy Plan filings.

An application filed pursuant to Chapter 26 (§ 56-603 et seq.) of Title 56 of the Code of Virginia for a new or amended Steps to Advance Virginia's Energy (SAVE) Plan or SAVE Rider, shall include Schedule 46 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used. [ Applications limited to requesting an accounting update to an existing SAVE Rider may omit the requirements of 20VAC5-205-10 B 7. ]

Lastly, we note that the Rules, as modified herein, continue to permit requests for waiver based on good cause shown.<sup>15</sup>

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Water Utilities, 20 VAC 5-201-10 et seq., and the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas Utilities, 20 VAC 5 205 5 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2024.

(2) A copy of this Order, with Attachment A, shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

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

(4) This case is dismissed.

Commissioner James C. Dimitri participated in this matter.

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

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<sup>1</sup> 39 Va. Regs. Reg. 17 (Apr. 10, 2023).

<sup>2</sup> The Existing Rate Case Rules include a section addressing filings under Chapter 25 of Title 56 of the Code of Virginia ("Code") (§ 56-600 et seq., "Natural Gas Conservation and Ratemaking Efficiency Act"). See 20 VAC 5-201-85. The General Assembly has subsequently amended Title 56 of the Code to add Chapter 26 (§ 56-603 et seq., "Steps to Advance Virginia's Energy Plan (SAVE) Act"), Chapter 27 (§ 56-605 et seq., "Qualified Projects of Natural Gas Utilities"), Chapter 28 (§ 56-610 et seq., "Natural Gas System Expansion Infrastructure"), and Chapter 30 (§ 56-625, "Biogas Supply Infrastructure Projects"). The Existing Rate Case Rules do not address these chapters in Title 56.

<sup>3</sup> The proposed limited revisions to the Existing Rate Case Rules indicated they would no longer apply to investor-owned gas utilities effective December 1, 2023. CVA requested that, "to ensure there is sufficient time and clarity around implementation of these rules," the Commission specify an implementation date of January 1, 2024. Staff did not oppose this request, and we find this modification to be reasonable.

<sup>4</sup> Other than minor edits to 20 VAC 5-201-16, no additional modifications to the Existing Rate Case Rules beyond those previously attached to the Procedural Order are being adopted. Accordingly, all references for the remainder of the Order to Proposed Rules or Rules refer to the Investor-owned Gas Utility Rate Case Rules.

<sup>5</sup> Unless otherwise stated, the Commission agrees with the analysis and recommendations contained in the Staff Report.

<sup>6</sup> VNG comments at 3.

<sup>7</sup> Id. at 2.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id. at 5.

<sup>10</sup> Code § 2.2-235.

<sup>11</sup> Code § 2.2-234; see, e.g., Application of Appalachian Power Company, For approval and certification of the Central Virginia Transmission Reliability Project under Title 56 of the Code of Virginia, Case No. PUR-2021-00001, 2021 S.C.C. Ann. Rept. 368, 372, Final Order (Sept. 9, 2021); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company, Case No. PUR-2020-00134, 2021 S.C.C. Ann. Rept. 242, 252, Final Order (Apr. 30, 2021); Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2020-00035, 2021 S.C.C. Ann. Rept. 190, 195, Final Order (Feb. 1, 2021).

<sup>12</sup> In so doing, the Commission disagrees with CVA's recommendation to truncate the sentence beginning with "Such documentation may include..." CVA comments at 2. This sentence provides examples of documentation that may be provided, if appropriate.

<sup>13</sup> Code § 2.2-234.

<sup>14</sup> Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2020-00035, 2021 S.C.C. Ann. Rept. 190, 195 (Feb. 1, 2021).

<sup>15</sup> 20 VAC 5-205-10 E.

Chapter 205Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Gas Utilities**20VAC5-205-5. Purpose and applicability.**

This chapter sets forth minimum filing requirements for Virginia's investor-owned gas utilities related to annual informational filings, rate case filings, and other filings under Chapter 10 (§ 56-232 et seq.), Chapter 25 (§ 56-600 et seq.), Chapter 26 (§ 56-603 et seq.), Chapter 27 (§ 56-605 et seq.), Chapter 28 (§ 56-610 et seq.), and Chapter 30 (§ 56-625) of Title 56 of the Code of Virginia. Forms are prescribed or adopted for purposes of implementing Chapter 10 (§ 56-232 et seq.), Chapter 25 (§ 56-600 et seq.), Chapter 26 (§ 56-603 et seq.), Chapter 27 (§ 56-605 et seq.), Chapter 28 (§ 56-610 et seq.), and Chapter 30 (§ 56-625) of Title 56 of the Code of Virginia. When so prescribed or adopted, use of the forms is mandatory. This chapter should not be construed as limiting the ability of the State Corporation Commission or its staff to evaluate information in addition to or beyond that identified in this chapter.

**20VAC5-205-10. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-205-20, 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-75, and 20VAC5-205-85 to the State Corporation Commission (commission) 60 days prior to the application filing date.

B. Applications pursuant to 20VAC5-205-20, 20VAC5-205-30, 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-70, 20VAC5-205-75, and 20VAC5-205-85 shall include:

1. The name and post office address of the applicant and the name and post office address of the applicant's counsel.
2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.
3. A statement of details of the objectives sought and the legal basis therefore. In addition, the application shall reference any open cases or issues that the commission directed to be adjudicated in the new proceeding.
4. All direct testimony by which the applicant expects to support the objectives sought. Each testimony shall include a summary not to exceed one page for applications pursuant to 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-70, 20VAC5-205-75, or 20VAC5-205-85 and not to exceed two pages for applications pursuant to 20VAC5-205-20.
5. Information or documentation conforming to the following general instructions:
  - a. Attach a table of contents of the company's application, including exhibits.

b. Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right-hand corner as follows:

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or

Schedule Number

c. The first page of all exhibits shall contain a caption that describes the subject matter of the exhibit.

d. If the accounting and statistical data submitted differ from the books of the applicant, then the applicant shall include in its filing a reconciliation schedule for each account or subaccount that differs, together with an explanation describing the nature of the difference.

e. The required accounting and statistical data shall include all work papers and other information necessary to ensure that the items, statements, and schedules are not misleading.

6. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements pursuant to the code section under which the application is filed. This summary shall include references and page numbers to each supporting item referenced.

7. Provide a written narrative describing how the proposals contained in the application are consistent with the goals in the Environmental Justice Act (§ 2.2-234 et seq. of the Code of Virginia). Provide any documents or workpapers that support the assertions contained in the narrative, as applicable. Such documentation may include information from any federal, state, regional, or local agency or other source related to population, median income, and any other factors that determine whether a community impacted by the proposals in the application is an "environmental justice community" or "fenceline community," as those terms are defined in § 2.2-234 of the Code of Virginia.

C. This chapter does not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in earnings tests made pursuant to 20VAC5-205-20 or 20VAC5-205-30.

D. An application filed pursuant to 20VAC5-205-20, 20VAC5-205-30, 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-70, 20VAC5-205-75, or 20VAC5-205-85 shall not be deemed filed pursuant to Chapter 10 (§ 56-232 et seq.), Chapter 25 (§ 56-600 et seq.), Chapter 26 (§ 56-603 et seq.), Chapter 27 (§ 56-605 et seq.), Chapter 28 (§ 56-610 et seq.), or Chapter 30 (§ 56-625) of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

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E. The commission may waive any part or all of this chapter for good cause shown.

F. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is simultaneously accompanied by both a motion for protective order or other confidential treatment and an original and one copy of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

G. Filings containing confidential (or redacted) information shall so state on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

H. Applicants shall provide a searchable PDF version of the application and direct testimony electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation on the application filing date. Applicants shall also provide a searchable PDF of the public version of the application and direct testimony electronically to the Division of Consumer Counsel of the Office of the Attorney General of Virginia on the application filing date.

Additionally, all schedules containing calculations derived from formulas shall be provided electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation in an electronic spreadsheet, including all underlying formulas and assumptions on the application filing date. Such electronic spreadsheet shall be commercially available and have common use in the utility industry.

All schedules that do not contain calculations derived from formulas shall be provided electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation in a searchable PDF version. Additional versions of such schedules shall be made available to parties upon request.

I. All applications, including direct testimony and Schedules 1 through 9, 11, 12, 14 through 19, 21, 22, 24 through 28, 30, 31, 34 through 39, 41 through 44, 46, and 48 through 52, as applicable, shall be filed in an original, and 12 copies with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. One copy of Schedules 29 and 40 shall be filed with the Clerk of the Commission. Applicants may omit filing Schedule 29 with the Clerk of the Commission in Annual Informational Filings. Additional copies of such schedules shall be made available to parties upon request.

One copy of Schedules 29 and 40 shall be submitted to the Division of Utility Accounting and Finance. Four copies of Schedule 40 shall be submitted to the Division of Public Utility Regulation.

J. For any application made pursuant to 20VAC5-205-20, 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-70, 20VAC5-205-75, and 20VAC5-205-85, the applicant shall serve a copy of the information required in subsection A of this section at the same time that it is filed with the commission upon (i) the chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase; (ii) the mayor or manager of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase; and (iii) the Division of Consumer Counsel of the Office of the Attorney General of Virginia. Such service shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served.

For applications pursuant to 20VAC5-205-20, 20VAC5-205-40, 20VAC5-205-50, 20VAC5-205-60, 20VAC5-205-65, 20VAC5-205-70, 20VAC5-205-75, and 20VAC5-205-85, the applicant shall also serve each official listed in this subsection with the following within five business days of the issuance of the commission's procedural order regarding the application: (i) the information required in subdivisions B 1, B 2, and B 3 of this section; (ii) a statement that a copy of the complete public version of the application may be obtained at no cost by making a request therefor in writing to a specified company official; and (iii) the commission's procedural order regarding the application. Such service shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served.

