VIRGINIA REGISTER OF REGULATIONS

VOL. 41 ISS. 9 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | December 16, 2024

TABLE OF CONTENTS

Register Information Page 999

Publication Schedule and Deadlines 1000

Petitions for Rulemaking 1001

Periodic Reviews and Small Business Impact Reviews 1002

Notices of Intended Regulatory Action 1004

Regulations 1005

2VAC5-390. Rules and Regulations for the Enforcement of the Virginia Seed Law (Proposed) 1005
5VAC5-30. Uniform Commercial Code Filing Rules (Final) 1007
6VAC20-100. Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions (Proposed) 1012
9VAC20-81. Solid Waste Management Regulations (Final) 1016
9VAC20-85. Coal Combustion Byproduct Regulations (Final) 1021
9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (Final) 1022
9VAC25-875. Virginia Erosion and Stormwater Management Regulation (Withdrawal of Fast-track) 1023
12VAC35-260. Certified Recovery Residences (Forms) 1023
18VAC48-70. Common Interest Community Ombudsman Regulations (Proposed) 1023
18VAC90-19. Regulations Governing the Practice of Nursing (Proposed) 1028
18VAC90-25. Regulations Governing Certified Nurse Aides (Proposed) 1028
18VAC90-27. Regulations for Nursing Education Programs (Proposed) 1028
18VAC90-30. Regulations Governing the Licensure of Advanced Practice Registered Nurses (Proposed) 1028
18VAC90-50. Regulations Governing the Licensure of Massage Therapists (Proposed) 1028
18VAC90-60. Regulations Governing the Registration of Medication Aides (Proposed) 1028
18VAC115-90. Regulations Governing the Practice of Art Therapy (Proposed) 1034
18VAC140-30. Regulations Governing the Practice of Music Therapy (Proposed) 1043
20VAC5-305. Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment (Proposed) 1050
20VAC5-340. Rules Governing Shared Solar Program (Final) 1053
22VAC40-705. Child Protective Services (Final) 1068

Governor 1078

Guidance Documents 1081

General Notices 1083

Errata 1086

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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 inconsequen111tial 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 https://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.

PUBLICATION SCHEDULE AND DEADLINES

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

December 2024 through January 2026

Volume: Issue	Material Submitted By Noon*	Will Be Published On
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 **(Monday)**	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025
42:6	October 15, 2025	November 3, 2025
42:7	October 29, 2025	November 17, 2025
42:8	November 10, 2025 **(Monday)**	December 1, 2025
42:9	November 24, 2025 **(Monday)**	December 15, 2025
42:10	December 9, 2025 **(Tuesday)**	December 29, 2025
42:11	December 22, 2025 **(Monday)**	January 12, 2026

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Decision

Title of Regulation: **9VAC5. None specified.**

Statutory Authority: §§ 2.2-4007.02 and 10.1-1308 of the Code of Virginia.

Name of Petitioner: Robert Hodson.

Nature of Petitioner's Request: On September 30, 2024, the Department of Environmental Quality (DEQ) received Robert Hodson's petition to initiate a new regulation on ocean-class passenger cruise ships. Specifically, this petition requests that DEQ and the Commonwealth develop a regulation for cruise ships in Virginia waters as follows: (i) mandate the use of low-sulphur fuel; (ii) ban the use of exhaust gas cleaning systems (open-loop scrubbers); (iii) require the use of shore power; (iv) restrict the dumping of graywater, blackwater, and other environmentally detrimental waste products; and (v) require incident reporting and independent monitoring to ensure compliance.

A copy of the full petition is available from the agency contact.

Agency Decision: Request denied.

Statement of Reason for Decision: At the November 21, 2024, meeting of the State Air Pollution Control Board, staff presented the board with information on the petition and a summary of the comments received on the petition during the public comment period. The board voted to not initiate a rulemaking in response to the petition. The rationale for denying the petition is as follows:

With respect to petition items one through three and item five:

1. The board is limited by § 10.1-1307 B of the Code of Virginia to regulating motor vehicles with respect to a Low and Zero Emissions Vehicle program, or an inspection and maintenance program governing on-road motor vehicles in the northern Virginia ozone nonattainment area. The board has no jurisdiction over off-shore mobile sources, such as cruise ships.

Even if state law did allow the board to adopt such regulations, the board would be prohibited from doing so by 42 USC § 7543(e)(1) of the federal Clean Air Act, which prohibits states from adopting certain standards for controlling emissions from new non-road vehicles and engines.

2. Cruise ships are subject to international law and treaty, and changes to pollution controls should be pursued through those venues. The U.S. Environmental Protection Agency participates on the United States delegation to the International Maritime Organization (IMO), which is part of the United Nations. The Marine Environment Protection Committee is a group of member states within IMO that works on the prevention of marine pollution. The global marine environment standards are contained in the International Convention on the Prevention of Pollution from Ships treaty, also known as MARPOL. Annex VI to MARPOL defines engine and ship requirements related to air pollution. The board has no legal ability to override these existing legal requirements.

3. Even if the board had the authority to regulate cruise ships, it would not be able to complete the work to develop a regulation until various international and federal efforts had been conducted; see, for example: https://www.epa.gov/regulations-emissions-vehicles-and-engines/epa-collaboration-international-air-pollution-0.

4. Neither the board nor the Department of Environmental Quality have the ability to ensure compliance with any such program.

5. Low-sulfur fuel is already required through the MARPOL treaty. Annex VI to MARPOL allows the use of exhaust gas cleaning systems (scrubbers) as an alternative method of compliance with the marine fuel sulfur limit.

6. Shore power is generally used by vessels with moderate power requirements, typically less than 50 to 100 kilowatts. These vessels are capable of making use of normal grid voltage and frequency and replace the energy from the generators with the shore power. To serve larger vessels with shore power, dedicated and relatively costly installations are required, both on land and on board the vessels. This may include upgrading the grid capacity, frequency converters and complex high power connectors. Consequently, relatively few vessels and ports are capable of making use of shore power, and any related benefits may not outweigh the costs.

With respect to item four: The board does not have the legal authority under the State Air Pollution Control Law (§ 10.0-1300 et seq. of the Code of Virginia) to regulate water quality.

Agency Contact: Karen G. Sabasteanski Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA, 23218, telephone (804) 659-1973, or email karen.sabasteanski@deq.virginia.gov.

VA.R. Doc. No. PFR25-17; Filed October 01, 2024, 3:43 p.m.

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 **12VAC5-67, Advance Health Care Directive Registry**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 1, 2024, to support this decision.

The board will amend this regulation to conform it to provisions of Article 9 (§ 54.1-2994 et seq.) of Chapter 29 of Title 54.1 of the Code of Virginia that clarify the document types that may be stored in the Advance Healthcare Directive Registry and state when a provider may access documents in the Advance Healthcare Directive Registry.

The advantage to the public and the Commonwealth is that the regulation will be in compliance with legislative changes enacted by the 2021 General Assembly and will provide helpful information regarding advance health care directive registration. There are no disadvantages to individual private citizens or businesses not subject to the regulation, the agency, or the Commonwealth.

The Advance Healthcare Directive Registry regulation is necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth. The establishment of effective health care data analysis and reporting initiatives is essential to improving the quality and efficiency of health care, fostering competition among health care providers, and increasing consumer choice with regard to health care services in the Commonwealth. The regulation is mostly clearly written and understandable. It requires some clarifying language with regard to allowable documentation and provider access to the registry.

The board will amend the regulation to better align the chapter with current practice, update existing regulatory language to conform to the form and style requirements of the Virginia Administrative Code, consider opportunities for regulatory reduction, and amend the chapter to clarify advance care planning documentation that may be stored in the Advance Healthcare Directory Registry and who may access the documentation.

There is a continued need for these regulations as the board is required to make available an Advance Healthcare Directive Registry. The board has received neither complaints nor comments concerning this regulation. The regulatory language contained in this chapter is not complex. The regulation does not conflict with state law or regulation. The regulation requires a comprehensive review to reflect changes in the health care industry, technology, and economic conditions.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 986-5270, or email kindall.bundy@vdh.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-293, Locality Groupings**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 30, 2024, to support this decision.

This regulation is clearly written and easily understandable. The Temporary Assistance for Needy Families (TANF) program and regulation are essential to protecting the welfare of vulnerable citizens. The regulation is necessary because it provides a mechanism for a locality to switch grouping when there is evidence to support that need. This regulation will protect families by allowing them access to greater resources in certain situations. This regulation establishes criteria using data that is easily obtainable and readily available. This results in a system that is more equitable to families across the Commonwealth.

This regulation continues to be necessary and should stay in effect without change. Without the regulation, there would be no means of reviewing or changing the TANF payment level for a specific locality. Since this regulation has been in effect, 12 localities have switched to higher paying locality groupings, directly benefiting the citizens of those areas.

No comments have been received in the past concerning this regulation. This regulation is clearly written and easily understandable. This regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. While economic conditions as well as local cost of living standards continue to change, this regulation provides a means for a locality to change locality groupings as a result of such changes. This regulation was last reviewed in 2020. It has no impact on small businesses.

Contact Information: Mark Golden, Temporary Assistance for Needy Families Program Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7385, or email mark.golden@dss.virginia.gov.

Agency Notice

Pursuant to §§ 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: **22VAC40-675, Personnel Policies for Local Departments of Social Services**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins December 16, 2024, and ends January 6, 2025.

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: Leighann Smigielski, Senior Human Resources Policy Analyst, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7059, or email r.leighann.smigielski@dss.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-685, Virginia Energy Assistance Program - Home Energy Assistance Program**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated October 16, 2024, to support this decision.

The Home Energy Assistance Program (HEAP) protects the welfare of eligible citizens of the Commonwealth by providing funding to augment the Low-Income Home Energy Assistance Program (LIHEAP), which provides critical heating, cooling, and crisis assistance that ensures the safety, health, and welfare of Virginia's low-income citizens. This regulation is necessary to provide a framework for the program. The regulation is clear and concise and written in a manner easily understood.

The regulation should be retained without changes at this time to ensure that procedures regarding current program administration and fund disbursement are in place. The regulation grants authority to the Department of Social Services to receive and disburse HEAP funds. These funds are used to supplement the LIHEAP federal funding used to offer and administer the Energy Assistance Program (EAP). In addition, HEAP funds may be used to leverage additional federal funds.

The department did not receive any complaints or comments during the public comment period. Because this regulation makes revenue available to over 400 vendors, the impact of the regulation on small business is positive. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. The regulation is not complex and does not overlap, duplicate, or conflict with other federal or state laws or regulations. The last evaluation of this regulation occurred in 2019. Business entities that provide EAP goods and services are eligible to participate as vendors in the EAP. Payments to vendors are determined by their respective products, self-designated service areas and by customer selection. There is no need to amend or repeal the regulation to minimize the economic impact on small businesses.

Contact Information: Denise Surber, Interim Program Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7386, or email denise.t.surber@dss.virginia.gov.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-501, Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps**. The purpose of the proposed action is to amend the regulation following a periodic review to ensure there is an effective regulatory program governing living quarters for migrant agricultural workers within the Commonwealth. The regulation has not undergone a comprehensive review since its promulgation over 20 years ago. This action proposes to (i) remove outdated information; (ii) add and amend text to reflect best practices and the latest science from industry, academia, public health experts, and other stakeholders; (iii) clarify regulatory and enforcement standards; and (iv) include any additional amendments deemed necessary in response to public comment or input from industry and subject matter experts.

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

Statutory Authority: § 32.1-211 of the Code of Virginia.

Public Comment Deadline: January 15, 2025.

Agency Contact: Kristin Marie Clay, Senior Policy Analyst, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Fifth Floor, Richmond, VA 23219, telephone (804) 864-7474, or email kristin.clay@vdh.virginia.gov.

VA.R. Doc. No. R25-7480; Filed November 15, 2024, 1:58 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-390. Rules and Regulations for the Enforcement of the Virginia Seed Law (adding 2VAC5-390-190).**

Statutory Authority: § 3.2-4001 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2025.

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

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia. Section 3.2-4001 of the Code of Virginia authorizes the board to establish standards, such as minimum germination rates, for agricultural, vegetable, flower, tree and shrub, and lawn and turf seeds; mixtures of such seeds; and screenings sold in the Commonwealth.

Purpose: Over the past several years, Virginia's cotton growers have reported that planted cotton seed has had low germination rates. Low germination can negatively impact plant density and lead to a reduction in the yield of harvested cotton. The establishment of a minimum germination rate ensures that cotton seed meets or exceeds a minimum germination standard so that proper plant population density in the field can be achieved and maximum production realized. Without an established minimum cotton seed germination rate, cotton seed with substandard germination rates can be sold in the Commonwealth, thereby negatively impacting Virginia's cotton producers. Cotton seed sold in many cotton producing states in the Southeastern United States currently have regulations establishing a minimum germination rate. In most of these states, the minimum germination rate for cotton seed is 60% to 70%.

The proposed amendments protect the economic welfare of Virginia's cotton farmers by ensuring that cotton farmers are purchasing cotton seed that meets or exceeds an established minimum germination rate. The Code of Virginia currently requires the germination rate of each seed product sold in Virginia to be listed on the product's label; however, not all seed products have a minimum germination rate established in the regulation. Thus, cotton seed can currently be sold in Virginia at any germination rate, so long as that rate appears on the product's label and is accurate. Establishing a minimum germination rate for cotton seed will ensure that the cotton seed offered for sale in Virginia meets or exceeds 60%, thereby enabling Virginia's cotton growers to maximize cotton yield and profit.

Substance: The proposed amendments establish a minimum germination rate of 60% for cotton seed sold in Virginia. In addition, the proposed amendments allow cotton seed that does not meet the labeled germination rate for that seed to be relabeled and sold with the correct germination rate, as determined by germination tests conducted by the Department of Agriculture and Consumer Services Seed Laboratory, provided such germination rate is 60% or higher.

Issues: The primary advantages of the proposed amendments will be for Virginia cotton growers, most of whom are small businesses, as the proposed amendments will ensure that the cotton seeds that cotton growers purchase will meet or exceed a minimum germination standard, which will increase the grower plant population density and production. The proposed amendments would only disadvantage cotton seed sellers who offer for sale cotton seeds that fall below the minimum germination rate. The department does not expect requiring a minimum germination rate of 60% to appreciably change cotton seed seller business operations or production costs. Under the proposed amendments, cotton seed with mislabeled germination rates above 60% may be relabeled and sold with the correct germination rate, which would advantage both sellers and buyers. The proposed amendments have no disadvantages to the Commonwealth as the department already has the capacity to sample and conduct germination tests on agricultural seed sold in Virginia.

Department of Planning and Budget 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.[1]

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (board) proposes

to (i) establish that cotton seeds sold in the Commonwealth must have a germination rate of at least 60% and (ii) state that cotton seed that tests below the germination rate stated on the label can be sold, provided that the tested germination rate is at least 60% and the seed is relabeled to indicate the actual germination rate.

Background. Section 3.2-4008 of the Code of Virginia requires the germination rate of each seed product sold in Virginia to be listed on the product's label.[2] According to the Virginia Department of Agriculture and Consumer Services (VDACS), Virginia cotton growers voiced concerns to the agency that they believe that the cotton seed that they are buying and planting is germinating at a substandard rate or that it is germinating at a rate below that which is labeled on the seed packaging. Virginia cotton growers also expressed their concern that most other cotton-growing states in the Southeastern United States require minimum germination rates for cotton, which may result in the offering for sale in Virginia of cotton seed that failed to meet the minimum germination requirements in those other states. In most of these states, the minimum germination rate for cotton seed is 60% to 70%. VDACS determined that the most appropriate means of addressing these concerns is utilizing the regulatory process to establish a minimum germination rate for cotton seed sold in Virginia. To determine if seed is in violation of the labeled germination rate, VDACS inspectors take samples of the seed when the seed is in a seed dealer's warehouse and before it has been distributed to farmers. The sample is submitted to the VDACS Seed Laboratory for analysis. Seed analysis for germination can take several weeks as laboratory staff complete the grow out germination tests. Once the germination tests are complete, seed that is in violation of the labeled germination rate and has not been distributed to growers is placed under stop sale. Such seed may be relabeled by the seed manufacturer with the new germination rate and sold or the seed can be returned to the seed manufacturer. Thus, stating in the regulation that cotton seeds that test below the germination rate stated on the label can be sold if the seeds are relabeled to indicate the actual germination rate reflects current policy, with the exception that seeds with true germination rates below 60% may no longer be sold under the proposed regulation. Though seed companies may sell cotton seeds that test below the germination rate stated on the label if the seeds are relabeled to indicate the actual germination rate, there is a penalty for selling seed at a germination rate below the labeled rate. The penalty assessment for variance from label guarantee is equivalent to one percent of the amount of money the person from whom the sample was taken receives from the sale of the seed or $100 (whichever is greater) on each lot of seed or portion found in violation.[3]

Estimated Benefits and Costs. The fine for selling cotton seeds that germinate at below the rate stated on the label is small and is not likely on its own to deter seed companies. Purchasing and planting seeds that have lower than anticipated germination is costly for cotton growers in that less cotton is produced than expected. The proposal to not allow the relabeling and sale of seeds that VDACS Seed Laboratory analysis indicates has germination below 60% disincentivizes seed sellers from selling substandard seeds in Virginia. Thus, cotton growers in Virginia may benefit.

Businesses and Other Entities Affected. The proposed amendments affect the approximate 245 cotton producers in Virginia, as well as the five cotton seed companies selling cotton seed in the Commonwealth.[4] According to VDACS, all five cotton seed companies are based out of state. The agency estimates that all Virginia cotton producers are small businesses, but is unable to determine if the cotton seed companies are small businesses. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity based in the Commonwealth, even if the benefits exceed the costs for all entities combined.[6] As no Virginia-based entity is specifically expected to have an increase in net cost or reduction in net benefit due to the proposed amendments,[7] no adverse impact is indicated.

Small Businesses[8] Affected.[9] The proposed amendments do not appear to adversely affect Virginia small businesses.

Localities[10] Affected.[11] The proposed amendments particularly affect the cotton-growing regions of Virginia, in particular the Cities of Chesapeake and Suffolk and the Counties of Accomack, Brunswick, Charles City, Dinwiddie, Greensville, Henrico, Isle of Wight, New Kent, Northampton, Prince George, Southampton, Surry, and Sussex.[12] No costs for local governments are expected.

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

Effects on the Use and Value of Private Property. The proposal may lead to more consistent, higher yielding cotton, which could increase the value of some cotton growing businesses. The proposed amendments do not affect real estate development costs.

---

[1] 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.

[2] See https://law.lis.virginia.gov/vacode/title3.2/chapter40/section3.2-4008/.

[3] See https://law.lis.virginia.gov/vacode/title3.2/chapter40/section3.2-4014/.

[4] Data source: VDACS.

[5] 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.

[6] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits

for each affected Virginia entity that directly results from discretionary changes to the regulation.

[7] It is possible that a Virginia cotton grower may wish to purchase seeds with below 60% germination rate if they are priced well below higher germinating seeds, but no such individual is specifically known, and the agency has indicated that at least most growers support the amendments. No objections were received at the Notice of Intended Regulatory Action stage.

[8] 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."

[9] 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.

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

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

[12] Source: VDACS.

Agency Response to Economic Impact Analysis: The Department of Agriculture and Consumer Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) establish a minimum germination rate of 60% for cotton seed sold in Virginia and (ii) allow cotton seed that does not meet the labeled germination rate for that seed to be relabeled and sold labeled with the correct germination rate, as determined by germination tests conducted by the Department of Agriculture and Consumer Services Seed Laboratory, provided such germination rate is 60% or higher.

2VAC5-390-190. Minimum germination standard for cotton seed.

A. Cotton for agricultural seed, as defined in § 3.2-4000 of the Code of Virginia, shall have a 60% minimum germination.

B. A licensee may relabel and distribute, sell, or offer for sale cotton for agricultural seed that is labeled in violation of § 3.2-4008 C 9 of the Code of Virginia if such seed is relabeled with the germination rate determined by the Department of Agriculture and Consumer Services.

VA.R. Doc. No. R23-7135; Filed November 18, 2024, 3:30 p.m.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final Regulation

Title of Regulation: **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2025.

Agency Contact: Bernard Logan, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9834, or email bernard.logan@scc.virginia.gov.

Summary:

The amendments require that Uniform Commercial Code (UCC) records shall only be communicated to the Clerk of the Virginia State Corporation Commission by the electronic delivery method provided by the clerk, unless in the case of hardship or other good cause, in which case the clerk may, at the clerk's discretion, allow for the communication of a UCC record by a method other than electronic filing. The amendments include additional process revisions to update the regulation.

AT RICHMOND, NOVEMBER 15, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2024-00005

Ex Parte: In the matter of Adopting Revisions

to Uniform Commercial Code Filing Rules

ORDER ADOPTING REGULATIONS

On August 20, 2024, the State Corporation Commission ("Commission") entered an Order Establishing Proceeding ("August 20, 2024 Order") regarding a proposal by the Office of the Clerk ("Clerk") to amend Title 5, Chapter 30 of the Virginia Administrative Code ("Chapter 30")[1] of the Commission's rules governing the filing and handling of Uniform Commercial Code ("UCC") records in the Clerk's Office of the Commission pursuant to Title 8.9A of the Code of Virginia ("Proposed Amendments").