In addition, the applicant shall serve a copy of the complete public version of its application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia at the same time it is filed with the commission. Such service shall be made either by personal delivery or first class mail to the customary place of business.

K. Nothing in this chapter shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

## **20VAC5-205-20. General and expedited rate increase applications.**

A. An application for a base rate increase pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall conform to the following requirements:

1. Exhibits consisting of Schedules 1 through 9, 11, 12, 14 through 19, 21, 22, 24 through 30, 31, and 34 through 44 and the utility's direct testimony shall be submitted. Such



schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in 20VAC5-205-90.

2. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 52 (this exhibit may include numerous subschedules labeled 52A et seq.).

B. The selection of a historical test period is up to the applicant. However, the use of overlapping test periods will not be allowed.

C. If not otherwise constrained by law or regulatory requirements, an applicant who has not experienced a substantial change in circumstances may file an expedited rate application as an alternative to a general rate application. Such application need not propose an increase in regulated operating revenues. If, upon timely consideration of the expedited application and supporting evidence, it appears that a substantial change in circumstances has taken place since the applicant's last rate case, then the State Corporation Commission (commission) may take appropriate action, such as directing that the expedited application be dismissed or treated as a general rate application. Prior to public hearing and subject to applicable provisions of law, an application for expedited rate increase may take effect within 30 days after the date the application is filed. Expedited rate increases may also take effect in less than 12 months after the applicant's preceding rate increase so long as rates are not increased as a result thereof more than once in any calendar year. An applicant making an expedited application shall also comply with the following rules:

1. In computing its cost of capital, as prescribed in Schedule 3 in 20VAC5-205-90, the applicant shall use the equity return rate approved by the commission and used to determine the revenue requirement in the utility's most recent rate proceeding.

2. An applicant, in developing its rate of return statement, shall make adjustments to its test period jurisdictional results only in accordance with the instructions for Schedule 25 in 20VAC5-205-90.

3. The applicant may propose new allocation methodologies, rate designs, and new or revised terms and conditions, provided such proposals are supported by appropriate cost studies. Such support shall be included in Schedule 40.

D. Rates authorized to take effect 30 days following the filing of any application for an expedited rate increase shall be subject to refund in a manner prescribed by the commission. Whenever rates are subject to refund, the commission may also direct that such refund bear interest at a rate set by the commission.

## **20VAC5-205-30. Annual informational filings.**

Unless modified per a State Corporation Commission-approved alternative regulatory plan, each utility not requesting a base rate increase shall make an annual informational filing consisting of Schedules 1 through 7, 9, 11, 12, 14 through 18, 29, 36, and 40 as identified in 20VAC5-205-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the State Corporation Commission within 120 days after the end of the test period. Requirements found in 20VAC5-205-10 B 2, B 3, [ ~~and~~ ] B 4 [ , and B 7 ] may be omitted in annual informational filings.

## **20VAC5-205-40. Optional performance-based applications.**

An applicant that files an application for performance-based regulation pursuant to § 56-235.6 of the Code of Virginia shall file Schedules 1 through 32 and 34 through 43 as identified in 20VAC5-205-90.

## **20VAC5-205-50. Upstream natural gas supply infrastructure plans.**

An applicant that files an initial or amended upstream natural gas supply infrastructure plan pursuant to Chapter 27 (§ 56-605 et seq.) of Title 56 of the Code of Virginia, shall file Schedule 49 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used.

## **20VAC5-205-60. System expansion plans.**

An applicant that files an initial or amended system expansion plan pursuant to Chapter 28 (§ 56-610 et seq.) of Title 56 of the Code of Virginia, shall file Schedule 50 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used.

## **20VAC5-205-65. Biogas supply investment plans.**

An applicant that files an initial or amended biogas supply investment plan pursuant to Chapter 30 (§ 56-625) of Title 56 of the Code of Virginia, shall file Schedule 51 as identified and

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described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used.

## **20VAC5-205-70. Temporary increases of rates.**

Applicants that file a request for a temporary increase in rates pursuant to § 56-245 of the Code of Virginia, shall include Schedules 1 through 9, 11, 12, 14, 16, 17, and 18 as identified and described in 20VAC5-205-90.

## **20VAC5-205-75. Steps to Advance Virginia's Energy Plan filings.**

An application filed pursuant to Chapter 26 (§ 56-603 et seq.) of Title 56 of the Code of Virginia for a new or amended Steps to Advance Virginia's Energy (SAVE) Plan or SAVE Rider, shall include Schedule 46 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used. [ Applications limited to requesting an accounting update to an existing SAVE Rider may omit the requirements of 20VAC5-205-10 B 7. ]

## **20VAC5-205-85. Conservation and ratemaking efficiency plans.**

An applicant that files a conservation and ratemaking efficiency plan pursuant to Chapter 25 (§ 56-600 et seq.) of Title 56 of the Code of Virginia, shall file Schedule 48 as identified and described in 20VAC5-205-90, which shall be submitted with the utility's direct testimony. Additionally, applications in which the utility seeks a return on investment based on the last authorized cost of capital shall include Schedule 3, Parts B through E. Applications in which the utility seeks an updated return on investment shall include Schedules 3, 4, 5, and 8 for only the year requested. If Schedule 8 is filed, the application shall provide schedules that support the amount and cost rate of each component of the proposed capital structure and explain all assumptions used.

## **20VAC5-205-90. Instructions for schedules and exhibits for this chapter.**

The following instructions for schedules and exhibits are to be used in conjunction with this chapter:

### **Schedule 1 - Historical Profitability and Market Data**

Instructions: Using the format of Form Schedule 1 and the following definitions, provide the data for the test period and four prior fiscal years. The information shall be compatible with the latest SEC Form 10-K consolidated financial statements (including any restatements) or annual report if an SEC Form 10-K is not available. Information in Sections A and B shall be compiled for the corporate entity that raises equity capital in the marketplace. Information in Section C of Schedule 1 shall be compiled for the subsidiary company that provides regulated utility service in Virginia.

#### Definitions for Schedule 1

Return on Year End Equity = Earnings Available for Common Shareholders/Year End Common Equity

Return on Average Equity = Earnings Available for Common Shareholders/The Average of Year End Equity for the Current and Previous Year

Earnings Per Share = Earnings Available for Common Shareholders/Average Number Common Shares Outstanding

Dividends Per Share = Common Dividends Paid per Share During the Year

Payout Ratio = Dividends Per Share/Earnings Per Share

Dividend Yield = Dividends Per Share/ Year End Price

Price Earnings Ratio = Average Market Price/Earnings Per Share

### **Schedule 2 - Interest and Cash Flow Coverage Data**

Instructions: This schedule shall be prepared using the following definitions and instructions and presented in the format of Form Schedule 2. The information shall be provided for the test year and the four prior fiscal years based on information for the applicant and for the consolidated company if the applicant is a subsidiary.

- Interest (Lines 3, 4, and 5) shall include amortization of expenses, hedging gains and losses, discounts, and premiums on debt without deducting an allowance for borrowed funds used during construction.

- Income taxes (Line 2) shall include federal and state income taxes.

- Allowance for Funds Used During Construction (AFUDC) (Line 8), where applicable, is total AFUDC -- for borrowed and other funds.

- Preferred dividends (Line 13) for a subsidiary shall be stated per books.

- Construction expenditures (Line 15) are net of AFUDC.
- Common dividends (Line 16) for a subsidiary shall be stated per books.

### **Schedule 3 - Capital Structure and Cost of Capital Statement – Per Books and Average**

Instructions: This schedule shall show the amount of each capital component per balance sheet, the amount for ratemaking purposes, the percentage weight in the capital structure, and the component cost and weighted cost, using the format in Form Schedule 3. The information shall be provided for the test period, the four prior fiscal years, and on a 13-month average or five-quarter average basis for the test period. The data shall be provided for the entity whose capital structure was approved for use in the applicant's last rate case.

In Part A, the information shall be compatible with the latest Securities and Exchange Commission Form 10-K consolidated financial statement (including any restatements) or annual report if an SEC Form 10-K is not available. In Parts B, C, and D, the methodology shall be consistent with that approved in the applicant's last rate case. Reconcile differences between Parts A and B for both end-of-test-period and average capital structures.

The amounts for all short-term debt, revolving credit agreements, and similar short-term financing arrangements in Part B shall be based on a daily average over the test year, or alternatively, on a 13-month average over the test year. Except for the Part B amount for short-term debt and average amounts in Column (6), all other accounts are end-of-year and end-of-test period.

The component weighted cost rates equal the product of each component's capital structure weight for ratemaking purposes times its cost rate. The weighted cost of capital is equal to the sum of the component weighted cost rates. The Investment Tax Credits (ITC) cost is equal to the weighted cost of permanent capital (long-term debt, preferred stock, and common equity).

Adjustments made to per books amounts shall be fully documented and explained.

In an application for a rate adjustment clause pursuant to any Code of Virginia section that allows the applicant to seek recovery of a return on investment, Schedule 3 information in Parts B through E shall be provided for each capital structure used to calculate the revenue requirement.

### **Schedule 4 - Schedules of Long-Term Debt, Preferred Stock, Investment Tax Credits, and Any Other Component of Ratemaking Capital**

Instructions: For each applicable capital component, provide a schedule that shows, for each issue, the amount outstanding, and effective cost rate. This data shall support the amount and cost rate of the respective capital components contained in Schedule 3, consistent with the methodology approved in the

applicant's last rate case. In addition, a detailed breakdown of all investment tax credits should be provided that reconciles to the per books balance of investment tax credits. These schedules should include disclosure of any associated hedging/derivative instruments, their respective terms and conditions (instrument type, notional amount and associated series of debt or preferred stock hedged, period in effect, etc.), and the impact of such instruments on the cost of debt or preferred stock.