The Clerk has recommended amendments to Chapter 30 that will require that UCC records shall only be tendered to the Clerk by the electronic delivery method provided by the Clerk, unless in the case of hardship or other good cause, in which case the Clerk may, at its discretion, allow for the communication of a UCC record by a method other than electronic filing. Additionally, the amendments include further process revisions to update the rules.

The Order Establishing Proceeding and the proposed amendments to Chapter 30 were posted on the Commission's

website, provided to all interested persons, and published in the Virginia Register of Regulations on September 9, 2024. The Order Establishing Proceeding invited any interested persons to participate and required that any comments or requests for a hearing on the proposed amendments to Chapter 30 be submitted in writing on or before October 11, 2024. The Commission did not receive any comments or requests for a hearing. However, the Commission is aware that there were non-substantive differences between the Proposed Amendments set forth in the Order Establishing Proceeding and the version published in the Virginia Register of Regulations. These differences were due to a clerical error. The Final Rule adopted herein is consistent with the version published by the Commission in its August 20, 2024 Order.[2]

NOW THE COMMISSION, having considered this matter, concludes that the attached amendments to Chapter 30 should be adopted effective January 1, 2025.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to Chapter 30, which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2025.

(2) The Clerk shall provide notice of the adopted amendments to Chapter 30 to any interested persons as the Clerk may designate.

(3) The Commission's Office of General Counsel shall provide a copy of this Order and the adopted amendments to Chapter 30 to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) Interested persons may download unofficial copies of this Order and the adopted amendments to Chapter 30 from the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) This case is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, MBrowder@oag.state.va.us; and a copy shall be delivered to the Commission's Office of General Counsel.

---

[1] Available at: https://law.lis.virginia.gov/admincode/title5/agency5/chapter30/.

[2] The blackline of the adopted amendments to Chapter 30 appended hereto includes reconciliations of the different versions of the Proposed Amendments resulting from the clerical error explained above.

5VAC5-30-20. Definitions.

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

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for delivering the UCC record for filing. ~~"Remitter" does not include a person responsible merely for the delivery of the UCC record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.~~

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records ~~may be delivered to~~ shall only be [~~tendered for filing at~~ communicated to] the filing office ~~for filing as follows: 1. By personal delivery, at the filing office street address; 2. By courier delivery, at the filing office street address; 3. By postal delivery, to the filing office mailing address; or 4. B~~ by electronic delivery method provided and authorized by the filing office.

B. ~~The filing time for a UCC record delivered to the filing office for filing by personal or courier delivery is the time the UCC record is date and time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered to the filing office for filing after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.~~ The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.

C. In the case of hardship or other good cause, the filing office may, at its discretion, allow for the communication of a UCC record by a method [~~of communication~~] other than electronic filing. [~~Hardship delivery may only occur after the~~ The] filer [~~has received prior~~ must receive] approval from the filing office [prior to communicating a UCC record by a method other than electronic filing]. The filing office will determine the policy and procedure used to accept and process a UCC record [~~under a hardship request~~ in these circumstances].

D. UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

5VAC5-30-40. ~~Forms, fees,~~ Fees and payments.

A. ~~Forms. 1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter. 2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (http://www.scc.virginia.gov/clk/uccfile.aspx) shall be accepted. 3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators. B. Fees.~~ Filing fees and fees for services provided under this chapter are as follows:

1. The fee for filing ~~and indexing~~ a UCC record is $20.

2. The fee for submitting a UCC search request is $7.00.

3. There is no fee for furnishing a paper copy of a UCC record of 25 or fewer pages. The fee for furnishing a paper copy of a UCC record that exceeds 25 pages is $10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is $6.00.

~~C. Methods of payment.~~ B. Filing fees ~~and fees for services provided under this chapter~~ may be paid by the following methods:

~~1. Payment by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.~~

~~2. Personal check, cashier's check and money order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.~~

~~3.~~ 1. Payment by debit or credit card of a type approved by the filing office shall be accepted for the filing or submission of a document delivered to the filing office for filing by authorized electronic delivery method.

~~4.~~ 2. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

C. Fees for services provided under this chapter may be paid by the following methods:

1. Payment by debit or credit card of a type approved by the filing office for services requested by authorized electronic delivery method or in person at the filing office.

2. Personal check, cashier's check, and money order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for services requested by personal, courier, or postal delivery, or in person at the filing office, if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

D. ~~Overpayment and underpayment policies~~ In case of hardship or other good cause, the filing office may allow for the payment of fees by an alternate method of payment.

[~~Hardship or other good cause~~ Such] payment may only occur after the filer has received prior approval from the filing office.

~~1.~~ E. The filing office shall notify the remitter of the amount of any overpayment exceeding $24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing office shall refund an overpayment of $24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

~~2.~~ F. Upon receipt of a [~~hardship or other good cause~~] UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

~~E. Uncollected filing fee payment.~~ G. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

~~F. Federal liens.~~ H. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;

2. Determine that a security interest in collateral exists or does not exist;

3. Determine that information in the UCC record is correct or incorrect, in whole or in part; or

4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. ~~If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if delivered to the filing office for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open.~~ The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. If it is determined that the filing office refused to accept a UCC record in error, the filing office shall file the UCC record with the filing date and time that were assigned~~, based on the method of delivery,~~ by the filing office after the record was originally delivered to the filing office for filing. The filing office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally delivered to the filing office for filing.

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. The filing office shall file a filing officer statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and an explanation of the corrective or other action taken. The filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. ~~1. A UCC record delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given. 2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the UCC record or if it appears that the name of an individual has been included in the field designated for an organization name. 3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.~~ Only names entered in a designated name field through the system-to-system transfer method will be recorded as a name in the UCC information management system. This applies to all parties associated with a UCC record.

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made ~~only~~ by electronic delivery method provided and authorized by the filing office or on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.

2. The name and address of the person to whom the search report is to be sent.

3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report~~,~~; and

2. ~~Instructions~~ For requests made by personal, courier, or postal delivery, instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.

2. No distinction is made between upper and lower case letters.

3. Punctuation marks and accents are disregarded.

4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."

5. All spaces are disregarded.

6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unlapsed or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.

2. Identification of the name searched.

3. The through date as of the date and time the report was generated.

4. For an organization, the name as it appears after application of the standardized search logic.

5. Identification of each unlapsed initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.

6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.

7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

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, Fourth Floor, Richmond, Virginia 23219.

FORMS (5VAC5-30)

~~UCC Financing Statement, Form UCC1 (rev. 4/11).~~

~~UCC Financing Statement Addendum, Form UCC1Ad (rev. 4/11).~~

~~UCC Financing Statement Additional Party, Form UCC1AP (rev. 8/11).~~

~~UCC Financing Statement Amendment, Form UCC3 (rev. 4/11).~~

~~UCC Financing Statement Amendment Addendum, Form UCC3Ad (rev. 4/11).~~

~~UCC Financing Statement Amendment Additional Party, Form UCC3AP (rev. 8/11).~~

~~UCC Information Statement, Form UCC5 (rev. 7/12).~~

~~UCC Information Request, Form UCC11 (rev. 7/12).~~

UCC Information Request, Form UCC11 (rev. 7/2023)

VA.R. Doc. No. R25-8014; Filed November 15, 2024, 4:45 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-100. Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions (amending 6VAC20-100-20).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 14, 2025.

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.

Basis: Section 9.1-102 of the Code of Virginia gives the Criminal Justice Services Board the authority to establish the compulsory minimum training standards for full-time and part-time officers of the Department of Corrections (DOC).

Purpose: The proposed amendments are essential to protecting the public health, safety, and welfare of citizens of the Commonwealth because the proper, efficient training of correctional officers ensures not only the safety of incarcerated individuals, but also prioritizes the safety and wellbeing of the public at large and victims of crime.

Substance: Substantial changes and improvements have been made and applied to the performance outcomes, training objectives, testing criteria, and lesson plan guides in each individual category of training. These changes will reflect improved and updated language and enhanced training and include:

Category 1 - Security and Supervision:

1. Revised wording of performance outcomes (POs) and eliminated redundancy;

2. Changed several practical exercises to written exercises;

3. Added several training objectives (TOs) to better reflect revised performance outcomes for clarity;

4. Revised and significantly enhanced content in lesson plan guides (LPGs) to be taught to new officers;

5. Added additional information and removed redundancy (i.e., added types of counts to the LPG of PO 1.1);

6. Created new PO 1.4 dealing with inmate disciplinary procedures, new PO 1.9 to identify abnormal behavior among inmate population, new PO 1.10 for better identification of high-risk behaviors and how to handle them while maintaining professionalism, and new PO 1.12 identifying management of abnormal behaviors;

7. Created new PO 1.8 to address and identify inmate employment opportunities within the correctional setting; and

8. Created new PO 1.11 dealing with suicidal ideation, prevention, and intervention strategies.

Category 2 - Communications

1. Changed several written exercises to practical exercises;

2. Clarified effective interpersonal verbal and nonverbal communication skills;

3. Enhanced communication barriers section and elaborated for more effective content and measurability by creating new PO 2.5 identifying different levels of understanding and language barriers among individuals within a correctional setting;

4. Renumbered and fixed multiple technical errors (i.e. punctuation, spelling, etc.); and

5. Enhanced LPGs and added additional content to be taught (but not necessarily to be tested).

Category 3 - Safety

1. Revised practical and written TOs;

2. Amended and enhanced language in POs for better clarity and understanding;

3. Removed redundancy;

4. Revised criteria sections to better reflect POs and TOs;

5. Renumbered entire category to fix errors;

6. Ensured TOs utilize language that makes them measurable;

7. Created new PO 3.4 dealing with transportation of inmates, new PO 3.7 for inventorying keys and locking devices, new PO 3.14 dealing with the disbursement of unlawful assemblies,

new PO 3.15 that addresses use of force, and new PO 3.17 for weapons retention; and

8. Included less lethal force options in the new (renumbered) PO 3.13 that deals with identification of chemical agents.

Category 4 - Emergency Response

1. Revised practical and written TOs for more effective instruction;

2. Amended and enhanced language in POs for better clarity and understanding;

3. Ensured language used created measurability for testing and auditing purposes;

4. Renumbered entire category and fixed multiple technical errors;

5. Added content to LPGs for enhanced classroom teaching; and

6. Created new PO 4.2 dealing with hostage situational awareness and survival, new PO 4.6 that teaches and tests on terrorism and weapons of mass destruction in the workplace, new PO 4.7 dealing with response to an escaped inmate, and new PO 4.8 that addresses active shooter response within a correctional setting.

Category 5 - Conflict and Crisis Management

1. Removed redundant and outdated language, as well as content that appears elsewhere in other categories; and

2. Renumbered entire category and made the category smaller in content, with more training, and more efficient.

Category 6 - Law and Legal Issues;

1. Reworded and restructured language in POs for clarity and understanding of intended tasks;

2. Reorganized written and practical exercises;

3. Removed redundant information and testing criteria;

4. Increased information taught on Federal Code and the Constitutional rights of inmates;

5. Created new PO 6.5 to identify established federal and state standards for the prevention, detection, and response to sexual abuse, sexual assault, or harassment; and

6. Created new PO 6.6 to identify established federal laws concerning the protection of religious exercise by institutionalized persons.

Category 7 - Duty Assignments and Responsibilities

1. Removed redundancy;

2. Renumbered entire category and fixed various technical errors;

3. Reorganized practical and written exercises for better clarity; and

4. Created new PO 7.7 dealing with the operation of electrical detection equipment designed to detect contraband within a correctional facility, and new PO 7.8 dealing with food distribution procedures to inmates.

Category 8 - Professionalism

1. Created new PO 8.2 requiring the student to identify various aspects and elements of the criminal justice system, as well as new PO 8.3 addressing performing duties in a positive, professional manner; and

2. Removed redundancy and renumbered category.

Category 9 - BCO Firearms Training

1. Created new PO 9.1 to address safety procedures while students are at the range, as well as the identification of the cardinal rules of firearms;

2. Added content to LPGs;

3. Revised wording for clarity and understanding of specific intent of tasks and also to ensure measurability;

4. Revised firearms qualification courses and struck through the old ones;

5. Created new PO 9.6 dealing with duty rifle, ammunition, and equipment, as well as new PO 9.7 dealing with department-issued shotguns and qualification with each;

6. Revised 9.8 to better incorporate less-lethal launchers; and

7. Renumbered category for more efficiency and put new qualification courses as appendices, listed after the performance outcomes.

Category 10 - Physical Fitness Training

1. Removed outdated and redundant language and essentially rewrote entire the category to include much more relevant information;

2. Created new PO 10.1 addressing the identification of the importance and benefits of establishing and maintaining overall physical wellness for officers, as well as new PO 10.2 relating to physical exercise;

3. Added additional content in LPGs to ensure all students were being taught the same information, especially if some are not familiar with specific exercises; and

4. Created new PO 10.3 that deals with the identification of workplace stressors and their causes and impacts, as well as reduction strategies.

Category 11 - Field Training

1. Reduced number of field training hours to 120 for efficiency;

2. Reworded and revised current POs and tasks to ensure measurability for auditing purposes;

3. Included or added updated information in reference to DOC's electronic inmate record system;

4. Added information to better address the transportation of inmates, to include specific populations, such as pregnant inmates, or those with special needs (i.e., medical illness, nonambulatory persons);

5. Revised and enhanced 11.18, which deals with weapons handling, in its entirety; and

6. Renumbered, clarified content, and better organized the entire category.

Issues: There are no issues or disadvantages associated with the regulatory change that affect individual private citizens, businesses, other agencies within the Commonwealth, or government officials. Advantages of this regulatory change include improved and more efficient training for new corrections officers employed with the DOC, with less waste in ammunitions in the firearms category of training and in unnecessary classroom time currently used to "fill time requirements". The primary advantages associated with this regulatory change are numerous in terms of safety and transparency to the public, especially to the victims of crime. In the Commonwealth, offenders who are convicted of a crime and sentenced to more than 12 months of incarceration typically become inmates of DOC. The mandated training incorporated in the proposed amendments assists in keeping the Commonwealth's citizens safe by enhancing both basic and field training for new officers employed with DOC. There are no disadvantages to the public or the Commonwealth by promulgating this new regulation, and the Criminal Justice Services Board voted to approve not only this action, but also the amendments to the standards.

Department of Planning and Budget 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.[1]

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (board) proposes to: (i) reduce the minimum number of basic correctional officer training hours from 400 to 320, (ii) reduce the minimum number of field training hours from 200 to 120, and (iii) amend specific training requirements in a separate document incorporated by reference (DIBR), which is considered to be part of the regulatory text.

Background. The current regulation states that correctional officers shall comply with the following:

1. Successfully complete basic correctional officer training at a certified criminal justice training academy, external training location, or satellite facility, which includes receiving a minimum of 400 hours of department approved training in the following categories:

a. Security and supervision;

b. Communication;

c. Safety;

d. Emergency response;

e. Conflict and crisis management;

f. Law and legal;

g. Duty assignments and responsibilities;

h. Professionalism;

i. Basic corrections officer firearms training; and

j. Physical fitness training.

2. Successfully complete a minimum of 200 hours of approved training in the category of field training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

The board proposes to change the minimum of 400 hours to a minimum of 320 hours for basic correctional officer training and change the minimum of 200 hours to a minimum of 120 hours for field training. Additionally, in the DIBR, the board proposes to amend the specific training requirements for the 10 categories listed for basic correctional officer training and also the 11th category of field training. The training addressed by the proposed amendments is provided or overseen by the Department of Corrections Academy for Staff Development, which conducts all basic correctional officer training using DOC employees.

Estimated Benefits and Costs. By reducing the total required minimum number of hours of training by 160, trainees may be able to start work as correctional officers approximately four weeks sooner. To the extent that under the proposed requirements, correctional officers are at least as well trained and prepared as they are under the current requirements, the proposed amendments would be substantially beneficial. According to the Department of Criminal Justice Services (DCJS), the proposed requirements improve efficiency and effectiveness. DOC reports that the agency is facing unprecedented staffing shortages, with approximately 1,600 correctional officer vacancies, and that the proposal would enable the vacancies to be filled more quickly.[2]

In the DIBR, the board proposes to no longer require 200 firearm practice rounds for each student, and instead move toward a skill-based practice format. DCJS and DOC believe many students would be able to show competency while expending a smaller amount of live ammunition. DOC expects this would result in about a 10% reduction in ammunition usage in initial training. Further, DOC estimates that with current pricing this would result in an approximate savings of $11,500 over the course of a 12-month period. According to DCJS, the proposed amendments would not affect the need for any other items, including equipment. As indicated by the agency background document (ABD),[3] several other changes are being proposed throughout the DIBR. However, the information in the ABD is not sufficiently detailed to indicate whether the proposed changes constitute additions or deletions of existing text, or a reorganization of existing text. As a result, a comprehensive assessment of the total number and type of changes, and their potential economic impact, is not possible.

Businesses and Other Entities Affected. The proposed amendments affect DOC, and in particular their three training academies and those institutions that have a large number of vacancies for correctional officers. Suppliers of ammunition to the training academies would also be affected. 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. Since the proposal would likely result in reduced purchases of ammunition, those firms that sell ammunition to DOC would likely encounter reduced revenue. Thus, an adverse impact is indicated.

Small Businesses[4] Affected.[5] Types and Estimated Number of Small Businesses Affected. The proposed amendments affect two small firms that have contracts with DOC to provide ammunition.[6] Costs and Other Effects. The proposal to no longer require 200 firearm practice rounds for each student, and instead move toward a skill-based practice format, would likely result in about $11,500 less spent on ammunition annually. DOC has contracts with two small firms to purchase its ammunition. These firms would likely together have about $11,500 less in sales annually.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[7] Affected.[8] According to DCJS, localities with a DOC facility within their jurisdiction may benefit through enhanced training of corrections officers keeping their community safer. The following localities have at least one DOC facility: the Cities of Chesapeake and Harrisonburg and the Counties of Augusta, Bland, Brunswick, Buchanan, Buckingham, Campbell, Chesterfield, Culpeper, Fluvanna, Goochland, Greensville, Grayson, Halifax, Hanover, Henry, Lunenburg, Mecklenburg, Nottoway, Pittsylvania, Powhatan, Richmond, Russell, Smyth, Southampton, Stafford, Sussex, Tazewell, and Wise. The proposed amendments may also indirectly affect the localities where the three training academies are situated, which are the Counties of Goochland, Smyth, and Southampton. The proposed amendments do not appear to affect costs for localities.

Projected Impact on Employment. According to DCJS, the proposed reduction in minimum training hours is not expected to affect employment for trainers. As mentioned above, the proposal would enable trainees to start working as correctional officers about four weeks sooner. This would likely enable vacancies to be filled more quickly, and consequently more correctional officers would likely be working at any given time.

Effects on the Use and Value of Private Property. The two firms that sell ammunition to the training academies would likely encounter reduced revenue. According to DOC, though the reduction in ammunition purchases would be about 10% of that currently used in initial training, it would only represent about 1.0% or less of all the ammunition purchased by DOC from those firms,[9] and the firms have large contracts that are used by all state-level law-enforcement entities. Thus, any impact on the value of the firms would be quite small.

The proposed amendments do not appear to affect real estate development costs.

---

[1] 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.

[2] Source: Department of Corrections

[3] See https://townhall.virginia.gov/l/GetFile.cfm?File=51\5649\9355\AgencyStatement_DCJS_9355_v4.pdf

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

[5] 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.

[6] Data source: Virginia Employment Commission

[7] "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.

[8] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[9] Other DOC ammunition expenditure purposes include annual recertification training, instructor level training and duty ammunition purchases.

Agency Response to Economic Impact Analysis: The Virginia Department of Criminal Justice Services (DCJS) is in agreement with the economic impact analysis (EIA) prepared by the Department of Planning and Budget (DPB). Although prepared approximately three years ago in October 2021, all details related to the stages of basic training for new law corrections officer recruits is correct. DPB's assessment that there are no associated increases in costs is correct, and DCJS concurs that the changes associated with this regulatory action reduce the minimum number of basic correctional officer training hours from 400 to 320, reduce the minimum number of field training hours from 200 to 120, and amend training requirements in a separate document incorporated by reference (DIBR), which will replace the current version. With respect to the DIBR, DCJS also agrees that the proposed changes to no longer require 200 firearm practice rounds for each student and instead move toward a skill-based practice format, that the Department of Corrections (DOC) expects this would result in

about a 10% reduction in ammunition usage in initial training. Further, DOC concurs that with current pricing, this would result in an approximate savings of $11,500 over the course of a 12-month period. DCJS supports DPB's assessment and is in agreement with the published EIA.

Summary:

The proposed amendments (i) reduce the minimum number of basic correctional officer training hours from 400 to 320, (ii) reduce the minimum number of field training hours from 200 to 120, and (iii) revise training requirements in the Virginia Department of Criminal Justice Services Basic Corrections Officer Compulsory Minimum Training Standards and Field Training Performance Outcomes to enhance performance outcomes and update outdated language for effectiveness and efficiency in training new academy recruits.

6VAC20-100-20. Compulsory minimum training standards.

A. Pursuant to the provisions of subdivision 9 of § 9.1-102 of the Code of Virginia, the department under the direction of the board establishes the compulsory minimum training standards for full-time or part-time correctional officers of the Department of Corrections.