In an application for a rate adjustment clause pursuant to any Code of Virginia section that allows the applicant to seek recovery of a return on investment, Schedule 4 information shall be provided for long-term debt, preferred stock, and investment tax credits in each capital structure used to calculate the revenue requirement if the applicant proposes a cost of capital that differs from the last authorized cost of capital.

### **Schedule 5 - Schedule of Short-Term Debt, Revolving Credit Agreements, and similar Short-Term Financing Arrangements**

Instructions: Provide data and explain the methodology, which should be consistent with the methodology approved in the applicant's last rate case, used to calculate the cost and balance contained in Schedule 3 for short-term debt, revolving credit agreements, and similar arrangements.

This schedule should also provide detailed disclosure of any hedging/derivative instruments related to short-term debt, their respective terms and conditions (instrument type, notional amount and associated series of debt hedged, period in effect, etc.), and the impact of such instruments on the cost of short-term debt.

In an application for a rate adjustment clause pursuant to any Code of Virginia section that allows the applicant to seek recovery of a return on investment, Schedule 5 information shall be provided for short-term financing included in each capital structure used to calculate the revenue requirement if the applicant proposes a cost of capital that differs from the last authorized cost of capital.

### **Schedule 6 - Public Financial Reports**

Instructions: Provide copies, or a link to where such copies can be found on the Internet, of the most recent Stockholder's Annual Report, Securities and Exchange Commission Form 10-K, and Form 10-Q for the applicant and the consolidated parent company if the applicant is a subsidiary. If published, provide a copy or a link to where such copy can be found on the Internet of the most recent statistical or financial supplement for the consolidated parent company.

### **Schedule 7 - Comparative Financial Statements**

Instructions: If not provided in the public financial reports for Schedule 6, provide comparative balance sheets, income statements, and cash flow statements for the test year and the 12-month period preceding the test year for the applicant and

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its consolidated parent company if applicant is a subsidiary. In lieu of providing a copy, the applicant may provide a link to where such information can be found on the Internet.

## **Schedule 8 - Proposed Cost of Capital Statement**

Instructions: Provide the applicant's proposed capital structure/cost of capital schedule. In conjunction, provide schedules that support the amount and cost rate of each component of the proposed capital structure, and explain all assumptions used.

In an application for a rate adjustment clause pursuant to any Code of Virginia section that allows the applicant to seek recovery of a return on investment, Schedule 8 information shall be provided for the proposed capital structure used to calculate the revenue requirement if different from Schedule 3.

## **Schedule 9 - Rate of Return Statement – Earnings Test – Per Books**

Instructions: Use format of Form Schedule 9.

Schedule 9 shall reflect average rate base, capital, and common equity capital. Interest expense, preferred dividends, and common equity capital shall be calculated by using the average capital structure included in Schedule 3 B and average rate base.

## **Schedule 11 - Rate of Return Statement – Earnings Test – Adjusted to A Regulatory Accounting Basis**

Instructions: Use format of Form Schedule 11.

Schedule 11 adjustments in Column (2) shall reflect any financial differences between per books and regulatory accounting as prescribed by the State Corporation Commission. Each Column (2) adjustment shall be separately identified and reflected in Schedule 16.

A per books regulatory accounting adjustment to reflect Investment Tax Credits (ITC) Capital Expense shall be reflected in Schedule 11 Column (2), if applicable. Column (3) ITC Capital Expense shall be calculated as follows:

ITC Capital Expense = Rate Base (line 25) \* weighted cost of ITC Capital in Schedule 3

The associated income tax savings shall be reflected in lines 5 and 6, Column (2) as follows:

Associated income tax savings = total average rate base (line 25) \* weight of ITC capital (Sch. 3) \* weighted cost of debt component of the ITC cost component (Sch. 3) \* (Federal and State Income Tax rate \* -1)

Schedule 11 Line 15 other income/(expense) shown in Column (3) shall be the current amount of other income/(expense) categorized as jurisdictional in the applicant's last rate case.

## **Schedule 12 - Rate Base Statement – Earnings Test – Per Books**

Instructions: Use format of Form Schedule 12.

Applicants must use the same methodology to calculate cash working capital allowance as was employed in the applicant's most recent base rate case.

## **Schedule 14 - Rate Base Statement – Earnings Test – Adjusted to Regulatory Accounting Basis**

Instructions: Use format of Form Schedule 14.

Cash working capital allowance shall be calculated using the instructions in Schedule 12. Schedule 14 Column (2) shall reflect adjustments necessary to identify any financial differences between per books and regulatory accounting as prescribed by the State Corporation Commission. Each Column (2) adjustment shall be separately identified and reflected in Schedule 16.

## **Schedule 15 - Schedule of Regulatory Assets**

Instructions: If applicable per Schedules 9 and 12 instructions. Use format of Form Schedule 15.

All regulatory assets shall be individually listed with associated deferred income tax. Indicate whether the regulatory asset (i) is proposed in the current proceeding; (ii) was previously approved by the State Corporation Commission; (iii) is not subject to an earnings test; or (iv) is for financial purposes only. Also include Eligible Safety Activity Cost deferrals pursuant to § 56-235.10 of the Code of Virginia.

## **Schedule 16 - Detail of Regulatory Accounting Adjustments**

Instructions: If applicable per Schedules 9 and 12 instructions.

Use format of Form Schedule 16.

Each regulatory accounting adjustment shall be numbered sequentially beginning with ET-1 and listed under the appropriate description category (Operating Revenues, Interest Expense, Common Equity Capital, etc.).

Each regulatory accounting adjustment shall be fully explained in the description column of this schedule. Regulatory accounting adjustments shall adjust from a financial accounting basis to a regulatory accounting basis. Adjustments to reflect going-forward operations shall not be included on this schedule.

Detailed workpapers substantiating each adjustment shall be provided in Schedule 29.

## **Schedule 17 - Lead/Lag Cash Working Capital Calculation – Earnings Test**

Instructions: Use format of Form Schedule 17.

Total Balance Sheet Net Source/Use of Average Cash Working Capital determined in Schedule 18 shall be included in the Total Cash Working Capital amount in this schedule.

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 12 and 14.

Utilities required to use a lead/lag study should perform a complete lead/lag analysis every five years. Major items, such as the revenue lag and balance sheet accounts, should be reviewed every year.

### **Schedule 18 - Balance Sheet Analysis – Earnings Test**

Instructions: Use format of Form Schedule 18.

All uses and sources of cash working capital shall be detailed in this schedule. The associated accumulated deferred income tax (ADIT) shall also be included as a use or source.

The Net Source/Use of Average Cash Working Capital determined in this schedule shall be included in Schedule 17.

Support for Schedule 18 shall include a list of all balance sheet subaccounts and titles. Indicate whether the account's impact is included in (i) the balance sheet analysis; (ii) the capital structure; (iii) the income statement portion of the lead/lag study; (iv) elsewhere in rate base; or (v) excluded from cost of service. Applicants shall also include a brief description of the costs in each account.

### **Schedule 19 - Rate of Return Statement – Per Books**

Instructions: Use format of Form Schedule 19.

Column (1) interest expense, preferred dividends and common equity capital shall be calculated by using the capital structure included in Schedule 3 or Schedule 8 and end of test year level rate base.

### **Schedule 21 - Rate of Return Statement – Reflecting Ratemaking Adjustments**

Instructions: Use format of Form Schedule 21 and Form Supporting Steps to Advance Virginia's Energy (SAVE) Roll-in Schedule 21, as appropriate.

Schedule 21 Column (2) adjustments shall be separately identified and reflected in Schedule 25.

Applicants not proposing a Roll-in of a SAVE Rider may omit Supporting SAVE Roll-in Schedule 21.

Interest expense, preferred dividends, and common equity capital shall be calculated by using the capital structure included in Schedule 3 or Schedule 8 and an adjusted level of rate base.

After ratemaking adjustments, ITC capital expense shall be calculated as follows:

Total rate base (line 29) \* weighted cost of ITC capital in Schedule 3 or Schedule 8

Applicants filing pursuant to 20VAC5-205-30 may omit Columns (4) through (7).

### **Schedule 22 - Rate Base Statement – Per Books**

Instructions: Use format of Form Schedule 22.

Applicants with jurisdictional per books operating revenues more than \$150 million shall calculate cash working capital allowance using a lead/lag study. Schedules 27 and 28 shall be provided detailing the cash working capital computation for Columns (1), (3), and (7). Applicants with jurisdictional per books operating revenues between \$30 million and \$150 million may include a zero cash working capital requirement rather than perform a lead/lag study. Applicants with jurisdictional per books operating revenues less than \$30 million may use a formula method to calculate cash working capital.

### **Schedule 24 - Rate Base Statement – Adjusted – Reflecting Ratemaking Adjustments**

Instructions: Use format of Form Schedule 24 and Form Supporting SAVE Roll-in Schedule 24, as appropriate.

Cash working capital allowance shall be calculated using instructions in Schedule 22.

Applicants not proposing a Roll-in of a SAVE Rider may omit Supporting SAVE Roll-in Schedule 24.

### **Schedule 25 - Detail of Ratemaking Adjustments**

Instructions: Use format of Form Schedule 25.

Each adjustment shall be numbered sequentially and listed under the appropriate description category (Operating Revenues, Interest Expense, Common Equity Capital, etc.).

Ratemaking adjustments shall reflect a rate year level of revenues and expenses in accordance with applicable rules and laws governing utility rate changes. Rate base adjustments may reflect no more than a rate year average. In Expedited Filings, Column (4) Ratemaking Adjustments shall reflect a rate year level of only those types of adjustments previously approved for the applicant. In addition, separate adjustments shall be made for the purpose of identifying SAVE components. Examples of these adjustments include (i) removing the rate year level of SAVE-related depreciation expense and property taxes, (ii) removing the rate year 13-month average level of SAVE-related rate base (including ADIT), and (iii) eliminating SAVE-related revenues.

Detailed workpapers substantiating each adjustment shall be provided in Schedule 29.

### **Schedule 26 - Revenue Requirement Reconciliation**

Instructions: Use format of Form Schedule 26 for lead schedule. An example of a supporting schedule is provided.

Provide a reconciliation showing the revenue requirement impact of (i) each adjustment (including its income tax effects),

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(ii) the proposed capital structure, (iii) the proposed ROE, (iv) the proposed cost of debt, and (v) each other proposal impacting the requested revenue requirement.

## **Schedule 27 - Lead/Lag Cash Working Capital Calculation – Adjusted**

Instructions: Use format of Form Schedule 27.

Total Balance Sheet Net Source/Use of Average Cash Working Capital determined in Schedule 28 shall be included in the Total Cash Working Capital amount in this schedule.

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 22 and 24.

Utilities required to use a lead/lag study should perform a complete lead/lag analysis every five years. Major items such as the revenue lag and balance sheet accounts should be reviewed every year.

## **Schedule 28 - Balance Sheet Analysis – Adjusted**

Instructions: Use format of Form Schedule 28.

All uses and sources of cash working capital shall be detailed in this schedule. The associated ADIT shall also be included as a use or source.

Support for Schedule 28 should include a list of all balance sheet subaccounts and titles. Additionally, support for Schedule 28 should include a brief description of the cost in each balance sheet subaccount, whether the cost is presented on an end-of-period or 13-month average basis, and the reasons why such cost is presented on an end-of-period or 13-month average basis. Indicate whether the account's impact is included in (i) the balance sheet analysis; (ii) the capital structure; (iii) the income statement portion of the lead/lag study; (iv) elsewhere in rate base; or (v) excluded from cost of service. Include a brief description of the costs included in each account. Whether the cost is presented on an end-of-period or 13-month average basis, applicants shall provide the monthly balances making up the 13-month average.

The Net Source/Use of Average Cash Working Capital determined in this schedule shall be included in Schedule 27.

## **Schedule 29 - Workpapers for Earnings Test and Ratemaking Adjustments**

Instructions: Include a table of contents listing the work papers included in this schedule.

a. Provide a narrative explaining the purpose and methodology used for each adjustment identified in subsections b and d of these instructions that have not been addressed in the applicant's direct testimony. Such explanation shall reference any relevant Financial Accounting Standards Board (FASB) statement or commission precedent if known or available.

b. Provide a summary calculation of each earnings test adjustment included in Schedule 16. Each summary calculation shall identify the source documents used to prepare such calculation.

c. Provide all relevant documents, references, and information necessary to support the summary calculation required in subsection b of these instructions for each proposed earnings test adjustment. Amounts identified as per books costs shall include any documentation or references necessary to verify such amount to Schedule 40A. Working papers shall be indexed and tabbed for each adjustment and include the name of the primary employee responsible for the adjustment. All documents and information as referenced in these instructions should include general ledgers, payroll distributions, billing determinants, invoices, and actuarial reports. Supporting documentation that is voluminous may be made available at the applicant's office.

d. Provide a summary calculation of each rate year adjustment included in Schedule 25. Each summary calculation shall identify the source documents used to prepare such calculation.

e. Provide all relevant documents and information necessary to support the summary calculation required in subsection d of these instructions for each proposed rate year adjustment. Amounts identified as per books costs shall include any documentation necessary to verify such amount to Schedule 40b. Working papers shall be indexed and tabbed for each adjustment and include the name of the primary employees responsible for the adjustment. All documents and information as referenced in subsections a through e of these instructions should include general ledgers, payroll distributions, billing determinants, invoices, and actuarial reports.

## **Schedule 30 - Revenue and Expense Variance Analysis**

Instructions: Applicant shall quantify jurisdictional operating revenues and system operating and maintenance expenses by primary account as specified by the Federal Energy Regulatory Commission Uniform System of Accounts (USOA account) during the test period and the preceding 12 months. Also, provide jurisdictional sales volumes by customer class for the test period.

Applicants shall file a schedule detailing all revenue and expense accounts by month for the test period. Applicants shall provide a detailed explanation of all jurisdictional revenue and system expense increases or decreases of more than 10% during the test period compared to the previous 12-month period. The expense variance analysis applies to test period expense items greater than one-tenth of one percent (.001) of Operating & Maintenance expenses excluding purchased gas adjustment costs. Additionally, the applicant shall provide an electronic spreadsheet version of the accounts payable ledger



or schedule of all accounts payable electronically to the Division of Utility Accounting and Finance within five business days of the application filing date.

### **Schedule 31 - Advertising Expense**

Instructions: A schedule detailing advertising expense by USOA account and grouped according to the categories identified in § 56-235.2 of the Code of Virginia shall be provided. Advertising costs that are not identifiable to any of those categories shall be included in a separate category titled "other." If the applicant seeks rate relief, demonstrate that the applicant's advertising meets the criteria established in § 56-235.2.

### **Schedule 34 - Miscellaneous Expenses**

Instructions: Provide a description of amounts paid and USOA accounts charged for each charitable and educational donation, each payment to associated industry organizations, and all other miscellaneous general expenses. Individual items aggregating to less than 5.0% of the total miscellaneous expense may be reflected in an "Other" line item. Advertising expenses included in Schedule 31 should be excluded from this schedule.

### **Schedule 35 - Affiliate Services Transactions**

Instructions: For purposes of this schedule affiliate transactions shall be defined to include (i) goods exchanged between an applicant and its affiliates; (ii) services exchanged between an applicant and its affiliates; and (iii) transactions where a third party indirect affiliate provides goods or services on behalf of a direct affiliate that are passed through to applicant. If any portion of the required information has been filed with the State Corporation Commission (commission) as part of an applicant's Annual Report of Affiliate Transactions, the applicant may reference such report clearly identifying what portions of the required information are included in the Annual Report of Affiliate Transactions.

Provide a detailed narrative description of each type of affiliated good or service (i) received or (ii) provided by an applicant during the test period.

Provide detailed schedules for each approved affiliate transaction electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet, including all underlying formulas and assumptions on the application filing date, detailing costs by type of good or service (e.g. accounting, auditing, legal and regulatory, human resources, etc.) (i) received or (ii) provided, for each month of the test period. Show the final USOA account distribution of all costs billed to or by the regulated entity by month for the test period, as it is recorded on the regulated entity's books.

Identify all amounts billed to an affiliate and then billed back to the regulated entity.

Cost records and market analyses supporting all affiliated charges billed to or by the regulated entity/division shall be maintained and made readily available for commission staff review. This shall include supporting detail of costs (including the return component) incurred by the affiliated interest rendering the service and the allocation methodology. In situations when the pricing is required to be the higher (lower) of cost or market and market is unavailable, note each such transaction and have data supporting such a finding available for commission staff review.

If affiliate charges are booked per a pricing mechanism other than that approved by the commission, the regulated entity shall provide a reconciliation of books to commission-approved pricing, including an explanation of why the commission-approved pricing is not used for booking purposes.

### **Schedule 36 - Income Taxes**

Instructions: Provide a schedule detailing the computation of test period current state and federal income taxes on a total company and Virginia jurisdictional basis. Such schedule should provide a complete reconciliation between book and taxable income showing all individual differences. Additionally, provide a schedule detailing the computation of fully adjusted, current state and federal income taxes applicable to the Virginia jurisdiction.

Provide a schedule detailing the individual items of deferred state and federal income tax expense for the test period on a total company and Virginia jurisdictional basis. Separately quantify excess deferred income taxes amortization on both a total company and Virginia jurisdictional basis. Also, differentiate between protected (subject to Internal Revenue Service normalization rules) and unprotected amortization and state the amortization method and period applicable to each. Additionally, provide a schedule detailing the computation of fully adjusted, deferred state and federal income tax applicable to the Virginia jurisdiction.

Provide a detailed reconciliation between the statutory and effective income tax rates for the test period on both a total company and Virginia jurisdictional basis. Such schedule should quantify individual reconciling items by dollar amount and percentage. Individual items should include permanent differences (itemize), flow-through depreciation, excess deferred FIT amortization, and deferred ITC amortization.

Provide a detailed listing of individual ADIT and accumulated deferred ITC amounts as of the end of test period. Separately identify those items affecting the computation of rate base on both a total company and Virginia jurisdictional basis. Additionally, provide a detailed listing of individual ADIT and accumulated deferred ITC amounts for the earnings test rate base (if applicable), the end of test period rate base, and the fully-adjusted rate base on a Virginia jurisdictional basis.

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Provide a detailed reconciliation between the federal and state current tax expense on a stand-alone basis and the actual per book federal and state current tax expense for the test period on a total company and Virginia jurisdictional basis.

Provide a schedule depicting, by month, all federal and state income tax payments made during the test year. For each payment, identify the recipient.

Provide a detailed reconciliation between deferred federal and state income expense computed on a stand-alone basis and the actual per book deferred federal and state income tax expense, on a total company and Virginia jurisdictional basis.