B. Individuals hired as correctional officers as defined in § 53.1-1 of the Code of Virginia shall meet or exceed the compulsory minimum training standards at a certified criminal justice training academy, external training location, or satellite facility and complete field training requirements. Correctional officers shall comply with the following:

1. Successfully complete basic correctional officer training at a certified criminal justice training academy, external training location, or satellite facility, which includes receiving a minimum of ~~400~~ 320 hours of ~~department approved~~ department-approved training in the following categories:

a. Security and supervision;

b. Communication;

c. Safety;

d. Emergency response;

e. Conflict and crisis management;

f. Law and legal issues;

g. Duty assignments and responsibilities;

h. Professionalism;

i. Basic corrections officer firearms training; and

j. Physical fitness training.

2. Successfully complete a minimum of ~~200~~ 120 hours of approved training in the category of field training identified in the Virginia Department of Criminal ~~Justice Services~~ Basic Corrections Officer Compulsory Minimum Training Standards and Field Training ~~and On the Job Training~~ Performance Outcomes, draft dated November 1, 2024, hereby incorporated by reference.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-100)

~~Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes, published September 2012, Virginia Department of Criminal Justice Services (Revised January 2018)~~

Virginia Department of Criminal Justice Services Basic Corrections Officer Compulsory Minimum Training Standards and Field Training Performance Outcomes, draft dated November 1, 2024, Virginia Department of Corrections

VA.R. Doc. No. R21-6569; Filed November 15, 2024, 9:23 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-35, 9VAC20-81-800).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

Effective Date: January 15, 2025.

Agency Contact: Rebecca Rathe, Regulatory Analyst, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 830-7241, or email rebecca.rathe@deq.virginia.gov.

Background: Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended § 4005 of the Resource Conservation & Recovery Act to allow states to develop coal combustion residuals (CCR) permit programs and granted the U.S. Environmental Protection Agency (EPA) authority to approve state programs or implement a federal permit program in nonparticipating states. Prior to this action, the Virginia Solid Waste Management Regulations (VSWMR) (9VAC20-81) was amended to incorporate EPA's 2015 Disposal of CCR from Electric Utilities final rule and establish permit requirements for applicable CCR units. The VSWMR

was subsequently amended to incorporate the 2016 amendment applicable to inactive CCR surface impoundments. Separately, §§ 10.1-1402.03 and 10.1-1402.04 of the Code of Virginia define additional closure requirements for certain CCR units, and § 10.1-1402.05 of the Code of Virginia specify additional coal ash landfill requirements. Based on previous incorporations of the 2015 CCR Rule and 2016 amendment, Virginia drafted a state package for EPA program approval to administer a CCR permit program. EPA review indicated that Virginia needed to incorporate additional CCR Rule amendments promulgated through December 2020 to request state program approval, which is what this action is doing.

Summary:

The amendments (i) remove an exclusion for electric vehicles, which was vacated by a 2018 District of Columbia (DC) Circuit Court ruling; (ii) update the citation to 40 CFR 257 to December 14, 2020; (iii) exclude from incorporation by reference a phrase from the CFR so that entities seeking approval must provide certifications by a professional engineer; (iv) exclude from incorporation by reference language from the federal regulation vacated by the DC Circuit Court; and (v) exclude a requirement limiting the height of vegetative growth, which was remanded back to EPA for reconsideration by a 2016 DC Circuit Court ruling.

9VAC20-81-35. Applicability of chapter.

A. This chapter applies to all persons who treat, store, dispose, or otherwise manage solid wastes as defined in 9VAC20-81-95.

B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to § 10.1-1413.2 of the Code of Virginia~~,~~ in Table 2.1, provided:

1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.

2. On or before October 9, 1993, the owner or operator of the solid waste management facility submitted to the director:

a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action, and financial responsibility requirements;

b. A statement signed by a professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:

(1) That the facility is not an open dump;

(2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and

(3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water, or groundwater in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

c. A statement signed by the owner or operator:

(1) That the facility complies with applicable financial assurance regulations; and

(2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of these facilities shall conform with the following subconditions:

a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit, or modified operating practices to ensure good management.

b. The facility shall not dispose of solid waste in any portion of a landfill disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9VAC20-81-160 C. The facility shall notify the department, in writing, within 30 days, when an area has received final cover or has not received waste for a one-year period, in accordance with 9VAC20-81-160 C. However, a facility may apply for a permit, and if approved, can construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of this chapter.

c. The facilities subject to the restrictions in this subsection are listed in Table 2.1. The closure dates were established in Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility, including, but not limited to those listed in Table 2.1, must cease operation if that facility meets any of the open dump criteria listed in 9VAC20-81-45 A 1.

d. Those facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram, or other engineered drawing, areas in which waste will be disposed of in accordance with Table 2.1 until the latest cessation of waste acceptance date as listed in Table 2.1 is achieved. This map or plat shall be placed in the operating record and a copy shall be submitted upon request to the department in order to track the progress of closure of these facilities. If the facility already has provided this information under 9VAC20-81-160, then the facility may refer to that information.

TABLE 2.1
Final Prioritization and Closure Schedule For House Bill (HB) 1205 Disposal Areas

Solid Waste Permit Number and Site Name	Location	Department Regional Office[1]	Latest Cessation of Waste Acceptance Date[2]
429 - Fluvanna County Sanitary Landfill	Fluvanna County	VRO	12/31/2007
92 - Halifax County Sanitary Landfill[3]	Halifax County	BRRO	12/31/2007
49 - Martinsville Landfill	City of Martinsville	BRRO	12/31/2007
14 - Mecklenburg County Landfill	Mecklenburg County	BRRO	12/31/2007
228 - Petersburg City Landfill[3]	City of Petersburg	PRO	12/31/2007
31 - South Boston Sanitary Landfill	Town of South Boston	BRRO	12/31/2007
204 - Waynesboro City Landfill	City of Waynesboro	VRO	12/31/2007
91 - Accomack County Landfill – Bobtown South	Accomack County	TRO	12/31/2012
580 – Bethel Landfill[3]	City of Hampton	TRO	12/31/2012
182 - Caroline County Landfill	Caroline County	NVRO	12/31/2012
149 - Fauquier County Landfill	Fauquier County	NVRO	12/31/2012
405 - Greensville County Landfill	Greensville County	PRO	12/31/2012
29 - Independent Hill Landfill[3]	Prince William County	NVRO	12/31/2012
1 - Loudoun County Sanitary Landfill	Loudoun County	NVRO	12/31/2012
194 - Louisa County Sanitary Landfill	Louisa County	NVRO	12/31/2012
227 - Lunenburg County Sanitary Landfill	Lunenburg County	BRRO	12/31/2012
507 - Northampton County Landfill	Northampton County	TRO	12/31/2012
90 - Orange County Landfill	Orange County	NVRO	12/31/2012
75 - Rockbridge County Sanitary Landfill	Rockbridge County	VRO	12/31/2012
23 - Scott County Landfill	Scott County	SWRO	12/31/2012
587 - Shoosmith Sanitary Landfill[3]	Chesterfield County	PRO	12/31/2012
417 - Southeastern Public Service Authority Landfill[3]	City of Suffolk	TRO	12/31/2012
461 - Accomack County Landfill #2	Accomack County	TRO	12/31/2020
86 - Appomattox County Sanitary Landfill	Appomattox County	BRRO	12/31/2020
582 - Botetourt County Landfill[3]	Botetourt County	BRRO	12/31/2020
498 - Bristol City Landfill	City of Bristol	SWRO	12/31/2020

72 - Franklin County Landfill	Franklin County	BRRO	12/31/2020
398 - Virginia Beach Landfill #2 – Mount Trashmore II[3]	City of Virginia Beach	TRO	12/31/2020

Notes:
[1]Department of Environmental Quality Regional Offices:

BRRO - Blue Ridge Regional Office
NVRO - Northern Virginia Regional Office
PRO - Piedmont Regional Office
SWRO - Southwest Regional Office
TRO - Tidewater Regional Office
VRO - Valley Regional Office

[2]This date means the latest date that the disposal area must cease accepting waste.
[3]A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.

C. Facilities are authorized to expand beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.

a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities that are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities ~~which~~ that are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities authorized for expansion in accordance with subdivision 2 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities ~~which~~ that are authorized under subdivision 3 of this subsection to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9VAC20-81-160.

f. Facilities authorized for expansion in accordance with subdivision 3 of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators, as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60), for disposal on the expanded portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VI (9VAC20-81-610 et seq.) of this chapter or that contain hazardous constituents that would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance, or corrective action imposed under this chapter, or impair the powers of the director to revoke or modify a permit pursuant to § 10.1-1409 of the Virginia Waste Management Act or Part V (9VAC20-81-400 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility or unpermitted activity that managed materials previously exempt or excluded from this chapter shall submit a complete application for a solid waste management facility permit, permit by rule or a permit modification, as applicable, in accordance with Part V (9VAC20-81-400 et seq.) of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit modification decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

Owners or operators of solid waste management facilities in existence prior to September 24, 2003, shall now be in compliance with this chapter. Where conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the regulations has been approved by the director in accordance with the provisions of Part VII (9VAC20-81-700 et seq.) of this chapter. Existing facility permits will not be required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is modified for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must have submitted the materials required under 9VAC20-81-100 E 4 by March 22, 2004.

E. This chapter is not applicable to landfill units closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases from these closed landfills meet the open dump criteria found in 9VAC20-81-45, or the closed landfills are found to be a hazard or a nuisance under subdivision 21 of § 10.1-1402 of the Code of Virginia, or a site where improper waste management has occurred under subdivision 19 of § 10.1-1402 of the Code of Virginia.

F. Part VIII (9VAC20-81-800 et seq.) of this chapter applies to the following:

1. Owners and operators of new and existing CCR landfills and CCR surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the

combustion of coal at electric utilities and independent power producers;

2. Disposal units located offsite of the electric utility or independent power producer. Part VIII of this chapter also applies to any practice that does not meet the definition of a beneficial use of CCR; and

3. Inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

G. Part VIII of this chapter is not applicable to the following:

1. CCR landfills that have ceased receiving CCR prior to October 19, 2015;

~~2. Electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015;~~

~~3.~~ 2. Wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals;

~~4.~~ 3. Fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

~~5.~~ 4. Practices that meet the definition of a beneficial use of CCR;

~~6.~~ 5. CCR placement at active or abandoned underground or surface coal mines; or

~~7.~~ 6. Municipal solid waste landfills that receive CCR.

9VAC20-81-800. Adoption of 40 CFR Part 257 Subpart D by reference - Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.

A. Except as otherwise provided, those regulations of the U.S. Environmental Protection Agency set forth in Subpart D of 40 CFR Part 257 promulgated as of ~~October 4, 2016~~ December 14, 2020, wherein they relate to standards for the disposal of coal combustion residuals in landfills and surface impoundments, are hereby incorporated as part of the Virginia Solid Waste Management Regulations, 9VAC20-81. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of incorporated sections of 40 CFR Part 257 are also hereby incorporated as part of the Virginia Solid Waste Management Regulations.

B. In all locations in this chapter where text from 40 CFR Part 257 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into this chapter. The following terms, where they appear in the Code of Federal Regulations shall, for the purpose of this chapter, have the following meanings or interpretations:

1. "Director" shall supplant the "State Director" wherever it appears.

2. "Qualified professional engineer" or "engineer" means a "professional engineer" certified to practice in the Commonwealth of Virginia as defined in 9VAC20-81-10.

3. The phrase "or approval from the Participating State Director" throughout 40 CFR Part 257 is not incorporated by reference.

4. Notwithstanding the provisions of 9VAC20-81-800 A, the text of 40 CFR 257.50(e) and 40 CFR 257.90(g) is not incorporated into this chapter.

5. In 40 CFR 257.73(a)(4), the phrase "not to exceed six inches above the slope of the dike" is not incorporated by reference. In 40 CFR 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv), the phrase "not to exceed six inches above the slope of the dike" is not incorporated by reference.

C. Definitions in 40 CFR 257.53 are incorporated by reference into this part and are applicable to CCR landfills and CCR surface impoundments.

VA.R. Doc. No. R25-7944; Filed November 18, 2024, 10:09 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. 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: **9VAC20-85. Coal Combustion Byproduct Regulations (amending 9VAC20-85-90).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941; 40 CFR Part 257.

Effective Date: January 15, 2025.

Agency Contact: Rebecca Rathe, Regulatory Analyst, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 830-7241, or email rebecca.rathe@deq.virginia.gov.

Summary:

The amendments update a citation to reference the Virginia Erosion and Stormwater Management Regulation (9VAC25-875).

9VAC20-85-90. Operations.

The owner or operator of a fossil fuel combustion products site shall prepare an operation plan. At a minimum, the plan shall address the requirements contained in this section.

1. Tracking of mud or fossil fuel combustion products onto public roads from the site shall be controlled at all times to minimize nuisances.

2. The addition of any solid waste including ~~but not limited to~~ hazardous, infectious, construction, debris, demolition, industrial, petroleum-contaminated soil, or municipal solid waste to fossil fuel combustion products is prohibited. This prohibition does not apply to solid wastes from the extraction, beneficiation, and processing of ores and minerals conditionally exempted under 9VAC20-81-95 E 3 of the Solid Waste Management Regulations.

3. Fugitive dust shall be controlled at the site so it does not constitute nuisances or hazards.

4. After preparing the sub-base, fossil fuel combustion products shall be placed uniformly and compacted to standards, including in situ density, compaction effort, and relative density as specified by a registered professional engineer based on the intended use of the fossil fuel combustion products. The placement and compaction of CCB on coal mine sites shall be subject to the applicable requirements of the Coal Surface Mining Reclamation Regulations~~,~~ (4VAC25-130).

5. A surface run on and runoff control program shall be implemented to control and reduce the infiltration of surface water through the fossil fuel combustion products and to control the runoff from the placement area to other areas and to surface waters.

6. Runoff shall not be permitted to drain or discharge into surface waters except when in accordance with 9VAC25-10~~, of the State Water Control Board,~~ or otherwise approved by the department.

7. Fossil fuel combustion products site development shall be in accordance with the ~~Erosion and Sediment Control Regulations, 9VAC25-840,~~ Virginia Erosion and Stormwater Management Regulation (9VAC25-875) or the Coal Surface Mining Reclamation Regulations~~,~~ (4VAC25-130~~,~~) as applicable.

VA.R. Doc. No. R25-7926; Filed November 18, 2024, 2:16 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 5123, 5124, and 5125; 49 CFR Parts 107, 170 through 180, 383, and 390 through 397.

Effective Date: January 15, 2025.

Agency Contact: Rebecca Rathe, Regulatory Analyst, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 830-7241, or email rebecca.rathe@deq.virginia.gov.

Summary:

The amendments update the regulation to incorporate by reference the amendments to Title 49 of the Code of Federal Regulations as published on October 1, 2024.

9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation with amendments promulgated as of October 1, ~~2022~~ 2024, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.

2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.

3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.

4. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

5. Specifications for Packagings in 49 CFR Part 178.

6. Specifications for Tank Cars in 49 CFR Part 179.

7. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.

8. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R25-7899; Filed November 18, 2024, 9:57 a.m.

STATE WATER CONTROL BOARD

Withdrawal of Fast-Track Regulation

Title of Regulation: **9VAC25-875. Virginia Erosion and Stormwater Management Regulation (amending 9VAC25-875-70, 9VAC25-875-250, 9VAC25-875-280, 9VAC25-875-300, 9VAC25-875-370, 9VAC25-875-470, 9VAC25-875-490, 9VAC25-875-500, 9VAC25-875-550, 9VAC25-875-560, 9VAC25-875-850).**

Statutory Authority: §§ 62.1-44.15:28 and 62.1-44.52 of the Code of Virginia.

Notice is hereby given that the State Water Control Board has WITHDRAWN the regulatory action for **9VAC25-875, Virginia Erosion and Stormwater Management Regulation**, which was published as a Fast-Track regulation in 41:4 VA.R. 518-531 October 7, 2024. This action completed Executive Branch review and was published for public comment as a fast-track rulemaking action. The board will be following up with revised regulatory language and another fast-track rulemaking stage in the near future but is withdrawing this action on November 18, 2024, due to an issue with the regulatory language.

Agency Contact: Rebeccah W. Rochet, P.E., Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

VA.R. Doc. No. R25-7961; Filed November 18, 2024, 11:35 a.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: **12VAC35-260. Certified Recovery Residences.**

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Room 411, Richmond, VA 23219, telephone (804) 385-6549, FAX (804) 371-4609, or email susan.puglisi@dbhds.virginia.gov.

FORMS (12VAC35-260)

~~Application for a DBHDS Certified Recovery Residence, Office of Recovery Service Form (rev. 4/2024)~~

Application for a DBHDS Certified Recovery Residence, Office of Recovery Service Form (rev. 11/2024)

VA.R. Doc. No. R25-8173; Filed November 22, 2024, 10:30 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Proposed Regulation

Title of Regulation: **18VAC48-70. Common Interest Community Ombudsman Regulations (amending 18VAC48-70-10 through 18VAC48-70-50, 18VAC48-70-70, 18VAC48-70-90, 18VAC48-70-100, 18VAC48-70-110).**

Statutory Authority: §§ 54.1-2349 and 54.1-2354.4 of the Code of Virginia.

Public Hearing Information:

January 8, 2025 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, Second Floor Conference Center, Board Room 3, 9960 Mayland Drive, Richmond, VA 23233.

Public Comment Deadline: February 14, 2025.

Agency Contact: Anika Coleman, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Basis: Section 54.1-2354.4 of the Code of Virginia requires the Common Interest Community Board to establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens.

Purpose: As mandated by the General Assembly, the proposed amendments protect the public welfare, in part, by establishing and clarifying the (i) requirements for an association complaint procedure; (ii) requirements for development, adoption, and distribution of the complaint procedure; (iii) requirements for retention of records of association complaints; (iv) procedure for the filing of a notice of final adverse decision (NFAD) with

the Office of the Check-In, Check-Out (CICO) and review of an NFAD by the CICO; and (v) provisions for a final determination made by the CICO regarding an NFAD.

Substance: The proposed amendments include:

1. 18VAC48-70-10 is revised to incorporate statutory terms from §§ 54.1-2345, 54.1-2354.1, and 55.1-2307 of the Code of Virginia. The section is also revised to add the term "common interest community laws and regulations" and to clarify the meaning of other defined terms. The section is further revised to remove provisions that establish regulatory requirements and replace defined terms for which a statutory definition is incorporated by reference.

2. 18VAC48-70-50 is revised to (i) incorporate requirements pertaining to the association compliant procedure that are currently in the definition for "association complaint procedure" in 18VAC48-70-10; (ii) update provisions regarding delivery of notices to a complainant to state that such notices must be hand delivered, mailed, or delivered by third-party courier, with proof of delivery. Currently, the regulation requires that such notices must be either hand delivered or mailed by registered or certified mail; (iii) increase from seven to 14 days the time period for an association to provide a complainant with written acknowledgment of receiving the complaint following the association's receipt of the complaint; and (iii) provide that notice of the date, time, and location where the association complaint will be considered by the association be provided to the complainant at least 14 days prior to consideration, unless otherwise agreed to in writing. Currently, the regulation provides that notice be given "within a reasonable time."

3. 18VAC48-70-90 is revised to (i) remove the requirement that the NFAD include applicable association governing documents and (ii) to relocate a provision that establishes the date of a final adverse decision from the definition of "adverse decision" in 18VAC48-70-10.

4. 18VAC48-70-100 is revised to incorporate provisions from an existing board guidance document regarding consideration of requests to waive or refund NFAD filing fees.

5. Clarifying changes are made to 18VAC48-70-110 to provide that (i) an NFAD is not complete and will not be reviewed until the NFAD filing fee has been received or a waiver of the fee has been granted and (ii) information that was not part of a final adverse decision will not be considered in the review of the NFAD.

Issues: The primary advantages to the public and regulated community include providing clarification to provisions of the regulation, ensuring the regulation complements Virginia law and reflects current agency procedures, and reducing regulatory burdens. There are no identifiable disadvantages to the public or the Commonwealth. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community.

Department of Planning and Budget 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.[1]

Summary of the Proposed Amendments to Regulation. The Common Interest Community Board (board) proposes to amend the Common Interest Community Ombudsman Regulations to update and clarify the provisions of the regulation and ensure that it conforms to statute. This action proposes changes to (i) requirements for an association complaint procedure, (ii) requirements for filing a notice of final adverse decision, and (iii) provisions regarding the waiver of filing fees.