Provide a detailed reconciliation between individual accumulated deferred federal and state income tax assets and liabilities computed on a stand-alone basis and the actual per book ADIT amounts as of the end of the test period, on a total company and Virginia jurisdictional basis. Additionally, provide a detailed listing of individual ADIT assets and liabilities computed on a stand-alone basis for the earnings test rate base (if applicable), the end of test period rate base, and the fully-adjusted rate base on a Virginia jurisdictional basis.

## **Schedule 37 - Organization**

Instructions: Provide an organizational chart of the applicant and its parent company detailing subsidiaries and divisions. Provide details of any material corporate reorganizations since the applicant's last rate case. Explain the reasons for and any ratemaking impact of each such reorganization.

## **Schedule 38 - Changes in Accounting Procedures**

Instructions: Detail any material changes in accounting procedures adopted by either the parent/service company or the utility since the applicant's last rate case. Explain any ratemaking impact of such changes.

Identify any write-offs or write-downs associated with assets (i.e., plant, tax accounts, etc.) that have been retained, transferred, or sold.

## **Schedule 39 - Out-of-Period Book Entries**

Instructions: Provide a summary schedule prepared from an analysis of journal entries showing "out-of-period" items booked during the test period. Show the amount, USOA account, and explanation of charge.

## **Schedule 40 - Jurisdictional and Class Cost of Service Study**

Instructions: Use format of Form Schedule 40.

a. Provide detailed calculations for all jurisdictional allocations for each revenue, expense, and rate base USOA account used to create Schedule 9. Allocations should be based on test period average data. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed.

Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40a using both the new methodology used in the current rate case and the old methodology used in the last rate case.

b. Provide detailed calculations for all jurisdictional allocations for each revenue, expense, and rate base USOA account used to create Schedules 19 and 22. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40b using both the new methodology used in the current rate case and the old methodology used in the last rate case.

c. Provide a class cost of service study showing the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40c using both the new methodology used in the current rate case and the old methodology used in the last rate case.

d. Provide appropriate supporting cost data for new allocation methodologies or rate design proposals in expedited rate applications.

## **Schedule 41 - Proposed Rates and Tariffs**

Instructions: Provide a summary of the rates designed to effect the proposed revenue increase. Provide a redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

## **Schedule 42 - Present and Proposed Revenues**

Instructions:

a. Provide the detailed calculations supporting total per books revenues in Column (3) of Schedule 21. The present revenues from each of the applicant's services shall be determined by multiplying the current rates times the test period billing units (by rate block, if applicable).

b. Provide a detailed calculation supporting total adjusted revenues in Column (5) of Schedule 21. The proposed

revenues from each of applicant's services shall be determined by multiplying the proposed rates by the adjusted billing units (by rate block, if applicable). Detail by rate schedule all miscellaneous charges and other revenues, if applicable. Reconcile per books billing units to adjusted billing units itemizing changes such as customer growth, weather, BTU content, and miscellaneous revenues. The revenue changes for applicant's services should be subtotaled into the applicant's traditional categories.

#### **Schedule 43 - Sample Billing**

Instructions: Provide a sample billing analysis detailing the effect on each rate schedule at representative levels of consumption.

#### **Schedule 44 – Additional Information Required by Commission Order**

To the extent not included in other schedules, provide all information and analyses that the State Corporation Commission has previously directed the applicant to include in its filing pursuant to Chapter 205.

#### **Schedule 46 – Initial or Amended SAVE Plans and SAVE Rider Adjustments**

Instructions: Use the format of Form Schedule 46a-q.

a. Instructions for initial and amended Steps to Advance Virginia's Energy (SAVE) Plan applications. For any initial or amended SAVE Plan pursuant to § 56-603 et seq. of the Code of Virginia, the applicant shall provide the following information:

1. A schedule that includes, to the extent known: (i) a detailed narrative describing each distribution asset class replacement program (e.g., cast iron replacement program, copper replacement program, first-generation plastic replacement program, etc.); (ii) the estimated timeline, to the extent known, for each distribution asset class replacement program; and (iii) a detailed explanation of the justification for the proposed replacement activities and costs associated with each distribution asset class replacement program.

2. A schedule that includes, to the extent known, the following information about projects that fall outside item a 1 of these instructions (e.g., gate station replacements, regulator station replacements, transmission pipeline replacements, etc.): (i) a detailed narrative describing each project; (ii) the estimated timeline, to the extent known, for each project that falls outside of the distribution asset class replacement programs; and (iii) a detailed explanation of the justification for the proposed replacement activities and costs associated with each project that falls outside of distribution asset class replacement programs.

The narrative requested in a 2 (i) of these instructions shall include detailed specific project descriptions, to the extent

known, of the following: (i) gate station replacements; (ii) regulator station replacements; (iii) replacements of transmission pipelines or pipeline facilities associated with transmission pipelines (e.g., valves); (iv) replacements of distribution pipelines that exceed \$1 million in project cost that are not part of a distribution asset class replacement program (i.e., specific, discrete projects that cost more than \$1 million and involve pipeline facilities that are not part of a distribution asset class replacement program); (v) replacements of distribution pipelines that are 12 inches or greater in nominal outside diameter and have a Maximum Allowable Operating Pressure in excess of 60 psig; and (vi) replacements of any storage or peak shaving facilities. The detailed project descriptions provided for projects that fall under a 2 of these instructions shall also include comparisons between existing infrastructure and the proposed replacement infrastructure, to the extent known, to cover known material attributes, including diameter, wall thickness, yield strength, and equipment configurations, as applicable.

3. A detailed description of exactly which of the safety or reliability system integrity risks identified in clause (i) of the definition of "eligible infrastructure replacement" in § 56-603 are addressed by (i) each of the distribution asset class replacement programs included in the filing and (ii) to the extent known, each of the projects identified under item a 2 of these instructions.

4. A detailed description of how the applicant intends to prioritize replacement activities under (i) distribution asset class replacement programs and (ii) projects under a 2 of these instructions over the life of the proposed SAVE Plan or the life of the proposed Save Plan amendment. The explanation must also identify any and all pipeline facilities proposed for replacements that are not located within the Commonwealth of Virginia.

5. A detailed description of how proposed replacements either will reduce or have the potential to reduce greenhouse gas emissions.

6. A narrative describing how the applicant plants for adequate internal employees and contractor resources so that identified projects are completed within the life of the proposed SAVE Plan or SAVE Plan amendment.

7. A schedule showing, to the extent known, by year (i) tentative miles of main, by material type, anticipated to be replaced under each distribution asset class replacement program; (ii) tentative number of service lines, by material type, anticipated to be replaced under each distribution asset class replacement program; and (iii) tentative amount of infrastructure to be replaced under item a 2 of these instructions (e.g., number of regulator stations to be replaced, number of gate stations to be replaced, transmission mileage to be replaced, etc.).

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8. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by program if applicable, for the specific SAVE Plan filing.

9. A detailed schedule of the applicant's projections to facilitate the review of projected costs, electronically to the Division to Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. The applicant shall provide these projections grouped separately by, but not limited to, the following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

10. The estimated lifetime revenue requirement of the proposed eligible infrastructure replacement costs, by year, on a jurisdictional basis, including all supporting calculations and assumptions. The applicant shall provide such information by program if applicable for the specific SAVE Plan filing.

11. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in this section. This summary shall include references and page numbers to each supporting item referenced.

12. Any SAVE plan application that is also seeking recovery through a SAVE Rider shall also provide the information required in section b of these instructions, as applicable and to the extent known.

b. Instructions for initial and adjusted SAVE Rider applications. For any SAVE Rider pursuant to § 56-603 et seq. of the Code of Virginia, the applicant shall provide the following information:

1. A schedule of all projected and actual costs by type and by month to the extent available. The applicant shall provide such information by program if applicable for the specific SAVE Rider.

2. A schedule supporting all ADIT balances included in the SAVE Rider filing. The applicant shall provide such information in a manner that separately identifies the types of book/tax differences included in these supporting ADIT balances and include a separate written narrative describing the nature of each identified book/tax difference.

3. Provide a transaction-level summary to facilitate the audit of actual costs, electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions on the application filing date. If the SAVE Rider Adjustment includes a true-up, provide such information for costs incurred during the true-up period. If the SAVE Rider Adjustment does not include a true-up, provide the information based on the most current actual costs available to date. The applicant shall provide these transactions grouped separately by, but not limited to, the

following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

4. A schedule that includes, to the extent known, the projected costs that the applicant seeks to recover through the SAVE Rider, including any and all project costs, by year, identified for distribution asset class replacement programs under item a 1 of these instructions and projects that fall outside of distribution asset class replacement programs under item a 2 of these instructions.

5. Detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

6. The applicant shall provide an illustrative journal entry example for each the following items: (i) costs; (ii) recoveries; (iii) deferrals; (iv) carrying charges; (v) current taxes; (vi) deferred taxes; and (vii) any other items included in the applicant's SAVE Rider filing. In addition, the company shall provide a separate accompanying description for each type of journal entry provided.

7. A detailed explanation of the applicant's proposed regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes. The applicant shall provide a separate explanation for each of the items included in the applicant's SAVE Rider filing and discuss any proposed regulatory treatments that differ from the applicant's per book method of accounting.

8. A detailed explanation of any recent or proposed changes in the per books accounting or regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes that have occurred since the applicant's previous SAVE Rider filing. The applicant shall provide a separate explanation for each of these items included in the applicant's SAVE Rider filing.

9. Identification (in the application or supporting testimony) of the estimated impact on a typical affected customer's monthly bill from the proposed revenue requirement. The applicant should provide a billing analysis based on the average annualized bill for a typical customer for each class that details (i) the proposed customer bill impact and (ii) the current bill impact. The applicant should provide both the dollar amount increase as well as percentage increase. This should be provided in an electronic file with the underlying calculations and supporting information.

10. A supporting schedule that shows the historical costs, including carrying charges, and customer collections, by year. This schedule should include calculations that support any deferral balances included in the applicant's calculations and the deferral balances at the end of the time period for which the applicant is requesting recovery of actual costs.

11. A schedule that shows a comparison of actual and projected SAVE capital expenditures to State Corporation

Commission approved spending amounts, as of the end of the applicant's requested rate year. The applicant shall identify these amounts separately by case number.

12. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in this section. This summary shall include references and page numbers to each supporting item referenced.

## **Schedule 48 - Conservation and ratemaking efficiency plans**

Instructions: Applications made pursuant to § 56-602 A and B or § 56-602 A and C of the Code of Virginia shall file the following:

a. Provide the revenue study or class cost of service study relied upon to establish annual per-customer fixed costs on an intra-class basis.

b. Provide detailed calculations supporting determinations of current class, normalized class, or proposed class revenues. Such calculations should clearly show current, normalized, or proposed annual billing determinants (by rate block and class). Reconcile per books billing units to adjusted billing units itemizing changes such as customer growth, weather, and BTU content and miscellaneous revenues.

c. Provide detailed calculations supporting the revenues produced by the rates, tariff design, or mechanism designed to effect the proposed conservation and ratemaking efficiency plan. Provide illustrative examples if necessary. Detail by rate schedule all miscellaneous charges and other revenues, if applicable. To the extent any of the information requested in this subsection of these instructions has been provided in subsection b of these instructions, it does not need to be restated.

d. Clearly identify (in the application or supporting testimony) the estimated impact on a typical affected customer's monthly bill from the proposed revenue requirement. The applicant should provide a billing analysis based on the average annualized bill for a typical customer for each class that details (i) the proposed customer bill impact and (ii) the current bill impact. The applicant should provide both the dollar amount increase as well as percentage increase. This should be provided in an electronic file with the underlying calculations and supporting information.

e. Provide the detailed calculations showing that the rates, tariff design, or mechanism designed to effect the proposed conservation and ratemaking plan is revenue neutral as defined in Chapter 25 (§ 56-600 et seq.) of Title 56 of the Code of Virginia.

f. Provide a clean and redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

g. Provide a detailed narrative description and an analysis of the proposed conservation program and a cost benefit assessment of the program using the Total Resource Cost Test, the Program Administrator Test, the Participant Test, and the Rate Impact Measure Test. Detail and support all assumptions utilized in the cost benefit assessments.

h. Provide a detailed narrative describing the proposed normalization component that removes the effect of weather from the determination of conservation and energy efficiency results. Additionally, provide any supporting calculation of such component.

i. Provide a detailed narrative describing the proposed decoupling mechanism. Provide calculations and documentation that supports the applicant's actual or proposed decoupling rate. Identify the source for the authorized distribution revenues per customer from the applicant's most recent rate case and where that amount is utilized in the applicant's conservation and ratemaking efficiency plans (CARE) application.

j. Provide a detailed narrative describing the provisions addressing the needs of low-income or low-usage residential customers.

k. Provide a detailed narrative describing provisions ensuring that rates and services to nonparticipating classes of customers are not adversely impacted. Additionally, provide all studies or calculations supporting such conclusions.

l. Provide a detailed explanation of any recent or proposed changes in the per books accounting or regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes. Provide a separate explanation for each of the items that the applicant is proposing to recover through any applicant CARE Rider.

m. Provide a description of the accounting procedures and internal controls in place for each energy efficiency program that is administered by either a third party or by the applicant, including: (i) a description of the internal controls and procedures for rebate, incentive, and vendor payments for each newly approved energy efficiency program; (ii) a discussion of any changes in internal controls and procedures since the previous filing for existing energy efficiency programs; and (iii) support for how the applicant is ensuring that internal controls and procedures for all energy efficiency programs are functioning correctly.

n. Provide a detailed narrative and supporting workpapers showing how portfolio-level or plan-level costs are allocated to each program. For portfolio-level or plan-level costs that are unattributable to each program, provide a description of the cost and a narrative of the reasoning or justification of the cost being unattributable to each program.

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o. Provide a schedule supporting all the income tax amounts included in the application, including tax credits, deferred taxes, and tax expense. For any ADIT balances included in the application, the applicant shall provide such information in a manner that separately identifies the types of book/tax differences included in these supporting ADIT balances and include a separate written narrative describing the nature of each identified book/tax difference.

p. If the application is for an amendment of an existing conservation and ratemaking efficiency plan, provide a schedule that summarizes [ , for each existing program for which cost recovery is sought, the following: (i) ] actual participation data [ ~~by program~~, (ii) actual energy savings, and (iii) actual demand savings, as reflected in the applicant's most recent Evaluation, Measurement, and Verification (EM&V) report as filed ]. Also provide [ ~~evidence of the actual energy and demand savings achieved as a result of each specific program for which cost recovery is sought, along with~~, for continuing programs, ] revised cost-benefit tests that incorporate actual utility-specific energy and demand savings and cost data [ , as reflected in the applicant's most recent EM&V report as filed ].

q. Provide a transaction-level summary to facilitate the audit of actual costs electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. If the CARE Rider includes a true-up, provide such information for costs incurred during the true-up period. Provide these costs grouped separately by, but not limited to, the following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

r. Provide a supporting schedule that shows the historical costs and customer collections by month for any applicant CARE Rider. This schedule should include calculations that support any deferral balance included in the applicant's calculations.

s. Provide an itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in this section. This summary shall include references and page numbers to each supporting item referenced.

## **Schedule 49 - Upstream natural gas supply infrastructure plans**

Instructions: For any application made pursuant to § 56-609 of the Code of Virginia, the applicant shall provide the following information:

a. A detailed description, analysis, and quantification of the proposed eligible natural gas supply infrastructure projects and the timeline for the investment and completion of the proposed eligible natural gas supply infrastructure projects.

b. A detailed description, analysis, and quantification of the anticipated benefits of the proposed eligible natural gas

supply infrastructure projects, including how such projects will result in (i) savings in the delivered cost of gas versus long-term forward market projections available to the applicant at the time of the capital investment or other alternatives; (ii) a reduction in the applicant's overall portfolio price volatility; (iii) reduction in the applicant's overall supply risk; or (iv) any combination thereof.

c. An estimated schedule for recovery of the related eligible natural gas supply infrastructure costs through the gas cost component of the applicant's rate structure or other mechanism, including proposed depreciation rates for investments in nondistribution asset classes.

d. A detailed description and analysis of how any revenue gains from the use of the pipelines by third parties will be used to offset eligible natural gas supply infrastructure costs.

e. Provide a schedule supporting all the income tax amounts included in the application, including tax credits, deferred taxes, and tax expense. For any ADIT balances included in the application, the applicant shall provide such information in a manner that separately identifies the types of book/tax differences included in these supporting ADIT balances and include a separate written narrative describing the nature of each identified book/tax difference.

f. The applicant's weather-normalized Virginia-jurisdictional firm sales demand for the calendar year preceding the application.

g. Each project's annual volume of natural gas and the resulting percentage of the applicant's weather-normalized Virginia-jurisdictional firm sales demand for the calendar year preceding the application.

h. The applicant's forecast of future expected base gas requirements for the applicant's Virginia jurisdiction over the effective period of the proposed plan.

i. The base gas purchases the applicant expects will be replaced with the natural gas acquired from the upstream project during the first year of the plan and for any additional years of the plan thereafter for which the applicant has estimates.

j. A calculation of the anticipated savings on a nominal and a present value basis. Provide the basis of and support for the energy price forecasts utilized in calculating anticipated savings.

k. Identification (in the application or supporting testimony) of the estimated impact on a typical affected customer's monthly bill from the proposed revenue requirement. The applicant should provide a billing analysis based on the average annualized bill for a typical customer for each class that details (i) the proposed customer bill impact and (ii) the current bill impact. The applicant should provide both the dollar amount increase as well as percentage increase. This



should be provided in an electronic file with the underlying calculations and supporting information.

l. A Virginia-jurisdictional lifetime revenue requirement of the proposed plan by year, including all supporting calculations and assumptions. The applicant shall provide such information by program if applicable for the specific natural gas supply infrastructure plan filing.

m. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by program if applicable, for the specific natural gas supply infrastructure plan filing.

n. Provide a transaction-level summary to facilitate the audit of actual costs electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. If the application includes a true-up, provide such information for costs incurred during the true-up period. Provide these costs grouped separately by, but not limited to, the following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

o. Detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

p. The applicant shall provide an illustrative journal entry example for each the following items: (i) costs; (ii) recoveries; (iii) deferrals; (iv) carrying charges; (v) current taxes; (vi) deferred taxes; and (vii) any other items included in the applicant's natural gas supply infrastructure plan filing. In addition, the company shall provide a separate accompanying description for each type of journal entry provided.

q. A detailed explanation of the applicant's proposed regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes. The applicant shall provide a separate explanation for each of the items included in the applicant's natural gas supply infrastructure plan filing and discuss any proposed regulatory treatments that differ from the applicant's per book method of accounting.

r. A detailed explanation of any recent or proposed changes in the per books accounting or regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes that have occurred since the applicant's previous natural gas supply infrastructure plan filing. The applicant shall provide a separate explanation for each of these items included in the applicant's natural gas supply infrastructure plan filing.

s. A clean and redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

t. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in these instructions. This summary shall include references and page numbers to each supporting item referenced.