Background. This regulation addresses common interest communities (CICs), which are defined in statute as "real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses."[2] Examples of CICs include condominiums, cooperatives, retirement communities, and some townhomes. Each CIC has an association that represents its property owners. This regulation, which was originally promulgated in July 2012, requires associations to "have a written process for resolving association complaints from members and citizens."[3] It outlines the minimum requirements for an association complaint procedure, to include the process for consideration of a complaint by the association, and notification to the complainant of the association's final determination on the complaint. To the extent that a final determination of the association does not result in the cure or corrective action sought by the complainant, it is considered an "adverse decision" or "final adverse decision" as defined in the regulation. 18VAC48-90 allows complainants who are dissatisfied with the adverse decision to file a notice of final adverse decision in writing on forms provided by the Office of the CIC Ombudsman at the Department of Professional and Occupational Regulation (DPOR). As part of their submission, they must submit a $25 filing fee. The CIC board proposes to increase the time the association has to provide written acknowledgment of its receipt of a complaint (to 14 days from seven days) and add that notice of the meeting where a complaint will be considered must be provided at least 14 days before it is held, unless otherwise agreed to in writing. Currently, the regulation just requires notice of the meeting "within a reasonable time" before it is held. Lastly, the Health and Human Services Poverty Guidelines would be used to determine whether the $25 filing fee for the notice of final adverse decision can be waived by the board.[4] The board also seeks to make a number of clarifying edits.

Estimated Benefits and Costs: The proposed amendments largely serve to clarify and update the regulation and are not expected to create new costs. CIC associations could benefit from having 14 rather than seven days to provide written acknowledgement of a complaint, and complainants would likely benefit from the requirement that they be notified of a meeting at least 14 days before it is held. While the board is currently authorized to waive the $25 filing fee if it would cause undue financial hardship to the complainant, specifying that such determinations would be based on the federal poverty guidelines would enhance clarity and transparency.

Businesses and Other Entities Affected. The proposed amendments would affect the 6,983 registered CIC associations and 152 licensed CIC management companies and could indirectly affect all the residents of CICs to the extent that they need to go through the complaint procedure. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As the proposed amendments neither increase net costs nor reduce net benefits, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not adversely affect small businesses.

Costs and Other Effects. To the extent that small businesses pay for the practitioner licensure fees, their costs would increase commensurately with the proposed increases. Small businesses that operate training programs would face higher costs due to the increase in training program fees.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[9] Affected.[10] The proposed amendments do not affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments neither affect the use and value of private property nor real estate development costs.

[1] 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.

[2] See https://law.lis.virginia.gov/vacode/title54.1/chapter23.3/section54.1-2345/.

[3] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2956.

[5] 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.

[6] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[7] 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."

[8] 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.

[9] "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.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Common Interest Community Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Executive Directive One (2022) and Executive Order 19 (2022), the proposed amendments primarily consolidate and clarify the regulation. Additionally, substantive proposed changes (i) increase the time an association has to provide written acknowledgment of its receipt of a complaint to 14 days; (ii) add that notice of the meeting where a complaint will be considered must be provided at least 14 days before the meeting is held; and (iii) include the Health and Human Services Poverty Guidelines as the mechanism for determining whether the $25 filing fee for the notice of final adverse decision can be waived by the board.

18VAC48-70-10. Definitions.

A. Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association

Board

Common interest community

Common interest community manager

Declaration

Governing board

Lot

B. Section 54.1-2354.1 of the Code of Virginia provides the definition of the following term as used in this chapter:

Director

C. Section 55.1-1900 of the Code of Virginia provides definition of the following term as used in this chapter:

Condominium instruments

D. Section 55.1-2307 of the Code of Virginia provides definitions of the following terms as used in this chapter:

Governing documents

Resale certificate

E. The following words, terms, and phrases, when used in this chapter, ~~shall~~ have the following meanings unless ~~the context clearly indicates otherwise.~~ a different meaning is provided or is plainly required by context:

"Adverse decision" or "final adverse decision" means the final ~~determination~~ decision issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. ~~The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.~~

"Association complaint" means a written complaint filed by a member of the association or a citizen pursuant to an association complaint procedure. An association complaint ~~shall~~ must concern a matter regarding ~~the~~ an action, inaction, or decision by the association, governing board, or managing agent~~, or association inconsistent~~ that is in conflict with applicable common interest community laws ~~and~~ or regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. ~~The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 54.1-2354.4 of the Code of Virginia. An appeal process, if applicable, shall be set out in an association complaint procedure adopted by the association, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.~~

~~"Association governing documents" means collectively the applicable organizational documents, including the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.~~

"Common interest community laws or regulations" means Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia; Chapter 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), 20 (§ 55.1-2000 et seq.), or 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; or the regulations of the board.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

~~"Director" means the Director of the Department of Professional and Occupational Regulation.~~

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

18VAC48-70-20. Submission of documentation.

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Article 2 (§ 54.1-2354.1 et seq.) of Chapter 23.3 of Title 54.1 of the Code of Virginia ~~shall~~ must be filed with or provided to the Department of Professional and Occupational Regulation.

18VAC48-70-30. Requirement for association to develop an association complaint procedure.

In accordance with § 54.1-2354.4 of the Code of Virginia, each association ~~shall~~ will have a written process for resolving association complaints from members and citizens. The association complaint procedure ~~or form shall~~ will conform with the requirements set forth in § 54.1-2354.4 of the Code of Virginia and this chapter, as well as the association governing documents, which ~~shall~~ must not be in conflict with § 54.1-2354.4 of the Code of Virginia or this chapter.

18VAC48-70-40. Establishment and adoption of written association complaint procedure.

A. Associations filing an initial application for registration pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 of the Code of Virginia must certify that an association complaint procedure has been established and adopted ~~at~~ as of the date of registering or within 90 days of registering with the board.

B. An association that has been delinquent in registering the association and filing its required annual reports is still

required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.

C. The association ~~shall~~ will certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

18VAC48-70-50. Association complaint procedure requirements.

The association complaint procedure ~~shall~~ must be in writing and ~~shall~~ include the following provisions in addition to any specific requirements contained in the ~~association's~~ governing documents that do not conflict with § 54.1-2354.4 of the Code of Virginia or the requirements of this chapter.

1. The association complaint must be in writing.

2. A sample of the form, if any, on which the association complaint must be filed ~~shall~~ will be provided upon request.

3. The association complaint procedure ~~shall~~ must include the process by which complaints ~~shall be~~ are delivered to the association.

4. The association complaint procedure must include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 54.1-2354.4 of the Code of Virginia.

5. The association ~~shall~~ must provide written acknowledgment of receipt of the association complaint to the complainant within ~~seven~~ 14 days of receipt. ~~Such~~ The acknowledgment ~~shall~~ will be hand delivered ~~or,~~ mailed ~~by registered or certified mail, return receipt requested~~, or delivered by third-party courier, with proof of delivery to the complainant at the address provided, or ~~if consistent with established association procedure,~~ by electronic means, unless prohibited by the governing documents, provided the ~~sender~~ association retains sufficient proof of the electronic delivery.

~~5.~~ 6. Any specific documentation that must be provided with the association complaint ~~shall~~ must be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant ~~shall~~ will provide that reference~~, as well as the requested action or resolution~~.

~~6.~~ 7. The association ~~shall~~ must have a reasonable, efficient, and timely method for identifying and requesting any additional information from the complainant that is necessary ~~for the complainant to provide in order~~ to continue processing the association complaint. The association ~~shall~~ will establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.

~~7.~~ 8. Notice of the date, time, and location that the matter will be considered ~~shall~~ will be hand delivered ~~or,~~ mailed ~~by registered or certified mail, return receipt requested~~, or delivered by third-party courier, with proof of delivery to the complainant at the address provided or, ~~if consistent with established association procedure,~~ delivered by electronic means, unless prohibited by the governing documents, provided the ~~sender~~ association retains sufficient proof of the electronic delivery, ~~within a reasonable time~~ at least 14 days, unless otherwise agreed to in writing, prior to consideration as established by the association complaint procedure.

~~8.~~ 9. After the final determination is made, the written notice of final determination ~~shall~~ will be hand delivered ~~or,~~ mailed ~~by registered or certified mail, return receipt requested~~, or delivered by third-party courier, with proof of delivery, to the complainant at the address provided or~~, if consistent with established association procedure,~~ delivered by electronic means, unless prohibited by the governing documents, provided the ~~sender~~ association retains sufficient proof of the electronic delivery, within seven days.

~~9.~~ 10. The notice of final determination ~~shall~~ must be dated as of the date of issuance and include specific citations to ~~applicable association governing documents,~~ common interest community laws~~,~~ or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager ~~shall~~ must also be provided.

~~10.~~ 11. The notice of final determination ~~shall~~ must include the complainant's right to file a ~~Notice~~ notice of ~~Final Adverse Decision~~ final adverse decision with the ~~Common Interest Community Board via the~~ Common Interest Community Ombudsman and the applicable contact information.

12. An appeal process, if applicable, must be set out in an association complaint procedure, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure must indicate that no appeal process is available and that the rendered decision is final.

18VAC48-70-70. Maintenance of association record of complaint.

A. A record of each association complaint filed with the association ~~shall~~ must be maintained in accordance with § 54.1-2354.4 A 1 of the Code of Virginia.

B. Unless otherwise specified by the director or ~~his~~ the director's designee, the association ~~shall~~ must provide to the director or ~~his~~ the director's designee, within 14 days of receipt

of the request, any document, book, or record concerning the association complaint. The director or ~~his~~ the director's designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

18VAC48-70-90. Filing of notice of final adverse decision.

A complainant may file a notice of final adverse decision in accordance with § 54.1-2354.4 B of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter.

1. The notice ~~shall~~ must be filed within 30 days of the date of the final adverse decision.

2. The notice ~~shall~~ must be in writing on forms provided by the Office of the Common Interest Community Ombudsman. ~~Such~~ The forms ~~shall request~~ will include the following information:

a. Name and contact information of complainant;

b. Name, address, and contact information of association;

~~c. Applicable association governing documents;~~ and

~~d.~~ c. Date of final adverse decision. The date of final adverse decision will be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

3. The notice ~~shall~~ must include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation ~~related to~~ that accompanied the final adverse decision, and a copy of the association complaint procedure.

4. The notice ~~shall~~ must be accompanied by a $25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

18VAC48-70-100. Waiver of filing fee.

A. In accordance with § 54.1-2354.4 B of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.

B. The board will use the current U.S. Department of Health and Human Services (HHS) Poverty Guidelines to establish the threshold for whether a filing fee will be waived or refunded as a result of financial hardship. The HHS Poverty Guidelines, as updated annually in the Federal Register, are available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.

C. In order to determine whether the complainant requesting the waiver or refund of the filing fee is at or below the HHS Poverty Guidelines, the complainant must submit to the board supporting documentation satisfactory that provides proof of income.

D. A waiver or refund of the filing fee will be granted if proof of income submitted is at or below the then-current HHS Poverty Guidelines.

18VAC48-70-110. Review of final adverse decision.

A. Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman ~~shall~~ will provide written acknowledgment of receipt of the notice to the complainant and ~~shall~~ will provide a copy of the written notice to the governing board and, if applicable, the common interest community manager of the association that made the final adverse decision. The notice of adverse decision is not complete and will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

B. In accordance with § 54.1-2354.4 C of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association ~~shall~~ will provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

C. Information that was not part of the final adverse decision will not be considered.

VA.R. Doc. No. R24-7579; Filed November 20, 2024, 3:43 p.m.

BOARD OF NURSING

Proposed Regulation

Titles of Regulations: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-30).**

18VAC90-25. Regulations Governing Certified Nurse Aides (amending 18VAC90-25-16).

18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-20).

18VAC90-30. Regulations Governing the Licensure of Advanced Practice Registered Nurses (amending 18VAC90-30-50).

18VAC90-50. Regulations Governing the Licensure of Massage Therapists (amending 18VAC90-50-30).

18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-30).

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

Public Hearing Information:

January 28, 2025 - 9:05 a.m. - Department of Health Professions, Perimeter Center, Suite 201, Board Room 2, 9960 Mayland Drive, Henrico, VA 23233.

Public Comment Deadline: February 14, 2025.

Agency Contact: Claire Morris, RN, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA

23233, telephone (804) 367-4665, or email claire.morris@dhp.virginia.gov.

Basis: Regulations of the Board of Nursing are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the board the authority to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-400 et seq. of the Code of Virginia). In addition, the board is obligated by § 54.1-113 of the Code of Virginia to adjust fees to cover operating costs.

Purpose: The board last instituted a fee increase in 2011. The previous fee increase prior to that was between 2004 and 2006, depending on the license type. The board instituted a one-time fee reduction in 2017 as required by the Callahan Act (§ 54.1-113 of the Code of Virginia). It is important to note that the one-time fee reduction resulted in a decreased revenue of $2,395,212 that would have helped the board cushion the current negative trend. Amendments to operation changes affecting available funds include: a 44% increase in licensees since 2003 (2003: 163,453; Q1 2024: 235,045); a 160% increase in employees of the board since 2003 (2003: 30; 2023: 78); a 5.0% increase in salary due to mandatory retirement system contributions; 42% increase in investigations since 2013; 27% increase in cases received since 2013; 37% increase in allocated enforcement costs since 2018; 110% increase in administrative proceedings division allocated costs; and a 49% increase in information technology costs.

The Board of Nursing also faces a unique issue related to the maintenance of the certified nurse aide (CNA) registry. The federal government requires the board to maintain the CNA registry, but limits what can be charged to CNAs in terms of fees. The board receives allowed reimbursements from the Department of Medical Assistance Services for maintenance of the registry, but the expenditures of the registry far outstrip the reimbursements. For example, in fiscal year (FY) 2024, the expenditures for 11 months up to May 2024 were $2.918 million and expected to be over $3 million for the entire fiscal year but allowed reimbursements will be only $556,722.

Without adequate revenue to support inspections of nursing programs, licensing, and disciplinary functions, work to protect the public by regulating, licensing, and disciplining the nursing workforce under the board will slow. This will deprive the citizens of the Commonwealth of safe and necessary nursing services. Additionally, should inadequate revenue cause a backlog of disciplinary cases, public health and safety may be at risk by allowing practitioners who are actively committing violations of regulations or unprofessional conduct to continue practicing unencumbered for months while awaiting review and adjudication of disciplinary matters. The estimated FY 2025 cash balance, reflecting a projected revenue of $15,041,686 and expenditures of $20,095,428, will be -$2,548,279. The estimated FY 2026 cash balance, reflecting a projected revenue of $15,252,269 and expenditures of $20,895,868, will be -$8,191,878.

Substance: To address the deficit in board funding, the board will increase fees for most categories of practitioners and programs that the board regulates by 65% to 70%.

Issues: The primary advantage to the public is the continued licensing and disciplining of health care professionals by the board. There are no disadvantages to the public because the board is a special fund agency that is not funded by the general public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget 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.[1]

Summary of the Proposed Amendments to Regulation. The Board of Nursing (board) is proposing to amend six regulations to increase fees for its licensed professions in order to comply with § 54.1-113 B of the Code of Virginia (the Callahan Act).[2]

Background. The Callahan Act requires the Department of Health Professions (DHP) and its boards to revise fees in situations in which expenses allocated to the board for the past biennium are more than 10% greater or less than moneys collected on behalf of the board.[3] DHP reports that over the 2022-2024 biennium, the board's total expenditures were $35,973,319 and total revenues were $29,625,358. Since the expenses exceed the revenues by 21%, these numbers would appear to satisfy the requirements of the Callahan Act, suggesting that a fee increase is necessary. DHP also reports that that the board is not currently in a deficit, with a cash balance of $2,480,785 at the end of fiscal year (FY) 2024. However, the board is projected to have a deficit of roughly $2.5 million by the end of the current fiscal year and a deficit of roughly $8 million by the close of FY 2026.[4]

DHP reports that the fees for this board were last increased in 2011[5] and that there was also a one-time reduction in renewal fees in 2017.[6] DHP reports that since the last fee increase, the board has experienced an increase in salaries (enacted by the General Assembly) as well as increases in infrastructure costs such as those attributed to technology and real estate. In addition, DHP reports that the number of licensees under this board has increased by 44% over the last 20 years; as a result, the number of disciplinary cases and investigations and the allocated costs from enforcement and administrative proceedings have also increased. Lastly, the federal government requires the board to maintain the Certified Nurse Aide (CNA) registry but limits the fees that can be charged to CNAs.[7] DHP reports that the expenditures for the registry were over $3 million in FY 2024.

To prevent the anticipated deficit, the board proposes to increase fees for most categories of practitioners and programs by 65% to 70%. Incidental fees, such as those for late renewal

or reinstatement, would be increased by a greater percentage than fees that are required for all licensees. Further, some licensees, such as Advanced Practice Registered Nurses (APRNs), would face a higher percentage fee increase to reflect their higher earning potential, whereas Licensed Massage Therapists (LMTs) would face a higher percentage fee increase because the profession generates a higher number of more complex disciplinary cases that take up more board member and staff time.[8] The board does not propose to increase fees for Licensed Certified Midwives as they are a newly added license category and there are only six licensees as of June 2024. The proposed fee increases, which are listed in the following table, are expected to generate approximately $10 million in additional revenue per year. Lastly, the board proposes to (i) add a new criminal background check administrative fee of $25 in the nursing regulation (18VAC90-19) and massage therapists regulation (18VAC90-50), (ii) repeal a $35 verification of license fee for nurses (18VAC90-19) since licenses can now be verified online at no cost, and (iii) repeal a $35 fee for a transcript of all or part of applicant/licensee records in the massage therapists regulation (18VAC90-50).

FEE TYPE	CURRENT FEE	PROPOSED FEE	DOLLAR CHANGE	PERCENTAGE CHANGE
Nursing, 18VAC90-19				
Registered Nurse (RN) licensure by exam	$190	$315	$125	65.79%
RN licensure by endorsement	$190	$315	$125	65.79%
Licensed Practical Nurse (LPN) licensure by exam	$170	$280	$11	64.71%
LPN licensure by endorsement	$170	$280	$110	64.71%
Reapply for licensure by exam	$50	$85	$35	70.00%
RN biennial renewal	$140	$230	$90	64.29%
RN biennial inactive renewal	$70	$115	$45	64.29%
LPN biennial renewal	$120	$200	$80	66.67%
LPN biennial inactive renewal	$60	$100	$40	66.67%
RN late renewal	$50	$115	$65	130.00%
RN late inactive renewal	$25	$60	$35	140.00%
LPN late renewal	$40	$90	$50	125.00%
LPN late inactive renewal	$20	$45	$25	125.00%
RN reinstate lapsed license	$225	$450	$225	100.00%
LPN reinstate lapsed license	$200	$400	$200	100.00%
Reinstate suspended/revoked	$300	$600	$300	100.00%
Duplicate license	$15	$30	$15	100.00%
Replacement wall certificate	$25	$50	$25	100.00%
Educational transcript	$35	$70	$35	100.00%
Certified Nurse Aides, 18VAC90-16				
Annual renewal	$30	$35	$5	16.67%
Advanced CNA certification	$25	$30	$5	20.00%
Advanced CNA renewal	$20	$25	$5	25.00%
Reinstatement of Advanced CNA certification	$30	$35	$5	16.67%
Nursing Education Programs, 18VAC90-27				
Program approval	$1,650	$2,475	$825	50.00%

Survey visit	$2,200	$3,300	$1,100	50.00%
Site visit	$1,500	$2,250	$750	50.00%
Advanced Practice Registered Nurses, 18VAC90-30				
Application fee	$125	$250	$125	100.00%
Biennial renewal	$80	$130	$50	62.50%
Late renewal	$25	$100	$75	300.00%
Reinstatement	$150	$300	$150	100.00%
Duplicate license	$15	$30	$15	100.00%
Duplicate wall certificate	$25	$50	$25	100.00%
Reinstate suspended/revoked	$200	$400	$200	100.00%
Autonomous practice attestation	$100	$200	$100	100.00%
Massage therapists, 18VAC90-50				
Application/initial licensure	$140	$280	$140	100.00%
Biennial renewal	$95	$190	$95	100.00%
Late renewal	$30	$70	$40	133.33%
Reinstatement	$150	$300	$150	100.00%
Reinstate suspended/revoked	$200	$400	$200	100.00%
Duplicate license	$15	$30	$15	100.00%
Replacement wall certificate	$25	$50	$25	100.00%
Medication Aides, 18VAC90-60				
Program approval application	$500	$875	$375	75.00%
Registration application	$50	$80	$30	60.00%
Annual renewal	$30	$50	$20	66.67%
Late renewal	$15	$35	$20	133.33%
Reinstatement	$90	$180	$90	100.00%
Duplicate registration	$15	$30	$15	100.00%
Reinstate suspended/revoked	$120	$240	$120	100.00%

Estimated Benefits and Costs: The proposed fee increases would increase costs for current and prospective nurses (RNs and LPNs), CNAs, APRNs, LMTs, medication aides, as well as nursing education programs and medication aide training programs. The increased fees would allow the board to remain financially solvent and continue to provide oversight for these professions, including issuing licenses, conducting inspections, investigating complaints, and implementing any disciplinary actions. This in turn would maintain public confidence in these professionals and protect public safety from unscrupulous actors.

Businesses and Other Entities Affected. As mentioned previously, the proposed fee increases would increase costs for current and prospective nurses (RNs and LPNs), CNAs, APRNs, LMTs, medication aides, as well as nursing education programs and medication aide training programs. At the close of FY 2024, the board reported having 27,063 LPNs and 122,291 RNs; 51,552 CNAs and 50 Advanced CNAs; 20,988 APRNs; 8,263 LMTs; 7,377 medication aides; 40 practical schools of nursing and 67 professional schools of nursing, and 215 medication aide training programs.[9] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[10] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[11] Since the proposed amendments would increase costs, an adverse impact is indicated for the various nursing professionals and the training programs that would face higher fees.