**Schedule 50 – System expansion plans**

Instructions: For any application made pursuant to § 56-610 et seq. of the Code of Virginia, the applicant shall provide the following information:

a. A detailed description and analysis of the proposed system expansion plan and the timeline for the investment and completion of the proposed system expansion plan.

b. A business rationale explaining that the system expansion plan is in the public interest and of benefit to the affected customers served under the plan.

c. The period the system expansion rider is proposed to be in effect.

d. The estimated eligible system expansion infrastructure costs and a maximum level of investment to be included.

e. The maximum level of investment per affected customer.

f. The projected number of customers by rate class that will be served.

g. A schedule for recovery of eligible system expansion infrastructure costs through a system expansion rider.

h. A methodology for deferral of unrecovered eligible system expansion infrastructure costs in accordance with § 56-612 of the Code of Virginia.

i. A description of each class of customers eligible to participate in the system expansion plan.

j. The period of time a customer will be considered an affected customer, as that term is defined in § 56-610 of the Code of Virginia.

k. Provide a schedule supporting all the income tax amounts included in the application, including tax credits, deferred taxes, and tax expense. For any ADIT balances included in the application, the applicant shall provide such information in a manner that separately identifies the types of book/tax differences included in these supporting ADIT balances and include a separate written narrative describing the nature of each identified book/tax difference.

l. Identification (in the application or supporting testimony) of the estimated impact on an affected customer's monthly bill from the proposed system expansion plan. The applicant should provide a billing analysis based on the average annualized bill for a typical customer for each class that details (i) the proposed customer bill impact and (ii) the current bill impact. The applicant should provide both the dollar amount increase as well as percentage increase. This

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should be provided in an electronic file with the underlying calculations and supporting information.

m. A Virginia-jurisdictional lifetime revenue requirement of the proposed plan by year, including all supporting calculations and assumptions. The applicant shall provide such information by program if applicable for the specific system expansion plan filing.

n. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by program if applicable, for the specific system expansion plan filing.

o. Provide a transaction-level summary to facilitate the audit of actual costs electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. If the application includes a true-up, provide such information for costs incurred during the true-up period. Provide these costs grouped separately by, but not limited to, the following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

p. Detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

q. The applicant shall provide an illustrative journal entry example for each the following items: (i) costs; (ii) recoveries; (iii) deferrals; (iv) carrying charges; (v) current taxes; (vi) deferred taxes; and (vii) any other items included in the applicant's system expansion plan filing. In addition, the applicant shall provide a separate accompanying description for each type of journal entry provided.

r. A detailed explanation of the applicant's proposed regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes. The applicant shall provide a separate explanation for each of the items included in the applicant's system expansion plan filing and discuss any proposed regulatory treatments that differ from the applicant's per book method of accounting.

s. A detailed explanation of any recent or proposed changes in the per books accounting or regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes that have occurred since the applicant's previous system expansion plan filing. The applicant shall provide a separate explanation for each of these items included in the applicant's system expansion plan filing.

t. A clean and redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

u. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in this section. This summary shall include references and page numbers to each supporting item referenced.

## **Schedule 51 – Biogas supply investment plans**

Instructions: For any application made pursuant to § 56-625 of the Code of Virginia, the applicant shall file the following:

a. A detailed description and analysis of the proposed eligible biogas supply infrastructure projects and the timeline for the investment and completion of the proposed eligible biogas supply infrastructure projects.

b. A detailed description and analysis of the anticipated benefits of the proposed eligible biogas supply infrastructure projects, including how such projects will result in (i) a reduction in methane or carbon dioxide equivalent emissions from the biogas facility; (ii) an additional source of supply for the applicant; (iii) a beneficial use for the biogas; or (iv) any combination thereof. Provide calculations of the costs and benefits of each project.

c. An estimated schedule for recovery of the related eligible biogas supply infrastructure costs through the gas cost component of the applicant's rate structure or other mechanism, including proposed depreciation rates for investments in nondistribution asset classes.

d. A detailed description and analysis of how any revenue gains from the use of the pipelines by third parties will be used to offset eligible biogas supply infrastructure costs.

e. Provide a schedule supporting all the income tax amounts included in the application, including tax credits, deferred taxes, and tax expense. For any ADIT balances included in the application, the applicant shall provide such information in a manner that separately identifies the types of book/tax differences included in these supporting ADIT balances and include a separate written narrative describing the nature of each identified book/tax difference.

f. The applicant's weather-normalized Virginia-jurisdictional firm sales demand for the calendar year preceding the application.

g. Quantification of each project's annual volume of biogas and the resulting percentage of the applicant's weather-normalized Virginia-jurisdictional firm sales demand for the calendar year preceding the application.

h. Quantification of the base gas purchases the applicant expects will be replaced with the biogas acquired from the eligible biogas supply infrastructure projects during the first year of the plan and for any additional years of the plan thereafter for which the applicant has estimates.

i. If the proposed biogas supply investment plan includes the option for the applicant to receive the biogas or sell the biogas at market prices, provide a detailed description and analysis of how any revenue gains from the sale of the biogas will be used to reduce the cost of gas to the applicant's customers.

j. A Virginia-jurisdictional lifetime revenue requirement of the proposed plan by year, including all supporting calculations and assumptions. The applicant shall provide such information by program if applicable for the specific biogas supply investment plan filing.

k. Identification (in the application or supporting testimony) of the estimated impact on a typical affected customer's monthly bill from the proposed revenue requirement. The applicant should provide a billing analysis based on the average annualized bill for a typical customer for each class that details (i) the proposed customer bill impact and (ii) the current bill impact. The applicant should provide both the dollar amount increase as well as percentage increase. This should be provided in an electronic file with the underlying calculations and supporting information.

l. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by program if applicable, for the specific biogas supply investment plan filing.

m. Provide a transaction-level summary to facilitate the audit of actual costs and the review of projected costs, electronically to the Division of Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. If the application includes a true-up, provide such information for costs incurred during the true-up period. Provide these costs grouped separately by, but not limited to, the following categories: (i) program; (ii) project; (iii) work order; or (iv) cost type, if available.

n. If the applicant proposes to recover eligible biogas supply infrastructure costs through a recovery mechanism other than the gas cost component of the applicant's rate structure, provide detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

o. The applicant shall provide an illustrative journal entry example for each the following items: (i) costs; (ii) recoveries; (iii) deferrals; (iv) carrying charges; (v) current taxes; (vi) deferred taxes; and (vii) any other items included in the applicant's biogas supply investment plan filing. In addition, the company shall provide a separate accompanying description for each type of journal entry provided.

p. A detailed explanation of the applicant's proposed regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and deferred taxes. The applicant shall provide a separate explanation for each of the items included in the applicant's biogas supply investment plan filing and discuss any proposed regulatory treatments that differ from the applicant's per book method of accounting.

q. A detailed explanation of any recent or proposed changes in the per books accounting or regulatory treatment of costs, recoveries, deferrals, carrying charges, current taxes, and

deferred taxes that have occurred since the applicant's previous biogas supply investment plan filing. The applicant shall provide a separate explanation for each of these items included in the applicant's biogas supply investment plan filing.

r. A clean and redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

s. An itemized summary that demonstrates how the applicant has fulfilled each of the filing requirements in this section. This summary shall include references and page numbers to each supporting item referenced.

## **Schedule 52 - Additional Schedules**

Reserved for additional exhibits presented by the applicant to be labeled Schedule 52 et seq.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

### FORMS (20VAC5-205)

[Forms - Schedule 1 - Historical Profitability and Market Data \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 2 - Interest and Cash Flow Coverage Data \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 3 - Capital Structure & Cost of Capital Statement - Per Books and Average \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 9 - Rate of Return Statement - Earnings Test - Per Books \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 11 - Rate of Return Statement - Earnings Test - Adjusted to a Regulatory Accounting Basis \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 12 - Rate Base Statement - Earnings Test - Per Books \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 14 - Rate Base Statement - Earnings Test - Adjusted to a Regulatory Accounting Basis \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 15 - Schedule of Regulatory Assets \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 16 - Detail of Regulatory Accounting Adjustments \(eff. \[ 12/2023 1/2024 \]\)](#)

[Forms - Schedule 17 - Lead/Lag Cash Working Capital Calculation - Earnings Test \(eff. \[ 12/2023 1/2024 \]\)](#)

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[Forms - Schedule 18 - Balance Sheet Analysis - Earnings Test \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 19 - Rate of Return Statement - Per Books \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 21 - Rate of Return Statement - Reflecting Ratemaking Adjustments \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms – Supporting SAVE Roll-in Schedule 21 – Rate of Return Statement – Reflecting Ratemaking Adjustments \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 22 - Rate Base Statement - Per Books \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 24 - Rate Base Statement - Adjusted - Reflecting Ratemaking Adjustments \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms – Supporting SAVE Roll-in Schedule 24 – Rate Base Statement – Adjusted – Reflecting Ratemaking Adjustments \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 25 - Detail of Ratemaking Adjustments \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 26 - Revenue Requirement Reconciliation \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 26 - Revenue Requirement Reconciliation - FOR ILLUSTRATIVE PURPOSES ONLY \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 27 - Lead/Lag Cash Working Capital Calculation - Adjusted \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms - Schedule 28 - Balance Sheet Analysis - Adjusted \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms – Schedule 40 a and b – Jurisdictional Cost of Service Study \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

[Forms – Schedule 40c – Class Cost of Service Study \(eff. \[ ~~12/2023~~ 1/2024 \]\)](#)

~~[\[ Forms – Schedule 46 – Initial or Amended SAVE Plans and SAVE Rider Adjustments \(eff. ~~12/2023~~\) \]](#)~~

[Forms - Schedule 46 - Initial or Amended SAVE Plans and SAVE Rider Adjustments \(eff. 01/2024\) \]](#)

VA.R. Doc. No. R23-7440; Filed October 30, 2023, 2:59 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Richmond, Virginia 23219.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Pharmacists, Pharmacy Interns, and Pharmacy Technicians as Providers Supplement](#).