Small Businesses[12] Affected.[13] Types and Estimated Number of Small Businesses Affected. Since the board licenses individuals and not firms, no data on the number of affected small firms are available. Small businesses that employ RNs, LPNs, CNAs, APRNs, or medication aides may be indirectly affected if they pay for their employee license renewal fees. However, many of the LMTs may be self-employed or sole proprietors or employed by small businesses such as spas. Some nursing education and medication aide training programs may meet the definition of small businesses.

Costs and Other Effects. To the extent that small businesses pay for the practitioner licensure fees, their costs would increase commensurately with the proposed increases. Small businesses that operate training programs would face higher costs due to the increase in training program fees.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[14] Affected.[15] The proposed amendments do not appear to disproportionally affect any locality in particular or affect costs for local governments.

Projected Impact on Employment. The proposed amendments would not be expected to affect employment prospects or entry into the profession for RNs, LPNs, CNAs, APRNs, LMTs, or medication aides.

Effects on the Use and Value of Private Property. The proposed fee increases would increase costs for private nursing education programs and medication aide training programs. Potentially, this may result in a modest decrease in their value. The proposed amendments do not affect real estate development costs.

[1] 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.

[2] See https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/.

[3] It should be noted that the Callahan Act does not specify whether moneys collected on behalf of the board refers only to the revenues in the immediately preceding biennium or if it also includes the cash balance from the biennium prior to that..

[4] See page 3 of the Agency Background Document (ABD) https://townhall.virginia.gov/L/GetFile.cfm?File=27\6414\10416\AgencyStatement_DHP_10416_v1.pdf.

[5] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3110.

[6] See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4772.

[7] See https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-D/section-483.156.

[8] See pages 8-14 of the ABD for details regarding the rationale for fee increases for each chapter.

[9] Source: DHP. See https://www.dhp.virginia.gov/about/stats/2024Q4/04CurrentLicenseCountQ4FY2024.pdf.

[10] 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.

[11] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[12] 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."

[13] 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.

[14] "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.

[15] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Nursing concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to § 54.1-113 of the Code of Virginia, the proposed amendments raise fees charged by the Board of Nursing to ensure the board obtains sufficient operating funds for fiscal years 2025 and 2026.

18VAC90-19-30. Fees.

~~A.~~ Fees required by the board are:

1. Application for licensure by examination - RN	~~$190~~ $315
2. Application for licensure by endorsement - RN	~~$190~~ $315
3. Application for licensure by examination - LPN	~~$170~~ $280
4. Application for licensure by endorsement - LPN	~~$170~~ $280
5. Reapplication for licensure by examination	~~$50~~ $85

6. Biennial licensure renewal - RN	~~$140~~ $230
7. Biennial inactive licensure renewal - RN	~~$70~~ $115
8. Biennial licensure renewal - LPN	~~$120~~ $200
9. Biennial inactive licensure renewal - LPN	~~$60~~ $100
10. Late renewal - RN	~~$50~~ $115
11. Late renewal - RN inactive	~~$25~~ $60
12. Late renewal - LPN	~~$40~~ $90
13. Late renewal - LPN inactive	~~$20~~ $45
14. Reinstatement of lapsed license - RN	~~$225~~ $450
15. Reinstatement of lapsed license - LPN	~~$200~~ $400
16. Reinstatement of suspended or revoked license or registration	~~$300~~ $600
17. Duplicate license	~~$15~~ $30
18. Replacement wall certificate	~~$25~~ $50
~~19. Verification of license~~	~~$35~~
~~20. Transcript of all or part of applicant or licensee records~~ ~~21.~~ 19. Educational transcript - closed programs	~~$35~~ $70
20. Handling fee for returned check or dishonored credit card or debit card	$50
~~22. Application for CNS registration~~	~~$130~~
~~23. Biennial renewal of CNS registration~~	~~$80~~
~~24. Reinstatement of lapsed CNS registration~~	~~$125~~
~~25. Verification of CNS registration to another jurisdiction~~	~~$35~~
~~26. Late renewal of CNS registration~~	~~$35~~
21. Criminal background check administrative fee	$25

~~B. For renewal of licensure or registration from July 1, 2017, through June 30, 2019, the following fees shall be in effect:~~

~~1. Biennial licensure renewal - RN~~	~~$105~~
~~2. Biennial inactive licensure renewal - RN~~	~~$52~~
~~3. Biennial licensure renewal - LPN~~	~~$90~~
~~4. Biennial inactive licensure renewal - LPN~~	~~$45~~
~~5. Biennial renewal of CNS registration~~	~~$60~~

18VAC90-25-16. Fees.

A. The following fees shall apply:

1. Annual renewal for certified nurse aide	~~$30~~ $35
2. Handling fee for returned check or dishonored credit card or debit card	$50
3. Application for certification as an advanced certified nurse aide	~~$25~~ $30
4. Renewal of advanced certified nurse aide certification	~~$20~~ $25
5. Reinstatement of advanced certified nurse aide certification	~~$30~~ $35

B. Fees shall not be refunded once submitted.

18VAC90-27-20. Fees.

Fees required by the board are:

1. Application for approval of a nursing education program.	~~$1,650~~ $2,475
2. Survey visit for nursing education program.	~~$2,200~~ $3,300
3. Site visit for NCLEX passage rate for nursing education program.	~~$1,500~~ $2,250
4. Handling fee for returned check or dishonored credit card or debit card	$50

18VAC90-30-50. Fees.

~~A.~~ Fees required in connection with the licensure of advanced practice registered nurses are:

1. Application	~~$125~~ $250
2. Biennial licensure renewal	~~$80~~ $130
3. Late renewal	~~$25~~ $100

4. Reinstatement of licensure	~~$150~~ $300
~~5. Verification of licensure to another jurisdiction~~	~~$35~~
~~6.~~ 5. Duplicate license	~~$15~~ $30
~~7.~~ 6. Duplicate wall certificate	~~$25~~ $50
~~8.~~ 7. Handling fee for returned check or dishonored credit card or debit card	$50
~~9.~~ 8. Reinstatement of suspended or revoked license	~~$200~~ $400
~~10.~~ 9. Autonomous practice attestation	~~$100~~ $200

~~B. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:~~

~~Biennial renewal~~	~~$60~~

18VAC90-50-30. Fees.

A. Fees listed in this section shall be payable to the Treasurer of Virginia and shall not be refunded unless otherwise provided.

B. Fees required by the board are:

1. Application and initial licensure	~~$140~~ $280
2. Biennial renewal	~~$95~~ $190
3. Late renewal	~~$30~~ $70
4. Reinstatement of licensure	~~$150~~ $300
5. Reinstatement after suspension or revocation	~~$200~~ $400
6. Duplicate license	~~$15~~ $30
7. Replacement wall certificate	~~$25~~ $50
~~8. Verification of licensure~~	~~$35~~
~~9. Transcript of all or part of applicant/licensee records~~	~~$35~~
~~10.~~ 8. Handling fee for returned check or dishonored credit card or debit card	$50
9. Criminal background check administrative fee	$25

~~C. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:~~

~~Biennial renewal~~	~~$71~~

18VAC90-60-30. Fees.

A. The following fees shall apply:

1. Application for program approval	~~$500~~ $875
2. Application for registration as a medication aide	~~$50~~ $80
3. Annual renewal for medication aide	~~$30~~ $50
4. Late renewal	~~$15~~ $35
5. Reinstatement of registration	~~$90~~ $180
6. Handling fee for returned check or dishonored credit card or debit card	$50
7. Duplicate registration	~~$15~~ $30
8. Reinstatement following suspension, mandatory suspension, or revocation	~~$120~~ $240

B. Fees shall not be refunded once submitted.

C. The fee for the state examination shall be paid directly to the examination service contracted by the board for its administration.

VA.R. Doc. No. R24-7893; Filed November 17, 2024, 7:58 p.m.

BOARD OF COUNSELING

Proposed Regulation

Title of Regulation: **18VAC115-90. Regulations Governing the Practice of Art Therapy (adding 18VAC115-90-10 through 18VAC115-90-140).**

Statutory Authority: §§ 54.1-2400, and 54.1-3503 of the Code of Virginia.

Public Hearing Information:

January 24, 2025 - 10:05 a.m. - Department of Health Professions, 9960 Mayland Drive, Board Room Two, Second Floor Conference Center, Henrico, VA 23233.

Public Comment Deadline: February 14, 2025.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Counseling to promulgate regulations to administer the regulatory system. Section 54.1-3503 of the Code of Virginia provides the board the authority to regulate the practice of counseling, substance abuse treatment, art therapy, and marriage and family therapy.

Purpose: The board has adopted regulations to establish qualifications for education, examination, and experience that will ensure minimal competency for issuance or renewal of licensure as an art therapist to protect the health and safety of

clients or patients who receive art therapy services. Provisions are also necessary to ensure there are standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

Substance: The board adopted requirements for a fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice for art therapy licensure similar to other licensed professions. The amendments (i) set forth the requirements for licensure as an art therapist or art therapy associate, (ii) provide for appropriate application and renewal fees, and (iii) include requirements for licensure renewal and continuing education.

Issues: The primary advantage to the public is that the proposed amendments ensure competency and accountability by having persons who use the title of art therapist licensed by the board. Additionally, as a licensed mental health professional, an art therapist may be reimbursed by third-party payers for services provided. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

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

As required by Chapter 301 of the 2020 Acts of Assembly,[2] the Board of Counseling (board) proposes to promulgate a new regulation governing the practice of art therapy.

Background. In 2018, the Board of Health Professions assembled a regulatory research committee that conducted a study titled "Study into the Need to Regulate Art Therapists in the Commonwealth of Virginia" on behalf of the Virginia Art Therapy Association.[3] The major findings of the study are:

1. Art therapy is an integrative mental health and human services profession. Art therapists are educated in psychotherapeutic principles as specifically trained in the use of art media to provide counseling to individuals, families and groups.

2. Art therapy is categorically different than "art in therapy." Art in therapy is a therapeutic modality leveraging the creative process as a growth-producing experience.

3. Art therapy practices pose an inherent risk of harm to the patient. Individuals practicing art therapy without the proper skills, level education, supervision, and ethical standards pose a risk, especially to vulnerable patients who may have difficulty with verbal communication.

4. Art therapists practice autonomously as well as under supervision.

5. Art therapists are educated at the master's degree level and must sit for a national board certification exam to obtain the Registered Art Therapist (ATR) credential.

6. Seven states license art therapists as a distinct profession; five states provide for licensure of art therapists under a related profession's license; and four state recognize art therapists to enable state hiring and/or to provide title protection.

7. The number of art therapists in Virginia is undetermined at this time.

8. There is a need for art therapists in Virginia.

Subsequently, Chapter 301 of the 2020 Acts of Assembly was enacted and became the legislative mandate for this action. The board now proposes to establish the requirements for licensure as an art therapist and art therapist associate, continuing education requirements, standards of practice, disciplinary actions for violations of the standards of practice, and a fee structure to cover the program's operating expenses at the Department of Health Professions (DHP).

Estimated Benefits and Costs. Art therapy was practiced in Virginia before the legislative mandate became effective. However, the legislation created title protection for "art therapists" and "art therapy associates" and prohibited the practice of "art therapy unless the person is licensed by the board." The legislation and the regulation would affect individuals who previously practiced art therapy differently depending on the credentials and related licenses they may possess. Specific job positions for art therapy generally have not existed in Virginia because they did not require a license, because reimbursement for art therapists was not available from health insurance companies, or both. Instead, individuals have practiced art therapy as part of another job for which they qualified based on other skills. For example, the report noted that a teacher used art therapy with students, a licensed professional counselor used art therapy with patients, and another individual used art therapy when working with the elderly and persons with dementia (a job the person held based on other credentials). A driving force behind the study appears to be similarly placed individuals, who have a certification, education, or a license from another jurisdiction in art therapy. The study and the testimony to the research committee highlight the difficulty such individuals have experienced finding employment in Virginia. These individuals, who would meet the proposed standards because they already possess a certification, education, or a license from another jurisdiction, are the ones that stand to gain the most from the proposed regulation as they would likely have an easier time finding jobs in Virginia; they may also be able to complement their compensation due to the new license. A second group that would appear to benefit consists of those who were already practicing art therapy and would be able to continue practicing based on a related license that had art therapy within its scope of practice. These individuals, who lacked a specific license for art therapy, include some licensed professional counselors and licensed marriage and family therapists. The legislation and the

regulation would allow them to continue practicing art therapy under the umbrella of their existing licenses. However, they would be prohibited from calling themselves "art therapists" unless they also obtain the separate art therapist license.[4] The impact on such individuals appears to be limited to the impact of not being able to use the title of "art therapist." If they wish to use the title of "art therapist," they would have to obtain the new license. The last group consists of those individuals who lack the credentials for a Virginia art therapy license or a qualifying art therapy license from another jurisdiction. These individuals would have to not only cease any practice of art therapy, but also cease using the titles "art therapist" and "art therapy associate." If they wish, they can obtain an art therapy or art therapy associate license by fulfilling the proposed credentials. The cost of meeting the proposed standards for these individuals would likely be proportional to how much more education and experience they need to qualify for a Virginia license.

The proposed regulation allows licensure as an art therapist by endorsement as well as licensure by examination. The endorsement route requires a current, unrestricted art therapy license issued from another United States jurisdiction, an attestation of having read and understood the regulations and laws governing the practice of art therapy in Virginia, and either (i) current Board-Certified Registered Art Therapist (ATR-BC) certification from the Art Therapy Credentials Board, Inc. (ATCB) or (ii) documentation of passage of the examination of the ATCB and evidence of autonomous, clinical practice in art therapy for 24 of the last 60 months immediately preceding licensure application in Virginia. In the licensure by examination route, the proposed regulation requires credentialing from ATCB as an ATR-BC for the art therapist license and Registered Art Therapist (ATR) or a Provisional Registered Art Therapist (ATR-P) for the art therapy associate license. The proposal heavily relies on various credentials (i.e., ATR-BC, ATR, and ATR-P) all from ATCB. ATCB is an independent company and as such is free to establish or modify from time to time its own standards for its own credentials and its fees for exams, periodic renewals, or registration. This would produce some risk for the Commonwealth as decisions made by this independent company would effectively become Virginia administrative law without any oversight or approval from the Commonwealth. ATCB's education, experience, and supervision standards are complex.[5] At a high level, they appear to require at least master's level of degree or higher in art therapy with certain accreditation or master's degree or higher with concentration in certain areas, a minimum of 1,000 hours of post-education or more of direct client contact using art therapy, and a minimum of 100 hours or more of supervised practicum. From an ordinal perspective, it appears those who have a master's degree in art therapy would likely meet ATCB criteria most readily, followed by those who have a psychology-related license that includes art therapy within its scope of practice, and then those that have a psychology-related license but where art therapy does not fall within their scope of practice. The proposed regulation also requires a minimum of 20 hours of continuing education for each annual licensure renewal. Similarly, maintaining the ATCB credentials also requires 100 hours of continuing education over its five-year renewal cycle independently from this regulation.[6] The regulation recognizes continuing education credits earned for maintaining ATCB credentials. Thus, continuing education required by this regulation and ATCB are allowed to overlap. In addition to costs associated with education, experience, supervision, and continuing competency, the license applicants would be required to pay fees to DHP. These fees would be used to pay administrative costs associated with the proposed program. The administrative costs would include staff time for application processing, issuance of licenses, disciplinary hearings and actions, postal costs, office supplies, etc. The proposed fee structure is as follows: initial application processing and licensure as an art therapist ($175); initial application processing and licensure as an art therapy associate ($65); active annual license renewal as an art therapist ($130); inactive annual license renewal as an art therapist ($65); late renewal ($45); duplicate license ($10); verification of licensure to another jurisdiction ($30); reinstatement of a lapsed license ($200); replacement of or additional wall certificate ($25); returned check or dishonored credit card or debit card ($50); reinstatement following revocation or suspension ($600). DHP estimates that the number of persons seeking licensure in this program will initially be fewer than 200 that would translate to less than $6,000 in total collected from annual renewal fees. This regulation is also expected to encourage educational institutions to start new degree programs or increase the number of courses offered specific to art therapy. The study notes that there are two master's degree programs in Virginia: one at George Washington University's Columbian College of Arts and Sciences - Art Therapy Master's Degree Program in Alexandria offering three options (a Master's in Art Therapy, with a thesis option; a Master's in Art Therapy Practice; and a combined Bachelor of Arts/Masters of Arts in Art Therapy) enrolling approximately 20 students per year; and another at Eastern Virginia Medical Schools Art Therapy & Counseling Program in Norfolk offering a Post Master's program with enrollment of 34 students in the 2016-2017 school year. At one end of the spectrum, for someone who is just starting and who has no background in psychology, the proposed education and experience requirements for a license in art therapy would undoubtedly impose significant compliance costs. At the other end of the spectrum, there appears to be individuals who meet all the proposed requirements and who only need to apply and pay the associated fees. Regardless of the magnitude of compliance costs, the individual choosing to obtain a license in art therapy thereby indicates that the expected benefits exceed the expected costs.

In addition, the legislation (and thus the regulation) impose a ban on practice of art therapy by individuals who are not

licensed. As a consequence, individuals who have an education and background in art therapy but not a license to practice it (such as a teacher or a nursing home employee), would no longer be allowed to practice art therapy at all. The rationale for such a ban in the legislation is unclear, but the "Study into the Need to Regulate Art Therapists in the Commonwealth of Virginia" includes the statement that "Art therapy practices pose an inherent risk of harm to the patient. Individuals practicing art therapy without the proper skills, level education, supervision and ethical standards pose a risk, especially to vulnerable patients who may have difficulty with verbal communication." The study's discussion of harm states that "Untrained providers of art therapy can cause potential harm to their clients' emotional wellbeing," but the study does not provide any additional information on how these harms may occur. The study also notes potential physical risks to the subject, observing that while art therapists overall do not use dangerous equipment, there are "basic art tools, such as paint and glue, which contain toxic chemicals that could cause harm should they be inhaled or ingested, scissors which have sharp edges capable of causing cuts or punctures, and objects such as clay, if thrown, could be considered potentially dangers." These risks, however, would seem to apply to any setting in which art supplies are available. Moreover, the study does not provide any evidence that harms actually occur, noting that "Information regarding disciplinary action against art therapists was not readily accessible." The lack of evidence of harm to patients in this case is unusual compared to most other regulations from health boards, but as noted above this ban results from the legislative mandate. As discussed, the main driving force for licensure of art therapy is employment considerations for those who have a license from another jurisdiction, or who have completed a degree program but are experiencing difficulty finding a job. The trade-off is between expanding employment opportunities for those who meet the proposed credentials and reducing the beneficial practice of art therapy by those who are able to provide these services but who are not licensed. Perhaps this unintended trade-off may be mitigated by allowing uncompensated practice of art therapy by individuals whose scope of education and experience include art therapy. There does not seem to be much of a health and safety risk for allowing a schoolteacher or a nursing home employee with some education and experience in art therapy to utilize it, given the lack of documented evidence of harm. However, such a flexibility would require legislative action given the language of the current statute.

Businesses and Other Entities Affected. The legislation and this regulation affect individuals who would be practicing art therapy in the future and those who were practicing art therapy prior to 2020. According to DHP, when the Board of Health Professions conducted its study of the need for licensure of art therapists, the American Association of Art Therapists reported 131 professional members and 37 student members located in Virginia. DHP estimates that the number of persons seeking licensure will initially be fewer than 200. The number of those who were practicing art therapy prior to 2020 and who would not seek licensure is unknown. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[7] 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 discussed, individuals who were practicing art therapy prior to 2020 would have to cease their practice unless they obtain a license. For some individuals, particularly for those who have relatively lower costs in obtaining licensure, the costs may be outweighed by the increased possibility that their services would be reimbursed by health insurance. For others, particularly those who have relatively higher costs in obtaining licensure, the costs would likely outweigh the benefits. Because there is the potential for an increase in net cost or reduction in net revenue for any entity, an adverse impact is indicated.

Small Businesses[8] Affected.[9] No data are available to determine if any of the individuals who were practicing art therapy prior to 2020 were associated with a small business.

Localities[10] Affected.[11] The proposed regulation neither disproportionately affects particular localities nor introduces costs for local governments.

Projected Impact on Employment. The proposed licensure of art therapists may encourage individuals licensed in other jurisdictions to take jobs in Virginia and may cause those who meet the criteria to be licensed to secure better jobs. However, some individuals who had been practicing art therapy without a license may not be able to maintain their employment in that capacity. Thus, the net impact on total employment and on underemployment is uncertain.

Effects on the Use and Value of Private Property. The proposed regulation does not appear to directly affect the use and value of private property or real estate development costs.

---

[1] 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.

[2] https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0301&201+ful+CHAP0301.

[3] https://www.dhp.virginia.gov/media/dhpweb/docs/studies/ArtTherapist_2018.pdf.

[4] Legislation specifically states "Nothing in this chapter shall prohibit a person licensed, certified, or registered by a health regulatory board from using the modalities of art media if such modalities are within his scope of practice."

[5] https://www.atcb.org/wp-content/uploads/2022/03/ATR_ApplicationHandbook-2021-FINAL-1-2.pdf; https://www.atcb.org/wp-content/uploads/2022/03/ATRProvisional_ApplicationHandbook-2021-FINAL-1-1.pdf; https://www.atcb.org/board-certified-registered-art-therapist-atr-bc/

[6] https://www.atcb.org/wp-content/uploads/2021/07/Recertification-Standards-final-2021-1.pdf.

[7] 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.

[8] 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."

[9] 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.

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

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

Agency Response to Economic Impact Analysis: The Board of Counseling mostly concurs with the economic impact analysis prepared by the Department of Planning and Budget. The board would like to make two clarifications. First, there is an implication in the analysis that art could not be used in certain settings, such as schools or in working with the elderly, unless the individual facilitating the use of art held a license as an art therapist. Under § 54.1-3516 of the Code of Virginia, an individual cannot practice art therapy without a license. Art, however, can be used in schools, assisted living facilities, and other locations without incorporating art therapy or requiring a license to practice art therapy. Second, the analysis states that art therapists can receive continuing education to satisfy licensure renewal requirements from the Art Therapy Credentials Board (ATCB). While that is true, the ATCB is far from the only body the board recognizes to provide continuing education for art therapists. Proposed 18VAC115-90-90 lists 15 organizations that the board recognizes as providers of continuing education for art therapists.

Summary:

The proposed action establishes regulations governing the practice of art therapy pursuant to Chapter 301 of the 2020 Acts of Assembly, which specifies the credentials of the Art Therapy Credentials Board that was adopted as qualification for licensure as an art therapist and as an art therapy associate. The proposed amendments (i) set forth the requirements for licensure as an art therapist or art therapy associate, (ii) provide for appropriate application and renewal fees, (iii) include requirements for licensure renewal and continuing education, and (iv) provide for supervision of persons in training.

Chapter 90

Regulations Governing the Practice of Art Therapy

18VAC115-90-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Art therapist"

"Art therapy"

"Art therapy associate"

"Board"

"Counseling"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as an art therapist or art therapy associate.

"ATCB" means the Art Therapy Credentials Board Inc.

"ATR" means a Registered Art Therapist, a credential issued by the ATCB after meeting established educational standards, successful completion of advanced specific graduate-level education in art therapy, and supervised post-graduate art therapy experience.

"ATR-BC" means a Board-Certified Registered Art Therapist, a credential issued by the ATCB after meeting the requirements for the ATR credential and passing a national examination.

"ATR-P" means a Provisional Registered Art Therapist, a credential issued by the ATCB after meeting the established educational standards, successful completion of advanced specific graduate-level education in art therapy, and practicing art therapy under an approved supervisor.

18VAC115-90-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as an art therapist or art therapy associate:

Initial licensure as an art therapist: Application processing and initial licensure	$175
Initial licensure as an art therapy associate: Application processing and initial licensure	$65
Active annual license renewal as an art therapist	$130
Inactive annual license renewal as an art therapist	$65
Late renewal	$45

Duplicate license	$10
Verification of licensure to another jurisdiction	$30
Reinstatement of a lapsed license	$200
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	$50
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

18VAC115-90-30. Prerequisites for licensure as an art therapist and art therapist associate.

A. Every applicant for licensure shall submit to the board:

1. A completed application;

2. The application processing fee and initial licensure fee as prescribed in 18VAC115-90-20;

3. Verification of any other mental health or health professional license, registration, or certificate ever held in Virginia or another jurisdiction; and

4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

B. An applicant shall have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration held in Virginia or in another United States jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-90-40. Requirements for licensure.

In addition to the prerequisites set forth in 18VAC115-90-30:

1. Each applicant for licensure by examination as an art therapist shall submit to the board evidence of a current ATR-BC certification from the ATCB.

2. Each applicant for licensure by endorsement as an art therapist shall submit to the board:

a. Verification of a current, unrestricted art therapy license issued from another United States jurisdiction or, if lapsed, evidence that the license is eligible for reinstatement;

b. An attestation of having read and understood the regulations and laws governing the practice of art therapy in Virginia; and

c. Either:

(1) Current ATR-BC certification from the ATCB; or

(2) Documentation of passage of the examination of the ATCB and evidence of autonomous, clinical practice in art therapy, as defined in § 54.1-3500 of the Code of Virginia, for 24 of the last 60 months immediately preceding licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical art therapy services, clinical supervision of clinical art therapy services, or teaching graduate-level courses in art therapy.

3. Each applicant for licensure as an art therapy associate shall submit to the board evidence of a current registration as an ATR or an ATR-P from the ATCB.

18VAC115-90-50. Requirements for Practice as an Art Therapy Associate.

A. No art therapy associate shall call himself a licensed art therapist, directly bill for services rendered, or in any way represent himself as an independent, autonomous practitioner. Art therapy associates shall use the title of "art therapy associate" in all written communications. Clients shall be informed in writing that the art therapy associate does not have the authority for independent practice, is practicing under supervision, and shall be provided the supervisor's name, professional address, and telephone number.

B. No art therapy associate shall engage in practice under supervision in an area for which the art therapy associate has not had the appropriate education or training.

18VAC115-90-60. General examination requirements; schedules; time limits.

A. Each applicant for initial licensure by examination by the board as an art therapist shall pass the Art Therapy Credentials Board examination prescribed by the ATCB.

B. An applicant is required to pass the prescribed examination and obtain registration as an ATR-BC no later than five years from the date of initial issuance by the board of an art therapy associate license, unless the board has granted an extension of the art therapy associate license.

C. An art therapy associate who has not met the requirements for licensure as an art therapist within five years of issuance of licensure as an art therapy associate may submit an application for extension of licensure to the board. Such application shall include:

1. A plan for completing the requirement to obtain licensure as an art therapist;

2. Documentation of compliance with the continuing education requirements;

3. Documentation of compliance with requirements related to supervision; and

4. A letter of recommendation from the clinical supervisor of record.

An extension of an associate art therapy license shall be valid for a period of two years.

18VAC115-90-70. Annual renewal of licensure.

A. Each art therapist who intends to continue active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the art therapist attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-90-20.

B. An art therapist who wishes to place a license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-90-20. No person shall practice art therapy in Virginia unless that person holds a current active license. A licensee who has selected an inactive status may become active by fulfilling the reactivation requirements set forth in subsection C of 18VAC115-90-110.

C. The license of an art therapy associate shall expire after five years from initial licensure unless an extension is granted as indicated in subsection C of 18VAC115-90-60.

D. Licensees shall notify the board of a change in the address of record or the public address if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. Practicing with an expired license is prohibited and may constitute grounds for disciplinary action.

18VAC115-90-80. Continued competency requirements for renewal of a license.

A. Art therapists shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

D. An art therapist who holds another license issued by a Virginia health regulatory board shall not be required to obtain more than 20 total continuing education hours in order to renew an art therapy license, except that at least 10 of the required hours of continuing education shall be specifically related to art therapy.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through the delivery of art therapy services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

F. An art therapist who was licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.

18VAC115-90-90. Continuing competency activity criteria.

A. Hours of continuing competency activity for an art therapist shall be approved if the hours meet the continued education requirements for recertification as an ATR-BC.

B. Additionally, continuing competency activity for an art therapist shall be approved if the activities are workshops, seminars, conferences, or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

1. The International Association of Marriage and Family Counselors and its state affiliates;

2. The American Association for Marriage and Family Therapy and its state affiliates;

3. The American Association of State Counseling Boards;

4. The American Counseling Association and its state and local affiliates;

5. The American Psychological Association and its state affiliates;

6. The Commission on Rehabilitation Counselor Certification;

7. NAADAC, the Association for Addiction Professionals, and its state and local affiliates;

8. National Association of Social Workers;

9. National Board for Certified Counselors;

10. A national behavioral health organization or certification body;

11. Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state;

12. The American Association of Pastoral Counselors;

13. The American Art Therapy Association and its state affiliates;

14. The Art Therapy Credentials Board; or

15. The International Expressive Arts Therapy Association.

18VAC115-90-100. Documenting compliance with continuing competency requirements.

A. Art therapists are required to maintain original documentation for a period of two years following renewal.

B. After the end of each renewal period, the board may conduct a random audit of art therapists to verify compliance with the requirement for that renewal period.

C. Upon request, an art therapist shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

D. Continuing competency hours required by a disciplinary order shall not be used to satisfy renewal requirements.

18VAC115-90-110. Late renewal; reactivation or reinstatement.

A. An art therapist whose license has expired may renew the license within one year after its expiration date by paying the late fee prescribed in 18VAC115-90-20 and the license renewal fee prescribed for the year the license was not renewed and providing evidence of having met all applicable continuing competency requirements.

B. An art therapist who fails to renew a license after one or more years and wishes to resume practice shall apply for reinstatement, pay the reinstatement fee for a lapsed license, submit verification of any mental health license the art therapist holds or has held in another jurisdiction, if applicable, and provide evidence of having met all applicable continuing competency requirements, not to exceed a maximum of 80 hours. The board may require the applicant for reinstatement to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

C. An art therapist wishing to reactivate an inactive license shall submit (i) the renewal fee for active licensure minus any fee already paid for inactive licensure renewal; (ii) documentation of continued competency hours equal to the number of years the license has been inactive, not to exceed a maximum of 80 hours; and (iii) verification of any mental health license the art therapist holds or has held in another jurisdiction, if applicable. The board may require the applicant for reactivation to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

18VAC115-90-120. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guides in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone, or electronically, these standards shall apply to the practice of art therapy.

B. Each person licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of the licensee's competence, based on education, training, supervised experience, and appropriate professional experience, and represent education, training, and experience accurately to clients;

3. Stay abreast of new art therapy information, concepts, applications, and practices that are necessary to providing appropriate, effective, professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a therapeutic relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a therapeutic relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed, the limitations of confidentiality, and other pertinent information when art therapy is initiated and throughout the therapeutic process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been

granted communication privileges with the other professional;

12. Use only in connection with the licensee's practice as a mental health professional those educational and professional degrees or titles that (i) have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, (ii) are credentials granted by a national certifying agency, and (iii) are art therapy in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive.

C. In regard to client records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client, to include treatment dates and identifying information, to substantiate diagnosis and treatment plan, client progress, and termination. Client records include artwork or any visual production produced by the client during clinical sessions;

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative or as otherwise permitted or required by law;

4. Ensure confidentiality in the usage of client records and clinical materials, including artwork or any visual production produced by the client during clinical sessions, by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping; (ii) audio recording; (iii) permitting third-party observation; or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the art therapy relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years of age) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or the client's legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include familial, social, financial, business, bartering, or close personal relationships with clients. Art therapists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not provide therapy to persons with whom the licensee has had a romantic relationship or sexual intimacy. Art therapists shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the art therapy relationship. Art therapists who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitative nature, based on factors such as duration of art therapy, amount of time since art therapy, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with an art therapist neither changes the nature of the conduct nor lifts the regulatory prohibition;

3. Not engage in any romantic relationship or sexual intimacy or establish an art therapy or psychotherapeutic relationship with a supervisee or student. Licensed art therapists shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of art therapy.

F. Persons licensed by the board shall advise clients of the licensee's right to report to the Department of Health Professions any information of which the licensee may become aware in the licensee's professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-90-130. Grounds for revocation, suspension, probation, reprimand, or denial of license.

A. Action by the board to revoke, suspend, or deny issuance or renewal of a license or to take disciplinary action may be taken in accordance with the following:

1. Conviction of a felony or of a misdemeanor involving moral turpitude or a violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of art therapy, or any provision of this chapter;

2. Procuring, attempting to procure, or maintaining a license by fraud or misrepresentation;

3. Conducting practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public or inability to practice art therapy with reasonable skill and safety to clients by reason of illness; abusive use of alcohol, drugs, narcotics, chemicals, or other type of material; or as the result of any mental or physical condition;

4. Intentional or negligent conduct that causes or is likely to cause injury to any client;

5. Performance of functions outside the demonstrable areas of competency;

6. Failure to comply with the continued competency requirements set forth in this chapter;

7. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of art therapy or any part or portion of this chapter; or

8. Performance of an act likely to deceive, defraud, or harm the public.

B. Following the revocation or suspension of a license, the licensee may petition the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached.

18VAC115-90-140. Reinstatement following disciplinary action.

A. Any person whose license has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of licensure.

B. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in subsection A of this section.

VA.R. Doc. No. R21-6583; Filed November 17, 2024, 7:25 p.m.

BOARD OF SOCIAL WORK

Proposed Regulation

Title of Regulation: **18VAC140-30. Regulations Governing the Practice of Music Therapy (adding 18VAC140-30-10 through 18VAC140-30-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3709.2 of the Code of Virginia.

Public Hearing Information:

December 20, 2024 - 10:05 a.m. - Department of Health Professions, 9960 Mayland Drive, Board Room 3, Second Floor Conference Center, Henrico, VA 23233.

Public Comment Deadline: February 14, 2025.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4441, FAX (804) 977-9915, or email jaime.hoyle@dhp.virginia.gov.

Basis: The Board of Social Work promulgates regulations under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes the board to promulgate regulations to administer the regulatory system. Section 54.1-3709.2 of the Code of Virginia provides the board the authority to adopt regulations governing the practice of music therapy, upon consultation with the Advisory Board on Music Therapy.

Purpose: The regulation establishes qualifications for education, examination, and experience that will ensure minimal competency for issuance or renewal of licensure as music therapists to protect the health and safety of clients or patients who receive music therapy services. The proposed amendments ensure there are standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

Substance: The proposed amendments are similar to other licensed professions in regard to fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice. The proposed amendments (i) set forth the educational, clinical training, and examination requirements for licensure to practice music therapy; (ii) provide for appropriate application and renewal fees; and (iii) include requirements for licensure renewal and continuing education.

Issues: The primary advantage to the public is that the proposed amendments ensure competency and accountability by having persons who use the title of music therapist licensed by the board. Additionally, as a licensed mental health professional, a music therapist may be reimbursed by third-party payors for services provided. Other licensed mental health practitioners who are trained in the therapeutic use of music may use the modality, provided they do not call themselves music therapists or claim to be practicing music therapy. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget 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.[1]

As required by Chapters 103 and 233 of the 2020 Acts of Assembly,[2] which are identical, the Board of Social Work (board) proposes to promulgate a new regulation governing the practice of music therapy.

Background. Chapter 680 of the 2019 Acts of Assembly[3] directed the Board of Health Professions to "evaluate whether music therapists and the practice of music therapy should be regulated and the degree of regulation to be imposed," and further required that the evaluation be submitted to the relevant General Assembly committees by November 1, 2019. The Board of Health Professions assembled a regulatory research committee that conducted the study titled "Study into the Need to Regulate Music Therapists in the Commonwealth of Virginia."[4] The major findings of the study are:

1. Music therapy is the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program.

2. Not all music in a health care setting is music therapy. Clinical music therapy is the only professional, research-based discipline that actively supplies supportive science to the creative, emotional, and energizing experiences of music for treatment and educational goals.

3. Music therapists work with vulnerable populations, individuals with intellectual or emotional disabilities, or persons coping with physical, mental, or terminal health diagnoses. Potential for harm exists when nonqualified individuals provide inappropriate applications of music therapy interventions that could cause emotional harm.

4. Music therapists practice autonomously as well as under supervision.

5. Music therapists are bachelor's degree level trained and must sit for a national board certification exam to obtain the Music Therapist-Board Certified (MT-BC) credential, which is necessary for professional practice.

6. Five states license music therapists, one state provides title certification, and two states require registration.

7. There are approximately 227 music therapists who hold the MT-BC credential in Virginia.

8. There is a need for music therapists in Virginia.

Subsequently, Chapters 103 and 233 of the 2020 Acts of Assembly were enacted and became the legislative mandate for this action. Chapters 103 and 233 also established an advisory board on Music Therapy (advisory board) to assist the board in formulating regulations related to the practice of music therapy. The board now proposes to establish the requirements for licensure as a music therapist, continuing education requirements, standards of practice, disciplinary actions for violations of the standards of practice, and a fee structure to cover the program's operating expenses at the Department of Health Professions (DHP).

Estimated Benefits and Costs. Music therapy was practiced in Virginia before the legislative mandate became effective. However, the legislation created title protection for "music therapists" and prohibits a person from engaging "in the practice of music therapy unless he is licensed by the board." The legislation and the regulation would affect individuals who previously practiced music therapy differently depending on the credentials they possess and whether they qualify for one of the exceptions in the legislation. Generally speaking, music therapy specific jobs would not be as abundant or pay as well without a required license. Thus, individuals who would meet the proposed standards, because they already possess a certification and education in music therapy, are the ones that stand to gain the most from the proposed regulation as they would likely have an easier time finding jobs in Virginia; they may also be able to increase their compensation due to the new license. A second group that would appear to be affected consists of those who were already practicing music therapy and would be able to continue practicing based on the exceptions in the legislation. These exceptions include (i) the practice of music therapy by a student pursuing a course of study in music therapy if such practice constitutes part of the student's course of study and is adequately supervised or (ii) a licensed health care provider, other professional registered, certified, or licensed in the Commonwealth, or any person whose training and national certification attests to his preparation and ability to practice his certified profession or occupation from engaging in the full scope of his practice, including the use of music incidental to his practice, provided that he does not represent himself as a music therapist. The impact on such individuals appears to be limited to the impact of not being able to use the title of "music therapist." If they wish to use the title of "music therapist," they would have to obtain the new license. The last group consists of those individuals who lack the credentials for a Virginia music therapy license and who do not fall under the listed exceptions. These individuals would have to not only cease any practice of music therapy, but also cease using the title "music therapist." If they wish, they can obtain a music therapy license by fulfilling the proposed credentials. The cost of meeting the proposed standards for these individuals would likely be proportional to the extent of education and experience they would need to qualify for a Virginia license. The legislation mandated that "the board shall consider requirements for board certification offered by the Certification Board for Music Therapists or any successor organization." While not mandated to do so, the advisory board concurred that the credential cited in the legislation is the best measure of minimal competency

for the profession because it requires a national board certification examination. The advisory board also concurred that graduation from a music therapy program accredited by the American Music Therapy Association (AMTA) should be a requirement for licensure because it includes 1,200 hours of clinical training, including a supervised internship. Consequently, the proposed regulation would require Music Therapist-Board Certification (MT-BC), a credential issued by the Certification Board for Music Therapists (CBMT) after completing the academic and clinical training requirements of the AMTA and passing a national examination.

The proposal heavily relies on the MT-BC credential from CBMT and on the academic and clinical training requirements of the AMTA. CBMT and AMTA are independent entities and as such are free to establish or modify from time to time their own standards for their own credentials and their fees for exams, periodic renewals, or registration. This would produce some risk for the Commonwealth as decisions made by these independent entities would effectively become Virginia administrative law without any oversight or approval from the Commonwealth. The proposed regulation also requires a minimum of 20 hours of continuing education for each annual licensure renewal. Similarly, maintaining the CBMT credential also requires 100 hours of continuing education over its five-year renewal cycle independently from this regulation.[5] The regulation recognizes continuing education credits earned for maintaining CBMT credentials. Thus, continuing education required by this regulation and CBMT are allowed to overlap. In addition to costs associated with education, experience, and continuing competency, the licensure applicants would be required to pay fees to DHP. These fees would be used to pay administrative costs associated with the proposed program. The administrative costs would include staff time for application processing, issuance of licenses, disciplinary hearings and actions, postal costs, office supplies, etc. The proposed fee structure is as follows: initial application processing and licensure as a music therapist ($100); active annual license renewal ($55); inactive annual license renewal ($30); late renewal ($20); duplicate license ($15); verification of licensure to another jurisdiction ($25); reinstatement of a lapsed license ($120); replacement of or additional wall certificate ($25); returned check or dishonored credit card or debit card ($50); reinstatement following revocation or suspension ($500). DHP estimates that the number of persons seeking licensure in this program would initially be fewer than 300, which would translate to less than $16,500 in total collected from annual renewal fees. To the extent that educational institutions respond to the new license, this regulation may encourage educational institutions to start new degree programs or increase the number of courses offered specific to music therapy. The study notes that there are two universities in Virginia, Radford University and Shenandoah University, that offer bachelor's level and master's level music therapy training. Both are accredited and approved by the AMTA. At one end of the spectrum, for someone who is just starting and who has no background in music therapy, the proposed education and experience requirements for a license in music therapy would undoubtedly impose significant compliance costs. At the other end of the spectrum, there may be individuals who meet all the proposed requirements and who only need to apply and pay the associated fees. Regardless of the magnitude of compliance costs, the individual choosing to obtain a license in music therapy thereby indicates that the expected benefits exceed the expected costs. The "Study into the Need to Regulate Music Therapists in the Commonwealth of Virginia" includes the statement that "Music therapists do not utilize dangerous equipment while performing within their practice guidelines. They do, however, work with vulnerable populations, individuals with intellectual or emotional disabilities, and persons coping with physical, mental or terminal health diagnosis. The potential for harm exists if a nonqualified individual provides inappropriate applications of music therapy interventions that could cause emotional harm." It is notable that the study asserts the potential for emotional harm, but it does not provide any additional information on how these harms may occur. Also notable is the absence of any assertion that physical harm may occur, perhaps because music therapists do not utilize dangerous equipment. The lack of evidence of harm to patients in this case is unusual compared to most other regulations from health boards, but as noted, the regulation of music therapy results from the legislative mandate.