Public Comment Deadline: December 20, 2023.

Effective Date: December 21, 2023.

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

### DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: [Driver Training School Manual, Class A](#).

[Driver Training School Manual, Class B](#).

[Home-Schooled In-Car Driver Education Information Sheet](#).

[Virginia Motorcycle Rider Training Program, Virginia Rider Training Program Policy and Procedures](#).

[Virginia Rider Training Program Training Site License Application](#).

Public Comment Deadline: December 20, 2023.

Effective Date: December 21, 2023.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 230 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, or email [nicholas.megibow@dmv.virginia.gov](mailto:nicholas.megibow@dmv.virginia.gov).

### DEPARTMENT OF TAXATION

Title of Document: [Food Donation Tax Credit Guidelines](#).

Public Comment Deadline: December 20, 2023.

Effective Date: December 21, 2023.

Agency Contact: James Savage, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261, telephone (804) 371-2301, or email [james.savage@tax.virginia.gov](mailto:james.savage@tax.virginia.gov).

### DEPARTMENT OF WILDLIFE RESOURCES

Titles of Documents: [U.S. Army Corps of Engineers \(ACOE\) Permit Applicants - Scoping for Wildlife Impacts](#).

[ACOE Staff - Coordination with Department of Wildlife Resources \(DWR\) Coastal Zone Management Act Consistency](#).

[ACOE Staff Wildlife Scoping](#).

[Best Management Practices for Conservation of Little Brown Bats and Tri-Colored Bats](#).

[Canebrake Rattlesnake Mitigation](#).

[DWR Henslow's Sparrow Acoustic Survey Protocols](#).

[DWR Loggerhead Shrike Acoustic Survey Protocols](#).

[DWR Staff Project Review Protocol](#).

[Fish Relocation Best Practices](#).

[Freshwater Mussel Guidelines for Virginia](#).

[Instructions for Department of Conservation and Recreation Soil and Water Conservation District Staff](#).

[Inter-agency Coordination](#).

[Management of Bald Eagle Nests, Concentration Areas, and Communal Roosts in Virginia: A Guide for Landowners](#).

[Osprey Nest Management in Virginia: A Guideline for Landowners](#).

[Solar Energy Facility Construction and Operation Recommendations](#).

[State Permit and Project Reviewers](#).

[Surface Water Withdrawal Intake Design and Operation Standards](#).

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## Guidance Documents

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[Guidelines for How Long an Animal Survey for State-Listed Species in Virginia is Valid.](#)

[Survey Protocol for Mabee's Salamander and Tiger Salamander in Virginia - 2021.](#)

[Time of Year Restrictions and Other Recommendations.](#)

[Virginia Pollutant Discharge Elimination System Review Reissuances and Issuances.](#)

[Wildlife Scoping Instructions and Resource Protection Recommendations.](#)

Public Comment Deadline: December 20, 2023.

Effective Date: December 21, 2023.

Agency Contact: Aaron Proctor, Policy Planning Specialist, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).



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# GENERAL NOTICES

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## STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Public Comment Opportunity for Proposed Variances to the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on an application for proposed variances to the Human Rights Regulations submitted to the State Human Rights Committee (SHRC). The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of the regulation to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information, including comments, the SHRC intends to submit a written decision deferring, disapproving, modifying, or approving each variance application. All variances shall be approved for a specific time period. The decision and reasons for variance will be published in a later issue of the Virginia Register of Regulations.

Purpose of notice: The SHRC is seeking comment on the application for a proposed variance to the Human Rights Regulations for the DBHDS Western State Hospital (WSH) for a variance to Procedures for Behavior Treatment Plans and Use of Seclusion, Restraint, and Time Out:

12VAC35-115-105-H: Providers shall not use seclusion in a behavioral treatment plan.

12VAC35-115-110 C 3: Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

Explanation: The variances will allow WSH to place an individual in an environment of seclusion, at the individual's request, and not as related to an emergency, in order to prevent self-injurious harm to the individual and to the staff members responsible for the individual's care.

How to comment: The SHRC accepts written comments by online public comment forum, email, fax, and postal mail.

To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative listed in this notice.

Contact Information: Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (833) 734-1241, or email [taneika.goldman@dbhds.virginia.gov](mailto:taneika.goldman@dbhds.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for Cullen Management LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Cullen Management LLC for violations of the State Water Control Law and regulations at McDonald's, 1195 North 4th Street, Wytheville, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from November 20, 2023, through December 20, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### Gladys Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Campbell County

Gladys Solar LLC has provided DEQ a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) pursuant to 9VAC15-60. Gladys Solar will be located in Campbell County on two parcels (72-10-9 and 72-A-36) totaling 1,108 acres off of Gladys Road, approximately 4.5 miles southwest of Gladys, Virginia. The centroid of the project is located at 37.136600, -79.132900. The proposed project will have a rated capacity of 60.4 megawatts alternating current and include up to 180,000 photovoltaic panels. The project developer is Energix Renewables.

Contact Information: Amber Foster, Renewable Energy Permit By Rule Coordinator, Department of Environmental Quality, 111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474, or email [amber.foster@deq.virginia.gov](mailto:amber.foster@deq.virginia.gov).

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## General Notices

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### **Public Comment Opportunity on Proposed Vertiport in Blackstone, Virginia.**

**Purpose of notice:** The Department of Environmental Quality (DEQ) seeks public comment on the Commonwealth's response to the environmental aspects of a proposed vertiport in Blackstone, Virginia.

**Public comment period:** October 25, 2023, through November 24, 2023.

**Type of response:** DEQ is conducting an environmental review of a proposed vertiport as a component of the Town of Blackstone's application for a vertiport license submitted to the Virginia Department of Aviation (DOAV).

**Project description:** The Town of Blackstone, operator of the Allen C. Perkinson Municipal Airport in conjunction with the Department of Military Affairs, requests that DOAV approve its application for a vertiport license. The Allen C. Perkinson Municipal Airport is a joint-use facility that is comprised of approximately 700 acres, 26 of which are controlled by the town. The town's portion houses the general aviation terminal building, multiple hangar facilities, a fuel farm, and an aircraft parking apron, while the military's portion houses the control tower, runway, taxiway system, and aircraft hangars. The purpose of this project is to identify a designated takeoff and landing area for the vertical takeoff and landing of vehicles already operating at the field. The vertiport license, as applied for by the town, would authorize a specific area on the airfield to be solely dedicated for the takeoff and landing of drones and electric vertical take-off and landing vehicles (ETVOLs) on the airfield. The proposed site is located on a portion of the airfield controlled by the military but immediately adjacent to the 26 acres operated by the town. The proposed vertiport will be located on a 50 foot by 50 foot section of existing abandoned taxiway that will be painted or "marked" in a manner consistent with Engineering Brief 105, the Federal Aviation Administration's recommended guidelines on vertiports. The proposed action will allow the airport to identify a designated takeoff and landing area for the drones and ETVOLs already operating at the field and could potentially serve as an economic stimulant to the region.

**How a decision is made:** The DEQ Office of Environmental Impact Review coordinates the Commonwealth's response to the environmental information submitted for licensing actions. DEQ distributes the documents to appropriate state agencies, planning districts, and localities for review and comment. Upon consideration of all comments, DEQ prepares a single response to DOAV, which must consider the environmental review conducted by DEQ prior to approving the airport's vertiport license.

**How to comment:** DEQ accepts comments from the public by hand-delivery, email, or postal mail. The public is invited to comment in any of three ways: (i) oral comments will be recorded by a certified court reporter during a joint public

hearing; (ii) written comments may be submitted anytime during the hearing; or (iii) written comments may be mailed, emailed, or hand delivered to the DEQ staff member listed as contact for this notice. All written comments will be forwarded to DOAV. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. Before including an address, telephone number, email address, or other personal identifying information in a comment, commenters be advised that the entire comment, including personal identifying information, may be made publicly available at any time. While commenters can ask DEQ in a comment to withhold from public review personal identifying information, DEQ cannot guarantee that DEQ will be able to do so.

A copy of the environmental information is available at the following locations: (i) Allen C. Perkinson Municipal Airport, 291 Dominy Corner Road, Blackstone, VA 23824; or (ii) Department of Environmental Quality, 1111 East Main Street, 14th Floor, Richmond, VA 23219.

**Public hearing:** A joint public hearing will be hosted by DEQ in conjunction with DOAV for the purposes of compliance with state licensing requirements (§ 5.1-7 of the Code of Virginia). Anyone desiring to be heard in support of or in opposition to this proposed action may attend and have their comments considered by DEQ and DOAV.

The Joint Public Hearing will be held on November 14, 2023, 6 p.m., at Allen C. Perkinson Municipal Airport, 291 Dominy Corner Road, Blackstone, VA 23824

For public comments, document requests, and additional information, contact the DEQ staff member listed as contact for this notice.

**Contact Information:** Megan Black, Office of Environmental Impact Review Department of Environmental Quality, 1111 East Main Street, 14th Floor, Richmond, VA 23219, telephone (804) 698-4099, or email [megan.black@deq.virginia.gov](mailto:megan.black@deq.virginia.gov).

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# ERRATA

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## MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-720 Pertaining to Restrictions on Oyster Harvest.**

Publication: 40:3 VA.R. 93-105 September 25, 2023.

Correction to Final Regulation:

Page 104, 4VAC20-720-60 B, line 1, after "~~From October 1, 2022, through October 31, 2022, it~~" insert "It"

VA.R. Doc. No. R24-7644; Filed October 31, 2023, 2:51 p.m.

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# ERRATA

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