Businesses and Other Entities Affected. The legislation and this regulation affect individuals who would be practicing music therapy in the future and those who were practicing music therapy prior to 2020. According to DHP, when the Board of Health Professions conducted its study of the need for licensure of music therapists, the CBMT reported 227 professional members located in Virginia. DHP estimates that the number of persons seeking licensure will initially be fewer than 300. The number of those who were practicing music therapy prior to 2020 and who would not seek licensure is unknown.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[6] 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 discussed, individuals who were practicing music therapy prior to 2020 would have to cease their practice unless they obtain a license or fall under one of the exceptions. For some individuals, particularly for those who have relatively lower costs in obtaining licensure, the costs may be outweighed by the increased possibility that their services would be reimbursed by health insurance. For others, particularly those who have relatively higher costs in obtaining licensure, the costs would likely outweigh the benefits. Because there is the potential for an increase in net cost or reduction in net revenue for some entities an adverse impact is indicated.

Small Businesses[7] Affected.[8] No data are available to determine if any of the individuals who were practicing music therapy prior to 2020 were associated with a small business.

Localities[9] Affected[10]. The proposed regulation neither disproportionately affects particular localities nor introduces costs for local governments.

Projected Impact on Employment. The proposed licensure of music therapists may allow those who meet the licensure criteria to secure better jobs. However, some individuals who had been practicing music therapy without a license may not be able to maintain their employment in that capacity. Thus, the net impact on employment is uncertain.

Effects on the Use and Value of Private Property. The proposed regulation does not appear to directly affect the use and value of private property or real estate development costs.

[1] 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.

[2] https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0103; https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0233.

[3] https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0680.

[4] https://www.dhp.virginia.gov/media/dhpweb/docs/studies/Music_Therapy.pdf.

[5] https://www.cbmt.org/certificants/recertification/.

[6] 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.

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

[8] 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.

[9] "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.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Social Work concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed action establishes regulations governing the practice of music pursuant to Chapters 103 and 233 of the 2020 Acts of Assembly, which require the board to adopt regulations establishing a regulatory structure to license music therapists in the Commonwealth and establish an advisory board to assist the board in this process. The proposed regulations provide for (i) licensure requirements, (ii) a fee structure, (iii) renewal or reinstatement of a license, (iv) continuing competency, (v) supervision of persons in training, and (vi) standards of practice.

Chapter 30

Regulations Governing the Practice of Music Therapy

18VAC140-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in §§ 54.1-3700 and 54.1-3709.1 of the Code of Virginia:

"Board"

"Music therapist"

"Music therapy"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a music therapist.

"CBMT" means the Certification Board for Music Therapists.

"MT-BC" means a Music Therapist-Board Certified, a credential issued by the CBMT after completing the academic and clinical training requirements of the American Music Therapy Association and passing a national examination.

18VAC140-30-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a music therapist:

Initial licensure: Application processing and initial licensure	$100
Active annual license renewal	$55
Inactive annual license renewal	$30
Late renewal	$20
Duplicate license	$15
Verification of licensure to another jurisdiction	$25

Reinstatement of a lapsed license	$120
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	$50
Reinstatement following revocation or suspension	$500

B. All fees are nonrefundable.

18VAC140-30-30. Prerequisites for licensure as a music therapist.

A. Every applicant for licensure shall submit to the board:

1. A completed application;

2. The application processing fee and initial licensure fee as prescribed in 18VAC140-30-20;

3. Verification of any other mental health or health professional license, registration, or certificate ever held in Virginia or another jurisdiction; and

4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

B. An applicant shall have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration held in Virginia or in another United States jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC140-30-40. Requirements for licensure.

In addition to prerequisites as set forth in 18VAC140-30-30, every applicant for licensure shall submit to the board:

1. Evidence of the current certification as an MT-BC granted by the CBMT or its successor organization, as approved by the board; and

2. An attestation of having read and understood the regulations and laws governing the practice of music therapy in Virginia.

18VAC140-30-50. Annual renewal of licensure.

A. Every licensed music therapist who intends to continue active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing education requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC140-30-20.

B. A licensed music therapist who wishes to place a license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC140-30-20. No person shall practice music therapy in Virginia unless the person holds a current active license. A licensee who has selected an inactive status may become active by fulfilling the reactivation requirements set forth in subsection C of 18VAC140-30-80.

C. Licensees shall notify the board of a change in the address of record or the public address if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

D. Practicing with an expired license is prohibited and may constitute grounds for disciplinary action.

18VAC140-30-60. Continuing education requirements for renewal of a license.

A. For annual licensure renewal, a music therapist shall either hold a current credential as an MT-BC or be required to have completed a minimum of 20 hours of continuing education within the past 12 months. A minimum of three of these hours every five years shall be in courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia.

B. Hours of continuing education activity for a music therapist shall be approved if the hours meet the continued education requirements for recertification as an MT-BC.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

E. A music therapist who holds another license, certification, or registration issued by a Virginia health regulatory board may use up to 10 continuing education hours earned to satisfy the renewal requirements of that profession to satisfy the 20 total continuing education hours required to renew a music therapy license.

F. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of music therapy services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

G. A licensed music therapist is exempt from meeting continuing education requirements for the first renewal following initial licensure in Virginia.

18VAC140-30-70. Documenting compliance with continuing education requirements.

A. All licensees are required to maintain original documentation for a period of two years following renewal.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

D. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

18VAC140-30-80. Late renewal; reactivation or reinstatement.

A. A person whose license has expired may renew the license within one year after its expiration date by paying the late fee prescribed in 18VAC140-30-20 as well as the license renewal fee prescribed for the year the license was not renewed and providing evidence of having met all applicable continuing education requirements.

B. A person who fails to renew a license after one year or more and wishes to resume practice shall apply for reinstatement, pay the reinstatement fee for a lapsed license, submit verification of any mental health or health professional license the person holds or has held in another jurisdiction, if applicable, and provide evidence of having met all applicable continuing education requirements to satisfy the hours necessary for the number of years the license has been lapsed, not to exceed a maximum of 80 hours, or evidence of current certification as an MT-BC. The board may require the applicant for reinstatement to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

C. A person wishing to reactivate an inactive license shall submit (i) the renewal fee for active licensure minus any fee already paid for inactive licensure renewal; (ii) documentation of continued education hours to satisfy the hours necessary for the number of years the license has been inactive, not to exceed a maximum of 80 hours, or evidence of current certification as an MT-BC; and (iii) verification of any mental health or health professional license the person holds or has held in another jurisdiction, if applicable. The board may require the applicant for reactivation to submit evidence regarding the continued ability to perform the functions within the scope of practice of the license.

18VAC140-30-90. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone or electronically, these standards shall apply to the practice of music therapy.

B. Each person licensed as music therapists shall:

1. Be able to justify all services rendered to or on behalf of clients as necessary for therapeutic purposes.

2. Provide for continuation of care when services must be interrupted or terminated.

3. Practice only within the competency areas for which the licensee is qualified by education and experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of music therapy.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Ensure that clients are aware of fees and billing arrangements before rendering services.

7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that clients have provided informed written consent to treatment.

8. Keep confidential therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

9. When advertising services to the public, ensure that such advertising is neither fraudulent nor misleading.

10. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.

11. Refrain from undertaking any activity in which a licensee's personal problems are likely to lead to inadequate or harmful services.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

13. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to client records, music therapists shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that substantiates treatment plans. Each record shall include a

treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Disclose or release records to others only with clients' expressed written consent or that of the client's legally authorized representative or as mandated or permitted by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining written consent from a client or a client's legally authorized representative before (i) video-recording, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

5. For a music therapist practicing in an institution or school setting, follow the recordkeeping policies of the institution or school. For a music therapist practicing in a noninstitutional setting, maintain records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative.

D. In regard to dual relationships, music therapists shall:

1. Not engage in a dual relationship with a client or a supervisee that could impair professional judgment or increase the risk of exploitation or harm to the client or supervisee. (Examples of such a relationship include familial, social, financial, business, bartering, or a close personal relationship with a client or supervisee.) Music therapists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of romantic relationship or sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a romantic or sexual relationship. Music therapists shall not engage in romantic relationship or sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Music therapists who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitative nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, or an adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a music therapist neither changes the nature of the conduct nor lifts the regulatory prohibition.

3. Not engage in any romantic or sexual relationship or establish a therapeutic relationship with a current supervisee or student. Music therapists shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the music therapist in the music therapist's professional capacity.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, a person licensed by the board shall advise the licensee's clients of the licensee's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC140-30-100. Grounds for disciplinary action or denial of issuance of a license.

The board may refuse to issue a license to an applicant or reprimand, impose a monetary penalty, place on probation, impose such terms as the board may designate, suspend for a stated period of time or indefinitely, or revoke a license for one or more of the following grounds:

1. Conviction of a felony or of a misdemeanor involving moral turpitude;

2. Procuring, attempting to procure, or maintaining a license by fraud or misrepresentation;

3. Conducting a practice in such a manner so as to make the practice a danger to the health and welfare of the person's clients or to the public. In the event a question arises concerning the continued competence of a licensee, the board will consider evidence of continuing education.

4. Being unable to practice music therapy with reasonable skill and safety to clients by reason of illness; excessive use of alcohol, drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition;

5. Conducting a practice in a manner contrary to the standards of ethics of music therapy or in violation of 18VAC140-30-90;

6. Performing functions outside the board-licensed area of competency;

7. Failure to comply with the continued education requirements set forth in 18VAC140-30-60 or maintaining documentation as set forth in 18VAC140-30-70; or

8. Violating or aiding and abetting another to violate any statute applicable to the practice of music therapy or any provision of this chapter.

18VAC140-30-110. Reinstatement following disciplinary action.

Any person whose license has been suspended, revoked, or denied renewal by the board under the provisions of 18VAC140-30-100 shall, in order to be eligible for reinstatement, (i) submit a new application to the board for a license, (ii) pay the appropriate reinstatement fee, and (iii) submit any other credentials as prescribed by the board. After a hearing, the board may, at the board's discretion, grant the reinstatement.

VA.R. Doc. No. R21-6888; Filed November 17, 2024, 8:04 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **20VAC5-305. Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment (amending 20VAC5-305-10, 20VAC5-305-20).**

Statutory Authority: §§ 12.1-13 and 56-245.3 of the Code of Virginia.

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

Public Comment Deadline: January 13, 2025.

Agency Contact: Mike Cizenski, Deputy Director, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapter 557 of the 2024 Acts of Assembly, the proposed amendments make regulatory text clear that residential and nonresidential unit owners shall be considered tenants for purposes of rules for electricity and natural gas submetering and for energy allocation equipment.

AT RICHMOND, NOVEMBER 18, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2024-00186

Ex Parte: In the matter of amending regulations

governing gas and electric submetering of tenants

ORDER ESTABLISHING PROCEEDING

The Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment, 20VAC5-305-10 et seq. ("Submetering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-245.3 of the Code of Virginia ("Code"), establish requirements for owners using submetering and energy allocation equipment to measure and fairly allocate the costs of electric or gas to tenants of residential, commercial, or mixed-use properties.

Chapter 557 (House Bill 1376) of the 2024 Virginia Acts of Assembly ("Chapter 557") added the following language to Code § 56-245.3 to make clear that residential and non-residential unit owners shall be considered tenants for purposes of the Submetering Rules:

D. For the purposes of rules promulgated pursuant to this section, billing requirements and all other rules related to submetering or energy allocation equipment use by tenants of an apartment house, office building, shopping center, or campground shall apply to residential and nonresidential unit owners.

The Commission Staff ("Staff") has advised the Commission that, given this change, the current Submetering Rules must be revised to reflect the change set forth in Chapter 557. To initiate this proceeding, Staff has prepared proposed amendments to Rules 20VAC5-305-10 and 20VAC5-305-20 of the Submetering Rules ("Proposed Amendments"), which are appended to this order.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to consider amending the Submetering Rules in keeping with the expanded definition of "tenant" in Chapter 557.

The Commission finds that notice of Staff's Proposed Amendments should be given to potentially interested persons, and that interested persons, whether or not they received direct notice from Staff, should be provided an opportunity to file written comments or request a hearing on the Proposed Amendments. The Commission further finds that a copy of the Proposed Amendments should be sent to the Office of the

Registrar for publication in the Virginia Register of Regulations.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of comments and pleadings unless they contain confidential information, and require electronic service on participants in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed as Case No. PUR-2024-00186.

(2) All comments or other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure.[1] Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5VAC5-20-140, Filing and service, of the Rules of Practice, the Commission directs that service on participants and Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, participants and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no participant or Staff is impeded from participating in this matter.

(4) The Commission's Office of General Counsel shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(5) An electronic copy of the Proposed Amendments may be obtained by submitting a request to Michael A. Cizenski, Deputy Director in the Commission's Division of Public Utility Regulation at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Amendments can also be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Amendments from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) Within ten (10) business days hereof, Staff shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies who have been identified by Staff as potentially being interested in this proceeding.

(7) On or before January 13, 2025, any interested person may comment on or request a hearing on the Proposed Amendments by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2024-00186. Individuals should be specific in their comments on the Proposed Amendments and should address only those issues pertaining to the amendment of Code § 56-245.3 pursuant to Chapter 557. Issues outside the scope of addressing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(8) On or before February 28, 2025, Staff shall file with the Clerk of the Commission a report on or a response to any comments or requests for hearing submitted to the Commission on the Proposed Amendments.

(9) This matter is continued.

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

---

[1] 5VAC5-20-10 et seq. ("Rules of Practice").

20VAC5-305-10. Definitions.

Certain words as used in this chapter shall be understood to have the following meaning:

"Apartment house" means a building ~~or buildings~~ with the primary purpose of residential occupancy containing more than two dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives whether rented or owner-occupied.

"Building" means all of the individual units served through the same utility-owned meter within an apartment house, office building, or shopping center as defined in this section.

"Campground" means and includes ~~but is not limited to~~ a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor

camp, or park for mobile homes as defined in §§ 32.1-203 and 35.1-1 of the Code of Virginia, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing sanitary facilities within the individual owner's property lines.

"Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

"Commission" means the State Corporation Commission of Virginia.

"Dwelling" means a room ~~or rooms~~ suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit, nonresidential rental unit, or campsite within an apartment house, office building, shopping center, or campground.

"Energy unit" means the billing units for energy delivered to the master-metered customer. For electricity, the units are generally kilowatt hours (Kwh). For natural gas, the units are generally therms, but may be dekatherms (Dth), cubic feet (cf), hundreds of cubic feet (Ccf), or thousands of cubic feet (Mcf).

"Master meter" means a meter used to measure for billing purposes~~,~~ all electric or natural gas usage of an apartment house, office building, shopping center, or campground, including common areas, common facilities, and dwelling or rental units therein.

"Month" or "monthly" means the period between two consecutive meter readings, either actual or estimated, at approximately 30-day intervals.

"Nonresidential rental unit" means a room ~~or rooms~~ in which retail or commercial services, clerical work, or professional duties are carried out.

"Office building" means a building ~~or buildings~~ containing more than two rental units ~~which~~ that are rented primarily for retail, commercial, or professional use, with rental paid at intervals of one month or longer. Office buildings can include residential and nonresidential unit owners.

"Owner" means any owner, operator, or manager of an apartment house, office building, shopping center, or campground engaged in electrical or natural gas submetering or the use of energy allocation equipment.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs, which include ~~but are not limited to~~ areas outside individual residential or nonresidential units or in owner-occupied or ~~-~~ shared areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building ~~or buildings~~ containing more than two stores ~~which~~ that are rented primarily for commercial, retail, or professional use. Shopping centers can include residential and nonresidential unit owners.

"Submeter" means electric energy or natural gas measurement device used in submetering.

"Submetering" means dwelling or rental unit electrical or natural gas direct remetering performed by the owner to measure the tenant's electrical or natural gas usage and to render a bill for such usage.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit, nonresidential rental unit, or campsite when such equipment is not owned or controlled by the electric or natural gas utility serving the apartment house, office building, shopping center, or campground in which the dwelling unit, nonresidential rental unit, or campsite is located.

"Tenant" means the occupant ~~or occupants~~ or residential or nonresidential unit owner of a submetered dwelling, ~~rental~~ unit, or campsite.

"Utility" means the supplier of electric service or natural gas service to a master meter.

20VAC5-305-20. General requirements.

Residential and nonresidential unit owners shall be considered tenants for billing requirements and all other rules in this chapter related to submetering or energy allocation equipment.

Submetering or energy allocation equipment may not be used in any dwelling unit unless all dwelling units in the apartment house utilize such equipment to the extent permitted by the physical facilities.

Any individual nonresidential rental unit, store, or campground may utilize submetering or energy allocation equipment, provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit, store, or campsite is or will be using submetering or energy allocation equipment.

All rental agreements and leases between the owner and the tenants shall clearly state that the dwelling unit, nonresidential rental unit, or campsite utilizes submetering or energy allocation equipment, that the basis of bills for electric or natural gas consumption will be rendered based on readings of such equipment, and that any disputes relating to the amount of the tenant's bill and the accuracy of the equipment will be between the tenant and the owner. Where applicable, the provisions of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia) will govern the landlord-tenant relationship concerning the use of submetering

or energy allocation equipment on all related issues other than those covered by these rules.

Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electrical energy or natural gas consumed by tenants.

Any electric submeter installed will be of a type and class to register properly the electrical consumption of the dwelling unit, nonresidential rental unit, or campsite, and such meter will meet the standards of the American National Standards Institute, Inc., Standard C12.1-2008 Code for Electricity Metering (ANSI C12.1).

Any natural gas submeter installed will be of a type and class to register properly the natural gas consumption of the dwelling, nonresidential rental unit, or campsite, and such meter will meet the standards of the American National Standard Institute Standards ANSI B109.1 (2000) and B109.2 (2000) for Diaphragm Type Gas Displacement Meters and ANSI B109.3 (2000) for Rotary Type Gas Displacement Meters (hereafter, ANSI B109).

Any energy allocation equipment installed will be of a type and class appropriate to the heating, ventilation, and air conditioning (HVAC) system of the apartment house, office building, shopping center, or campground and used in accordance with the manufacturer's installation specifications and procedures for such energy allocation equipment.

Any owner installing submetering or energy allocation equipment shall notify the commission and the utility providing electric or natural gas service to the apartment house, office building, shopping center, or campground in writing within 90 days of completion of such installation that the equipment has been installed and shall give the name of the apartment house, office building, shopping center, or campground; number of dwelling units, nonresidential rental units, or campsites in the project; location; mailing address of the owner; the approximate date of installation of the equipment; and the type, manufacturer, and model number of such equipment.

Natural gas submetering and energy allocation equipment, including related piping and materials, for which the owner is responsible shall be installed, operated, and maintained by the owner in conformity with all municipal, state, and federal requirements, including ~~but not limited to~~ § 56-257.2 of the Code of Virginia, and with the 2006 edition of the National Fuel Gas Code.

No building ~~or buildings which qualify~~ that qualifies as an apartment house, office building, or shopping center shall be excluded from this chapter because the apartment house, office building, or shopping center contains a mixture of dwelling units and nonresidential rental units.

VA.R. Doc. No. R25-8108; Filed November 19, 2024, 9:26 a.m.

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: **20VAC5-340. Rules Governing Shared Solar Program (amending 20VAC5-340-10 through 20VAC5-340-90, 20VAC5-340-110; adding 20VAC5-340-65; repealing 20VAC5-340-100).**

Statutory Authority: §§ 12.1-13 and 56-594.3 of the Code of Virginia.

Effective Date: January 1, 2025.

Agency Contact: Matthew Unger, Senior Analyst, Division of Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9849, FAX (804) 371-9350, or email matthew.unger@scc.virginia.gov.

Summary:

This action implements Chapters 715, 716, 763, and 765 of the 2024 Acts of Assembly and (i) extends the existing program to customers of a Phase I Utility, (ii) increases the caps on participation by customers of a Phase II Utility, and (iii) requires the commission to recalculate the minimum bill that prescribes the amount a participating customer must pay the utility each month after accounting for any bill credits.

Changes to the proposed regulation modify the definition of "substantial completion" and require a Phase II Utility to notify the commission when 90% of the part one aggregate shared solar capacity has been subscribed and the related project construction is substantially complete.

AT RICHMOND, NOVEMBER 25, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2024-00122

Ex Parte: In the matter of amending regulations

governing shared solar programs

ORDER ADOPTING REGULATIONS

The Regulations Governing Shared Solar Program, 20VAC5-340-10 et seq. ("Shared Solar Rules"), adopted by the State Corporation Commission ("Commission") pursuant to Code § 56-594.3, establish the requirements for customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") to participate in shared solar projects.[1] The Shared Solar Rules include, inter alia, requirements for licensing and registration of subscriber organizations, billing and payment, and dispute resolution.

Chapters 715, 716, 763 and 765 of the Virginia Acts of Assembly, 2024 Session (collectively, "2024 Shared Solar Legislation") amended Code § 56-594.3 and enacted new Code

§ 56-594.4, effective July 1, 2024. The 2024 Shared Solar Legislation modified certain statutory provisions applicable to Dominion's shared solar program and directed the establishment of a similar program for customers of Appalachian Power Company ("APCo"). Additionally, the 2024 Shared Solar Legislation directs the Commission to recalculate the minimum bill that prescribes the amount a participating customer must pay to the utility each month after accounting for any bill credits.

In consideration of the 2024 Shared Solar Legislation, the Commission established this proceeding on August 8, 2024. Commission Staff ("Staff") proposed amendments to the Shared Solar Rules ("Proposed Amendments"). Interested persons were provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Amendments on or before September 26, 2024. Staff was required to file a report on or response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Amendments on or before October 10, 2024.

NOW THE COMMISSION, upon consideration of the matter,[2] is of the opinion and finds that a Final Rule should be adopted. The Commission appreciates the time and thought that went into the many comments received. While the Commission has fully considered the record, it will only address herein the primary issues they raised and how they are considered in the appended Final Rule.[3]

The Commission first wishes to echo Staff's observation that the 2024 Shared Solar Legislation is designed to get these shared solar projects online, rather than simply hold a spot in the queue.[4] To accomplish this, Staff's Proposed Amendments, among other things, proposed a definition of "substantial completion" in 20VAC5-340-20 and suggested corresponding revisions in 20VAC5-340-40 to avoid what one commenter accurately described as "queue squatting."[5]

Substantial Completion

The Proposed Amendments included this definition:

> "Substantial Completion" means all requirements for interconnection with the electric transmission or distribution system have been met and it is signified by a letter from the utility authorizing the shared solar facility to interconnect, energize, and operate. The utility must provide this letter to the shared solar facility as soon as reasonably practical, but no later than 30 days after final interconnection.

Additionally, the Proposed Amendments revised the timeframes in 20VAC5-340-40 E applicable to projects in the queue by tying them to substantial completion rather than mechanical completion as follows:

> E. If a project approved January 1, 2025 or after fails to reach ~~mechanical~~ substantial completion within 24 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of $~~2~~75 per kW to maintain its position within the program queue. If, after paying the additional deposit, the project still fails to reach ~~mechanical~~ substantial completion within an additional ~~12~~4 months, the utility shall remove the project from the program queue.

Some commenters expressed concern that this framework would: (1) unfairly "change the game" for developers currently in the queue by shortening the applicable timeframes;[6] and (2) possibly penalize developers for things beyond their control if the utility does not act expeditiously to provide a letter from the utility authorizing the shared solar facility to interconnect, energize, and operate after final interconnection.[7] These commenters expressed a preference for maintaining the two separate standards, one tying to substantial completion and one tying to mechanical completion, to address these concerns. Instead, the Commission will: (1) use "substantial completion" as a benchmark; (2) define the term so as to contemplate validation by the utility that the project may be interconnected but not require "final interconnection;" (3) provide an additional year to developers in the program queue as of January 1, 2025 and earlier; and (4) provide for tolling of the time in the queue if the utility must delay proceeding with the interconnection for reasons beyond the utility's control.[8] Specifically, as compared to the Proposed Amendment definition, the Final Rule states:

> "Substantial Completion" means all requirements for interconnection with the electric transmission or distribution system have been met by the shared solar facility and it is signified by a letter or comparable written document from the utility ~~authorizing~~ signifying that the shared solar facility has been constructed consistent with applicable standards for ~~to~~ interconnection~~, energize, and operate~~. The utility must provide this letter to the shared solar facility as soon as reasonably practical, but no later than 30 days after the Commissioning Test, as set forth in 20VAC5-314-90, or comparable project milestone ~~final interconnection~~.

Further, 20VAC5-340-40 E in the Final Rule now provides:

> E. If a project approved January 1, 2025 or after fails to reach ~~mechanical~~ substantial completion within 24 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of $75 per kW to maintain its position within the program queue. If, after paying the additional deposit, the project still fails to reach ~~mechanical~~ substantial completion within an additional 9~~12~~ months, the utility shall remove the project from the program queue. However, if the subscriber organization notifies the utility that it is prepared to proceed with Commissioning Tests, as set forth in 20VAC5-314-90, or comparable project milestone, and the utility must delay

proceeding with the interconnection for reasons beyond the utility's control, the time periods above and in subsection -40 E 1 are tolled until the utility is able to proceed with the interconnection.

1. If projects approved prior to January 1, 2025, fail to reach substantial completion within 36 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of $25 per kW to maintain its position within the program queue for up to an additional 12 months.

Opening Up Additional Capacity

Commenters expressed concern that the Proposed Amendments did not provide enough specificity as to the process for how up to 150 megawatts of additional capacity will be made available in Dominion's service territory.[9] To address this, the Final Rule includes a new 20VAC5-340-40 G, which requires Dominion to notify the Commission when 90% of the part one aggregate capacity has been subscribed and the related project construction is substantially complete. Additionally, 20VAC5-340-40 F now requires that the anticipated or achieved substantial completion date for these projects will be provided in the publicly available information maintained on the Company's website.

Minimum Bill[10]

In response to comments requesting further detail as to how the minimum bill will be quantified, the Final Rule explicitly recognizes that avoided costs, among other things already identified in 20VAC5-340-80, should be considered in the Commission's determination of costs and benefits. However, the Commission declines to further limit the factors it may consider at this time. Given the nascent stages of shared solar development and implementation of this program, the Commission will instead fully investigate these factual issues, as required by law, in the context of a fully litigated proceeding.

More specifically, Chapter 715 of the Shared Solar Legislation directed this Commission to initiate a proceeding to recalculate the minimum bill consistent with additional factors prescribed therein. Chapter 715 further prescribes when these proceedings must occur for the Commonwealth's two largest utilities, APCo and Dominion. As required by Va. Code § 56-594 E, the Commission is currently conducting a net metering proceeding for APCo in Case No. PUR-2024-00161. Within 30 days of the final order in such proceeding, the Commission will initiate the required separate proceeding to establish APCo's minimum bill. The Commission will similarly conduct a net metering proceeding for Dominion pursuant to the same statute in 2025. Within 30 days of the final order in Dominion's net metering proceeding, the Commission will initiate a separate proceeding to establish Dominion's own minimum bill.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules Governing Shared Solar Program, 20VAC5-340-10 et seq. are amended as shown in Attachment A to this Order and shall become effective on January 1, 2025.

(2) The Commission's Division of Information Resources shall forward a copy of this Order to the Office of the Registrar 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.

(4) On or before December 31, 2024, Dominion and APCo shall file in this docket, with the Clerk of the Commission, any revised tariff provisions necessary to implement the regulations adopted herein and shall also provide a copy of the document containing the revised tariff provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: scc.virginia.gov/pages/Case-Information.

(5) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (4).

(6) The Motions of the Coalition for Community Solar Access and Summit Ridge Energy, LLC are denied.

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

---

[1] Commonwealth of Virginia, ex rel. State Corporation Commission, ExParte: In the matter of establishing regulations for a shared solar program pursuant to § 56-594.3 of the Code of Virginia, Case No. PUR-2020-00125, 2020 S.C.C. Ann. Rept. 574, Order Adopting Rules (Dec. 23, 2020).

[2] The Commission has fully considered the evidence and arguments in the record. See also Board of Supervisors of Loudoun County v. State Corp. Comm'n, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

[3] In addition to the revisions discussed herein, the Final Rule also modifies 20VAC5-340-40 C to replace "low-income subscription requirements" with "low-income subscription plan" in order to be consistent with the existing definition contained in 20 VAC 5-340-20.

[4] Staff Report at 5. For example, this is evidenced in the 2024 Shared Solar Legislation's requirement that the Commission find that at least 90 percent of Dominion's Phase I is "substantially complete" before expanding the program. Code § 56-594.3 E.

[5] Apex Comments at 6.

[6] See Shared Solar Advocates Comments at 26-28; Dimension Energy Comments at 6-7; Summit Ridge Energy, LLC Comments at 8-9; Appalachian Voices Comments at 7-8; Nexamp Comments at 1-2.

[7] See Shared Solar Advocates Comments at 26; Dimension Energy Comments at 4; Summit Ridge Energy, LLC Comments at 9; Appalachian Voices Comments at 6; Apex Clean Energy Comments at 3-4.

[8] On October 29, 2024, the Coalition for Community Solar Access and Summit Ridge Energy, LLC each filed motions for leave to file comments in response to the Staff Report, requesting that the Commission not retroactively change the framework set forth in 20 VAC 5-340-40. In addition, Apex Clean Energy

and RWE Clean Energy each filed letters in support of the motions. As we have revised this language in the Final Rule to address developers' concerns, which were raised previously over the course of this proceeding, we will deny these motions as moot.

[9] Comments of Senator Scott A. Surovell at 2; Comments of Delegate Richard C. Sullivan, Jr. at 2.

[10] The Commission notes that the 2024 Shared Solar Legislation requires the Commission to initiate proceedings to set and/or revise the minimum bill no later than 30 days after our final orders in the net metering proceedings required by Code § 56-594. APCo's net metering proceeding is ongoing in Case No. PUR-2024-00161. Dominion's case will be initiated by a filing to be made on or before May 1, 2025.

20VAC5-340-10. Applicability.

A. This chapter is promulgated pursuant to ~~§~~ §§ 56-594.3 and 56-594.4 of the Code of Virginia. The provisions of this chapter apply to Phase I Utilities, Phase II Utilities, subscriber organizations, and subscribers. The provisions of this chapter govern the development of shared solar facilities and participation in the shared solar program.

B. ~~The maximum cumulative size~~ For a Phase I Utility, the maximum aggregate capacity of the shared solar program shall be 50 megawatts or 6.0% of peak load, whichever is less.

C. For a Phase II Utility, part one aggregate capacity of the shared solar program ~~initially~~ shall ~~not exceed 150~~ be 200 megawatts~~, at least 30% of which must be comprised of low-income customers~~. The program shall be expanded as part two by ~~50~~ up to 150 megawatts upon ~~qualification of satisfying the 30% requirement of low-income participation~~ a State Corporation Commission determination [in response to a notification filed consistent with 20VAC5-340-40 G] that at least 90% of the part one aggregate capacity has been subscribed and that project construction is substantially complete. In part two of the shared solar program, no more than 51% of up to 75 megawatts of aggregated capacity shall serve low-income customers.

~~C.~~ D. Any shared solar facility may colocate on the same parcel of land as another shared solar facility only if such facilities are owned by the same entity and do not exceed an accumulative maximum capacity of 5,000 kilowatts among all such facilities. Such facilities will also be responsible for any special interconnection arrangements with the utility.

~~D.~~ E. Customers participating in this program shall remain in ~~their~~ the customer's present customer class but may not participate in the multi-family solar program, pursuant to Chapters 1187, 1188, 1189, and 1239 of the 2020 Acts of Assembly, or the net metering program, pursuant to 20VAC5-315, while participating in this program.

~~E. Each utility~~ F. A Phase I Utility must file any tariffs, agreements, or forms necessary for implementation of the program ~~within 60 days of the utility's full implementation of a new customer information platform or~~ by July 1, ~~2023, whichever occurs first, to process customer subscriptions~~ 2025. A Phase II Utility must file updated tariffs, agreements, or forms necessary for implementation of the program by December 1, 2025. Subscriber organizations may apply for licenses, register projects, interact with potential customers, and otherwise develop shared solar projects beginning in 2021.

~~F.~~ G. The provisions of this chapter shall be deemed not to prohibit the Phase I Utility or Phase II Utility, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The ~~commission~~ State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

~~G.~~ H. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon such terms and conditions as the State Corporation Commission may ~~impose~~ require.

20VAC5-340-20. Definitions.

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

"Administrative cost" means the reasonable incremental cost to the investor-owned utility to process subscriber bills for the program.

"Affordable housing provider" means any multi-family residential housing project that is one or more of the following:

1. A federal, state, or local financing program requiring that the real estate remains subject to land use restriction and rental housing affordability covenants that limit allowable rents charged to individuals or families;

2. A federal low-income housing tax credit project, as defined in § 42 of the Internal Revenue Code of 1986;

3. A project funded with federal grants made to states for low-income housing tax credits under § 1602 of the American Recovery and Reinvestment Act of 2009;

4. A rental assistance demonstration public housing conversion under the federal Consolidated and Further Continuing Appropriations Act of 2020; or

5. Affordable housing meeting the applicable requirements of another federal, state, or local program.

"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate used to calculate the subscriber's bill credit.

"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.

"Commission" means the State Corporation Commission.

"Dual-use agricultural facility" means agricultural production and electricity production from solar photovoltaic panels occurring simultaneously on the same property.

"Gross bill" means the amount that a customer would pay to the utility based on the customer's monthly energy consumption before any bill credits are applied.

"Incremental cost" means any cost directly caused by the implementation of the shared solar program that would not have occurred absent the implementation of the shared solar program.

"Low-income customer" means any person or household whose income is no more than 80% of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.

"Low-income service organization" means a nonresidential customer of an investor-owned utility whose primary purpose is to serve low-income individuals and households.

"Low-income shared solar facility" means a shared solar facility at least 30% of the capacity of which is subscribed by low-income customers or low-income service organizations.

"Low-income subscription plan" means a plan submitted to the commission by an applicant providing a commitment for low-income subscription and demonstrating the ability to subscribe low-income customers.

"Minimum bill" means a dollar per month amount determined by the commission ~~under § 56-594.3 D of the Code of Virginia~~ that ~~subscribers are~~ a subscriber is required to pay, at a minimum, on ~~their~~ the subscriber's utility bill each month after accounting for any bill credits.

"Net bill" means the resulting amount a customer must pay the utility after deducting the bill credit from the customer's monthly gross bill.

"Non-ministerial ~~permit"~~ permits" means all necessary governmental permits and approvals to construct the project (other than ministerial permits, such as electrical and building permits), notwithstanding any pending legal challenges to one or more permits or approvals.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"REC" means a Renewable Energy Certificate originating from a renewable energy [portfolio] standard eligible source as defined in subdivision C of § 56-585.5 of the Code of Virginia.

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 5,000 kilowatts of alternating current;

2. Is ~~located in the service territory of an investor-owned electric utility~~ interconnected with the distribution system of a Phase I Utility or Phase II Utility in the Commonwealth;

3. ~~Is connected to the electric distribution grid serving the Commonwealth~~ Has at least three subscribers;

4. Has at least ~~three subscribers;~~ 40% of its capacity subscribed by customers with subscriptions of 25 kilowatts or less; and

~~5. Has at least 40% of its capacity subscribed by customers with subscriptions of 25 kilowatts or less; and~~

~~6.~~ 5. Is located on a single parcel of land.

"Shared solar program" or "program" means the program created through this chapter to allow for the development of shared solar facilities.

"Subscriber" means a retail customer of a utility that (i) owns one or more subscriptions of a shared solar facility that is interconnected with the utility and (ii) receives service in the service territory of the same utility in whose service territory the shared solar facility is ~~located~~ interconnected.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility. A subscriber organization licensed with the commission, unless otherwise exempt or granted a waiver from the commission, shall be eligible to own or operate shared solar facilities in more than one investor-owned utility service territory. A Phase I Utility or Phase II Utility shall not be a subscriber organization.

"Subscribed" means, in relation to a subscription, that a subscriber has made initial payments or provided a deposit to the owner of a shared solar facility for such subscription.

"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill for the customer account to which the subscription is attributed.

"Substantial completion" means all requirements for interconnection with the electric transmission or distribution system have been met [~~. Substantial completion~~ by the shared solar facility and] is signified by a letter [or comparable written document] from the utility [~~authorizing~~ signifying that] the shared solar facility [~~to interconnect, energize, and operate~~ has been constructed consistent with applicable standards for interconnection.] The utility must provide this letter to the shared solar facility as soon as reasonably practical, but no later than 30 days after [~~final interconnection~~ the

commissioning test, as set forth in 20VAC5-314-90, or comparable project milestone.]

"Utility" means ~~a~~ the respective Phase I Utility or Phase II Utility.

20VAC5-340-30. Licensing of subscriber organizations.

A. Each entity seeking to conduct business as a subscriber organization, unless otherwise exempt or granted a waiver from the commission, shall obtain a license from the commission prior to commencing business operations. Each entity applying for a license to conduct business as a subscriber organization shall file an application with the ~~clerk of the~~ commission and contemporaneously provide a copy of the application to the utility. Applications for licensure shall be filed by the legal entity with control of, or prospective control of, shared solar projects rather than each individual project needing a separate license. If the applicant becomes aware of any material changes to any information while the application is still pending, the applicant shall inform the commission within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant, as well as any trade names.

2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.

3. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).

4. Name and business address of all principal corporate officers and directors, partners, and limited liability company (LLC) members, as appropriate.

5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states in which the applicant and the applicant's affiliates conduct business related to participation in a shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. The applicant shall disclose if it is an affiliate of the incumbent utility. If it is, it shall further provide a description of internal controls the applicant has designed to ensure that ~~it~~ the applicant and its employees, contractors, and agents that are engaged in the ~~(i) merchant~~:

a. Merchant, operations, transmission, or reliability functions of the electric generation systems; or

~~(ii) customer~~ b. Customer service, sales, marketing, metering, accounting, or billing functions~~,~~ do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated subscriber organization an undue advantage over nonaffiliated subscriber organizations.

8. Name, title, and address of the applicant's registered agent in Virginia for service of process.

9. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

10. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. If available, proof of a minimum bond rating or other senior debt of at least "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.

b. If available, the applicant's audited balance sheet, income and cash flow statements for the most recent fiscal year, or published financial information such as the most recent Securities and Exchange Commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provide financial resources to the applicant may be provided.

c. If applicable, information to demonstrate that the applicant is a bona fide nonprofit entity. The information provided shall establish that the applicant (i) has the status of a tax-exempt organization under § 501(C)(3) of the Internal Revenue Code of 1986; (ii) conducts ~~its~~ the applicant's activities in a manner that serves public or charitable purposes rather than commercial purposes; (iii) will apply for qualification of projects that serve primarily or exclusively low-income customers; and (iv) was not created for the purpose of avoiding the financial fitness requirements or otherwise under the control of a for profit entity.

11. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. A description of the applicant's experience developing solar facilities and engaging as a subscriber organization or other relevant services. Provide a discussion of the applicant's qualifications, including a summary of other projects developed and managed by the applicant with location, status, and operational history.

b. The names and a description of the managerial and technical experience of each principal officer and appropriate senior management person with direct responsibility for the business operations conducted in Virginia. Include a description of ~~their~~ the person's

experience related to developing solar facilities and providing shared solar services.

c. Billing service options the applicant intends to offer and a description of the applicant's billing capability, including a description of any related experience.

d. A copy of the applicant's dispute resolution procedure, including the business website, email address, mailing address, and toll-free number for the customer service department.

~~12. A copy of the applicant's dispute resolution procedure, including the toll-free number for the customer service department.~~

~~13.~~ 12. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

~~14.~~ 13. A $250 registration fee payable to the commission.

~~15.~~ 14. The following information related to the applicant's fitness to operate as a subscriber organization:

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant, any of ~~its~~ the applicant's affiliates, or any officer, director, partner, or member of an LLC or any of ~~its~~ the LLC's affiliates, pursuant to any state or federal law or regulation; and (ii) felony convictions within the previous five years that relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct a similar type of business as ~~it~~ the applicant proposes to offer in Virginia has ever been denied, and whether any license or authority issued to ~~it~~ the applicant or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

~~16.~~ 15. A copy of the applicant's low-income subscription plan, as applicable.

B. An officer with appropriate authority shall attest that all information supplied on the application for licensure is true and correct and that, if a license is granted, the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Any application that fails to provide all required information in this section shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as a subscriber organization, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as a subscriber organization upon finding the applicant satisfies the requirements established by this chapter.

E. A license granted pursuant to this chapter is valid until revoked or suspended by the commission after providing due notice and an opportunity for a hearing, or until the subscriber organization abandons its license.

F. ~~Commission approval~~ Approval of the commission is required for transfer or assignment of a license issued under this section to any third party. The commission may condition its approval on any terms it determines appropriate to protect customers.

20VAC5-340-40. Registration with the utility.

A. Subscriber organizations~~,~~ that are licensed ~~or otherwise~~, exempted, or granted a waiver from the commission consistent with 20VAC5-340-30 shall register each proposed shared solar facility with the utility by ~~entering into an agreement containing information as prescribed in this section. B. A subscriber organization shall provide~~:

1. Providing proof of licensure, exemption, or waiver by the commission, as applicable.

~~C. A subscriber organization shall submit~~ 2. Submitting to the utility the full name of the subscriber organization, address, and type of entity (e.g. partnership, corporation, etc.).

~~D. Subscriber organizations shall provide~~ 3. Providing the identity of the shared solar facility participating in the shared solar program, including an address of record and a copy of the executed ~~interconnection agreement~~ Small [~~Generation~~ Generator] Interconnection Agreement or an Interconnection Service Agreement [as defined by the regional transmission operator] for the shared solar facility. Subscriber organizations also shall state the amount of capacity for the facility~~, meeting or exceeding the minimum of 30%~~, including any percentage that will be subscribed by low-income subscribers and provide proof that non-ministerial permits have been obtained for the shared solar facility. Subscriber organizations shall also state the facility's anticipated substantial completion date.

~~E.~~ 4. For a low-income shared solar facility, the subscriber organization shall provide a copy of its low-income subscription plan, as applicable.

~~F. Subscriber organizations and the utility shall exchange~~ 5. Providing the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues, and the names and addresses of their registered agents in Virginia.

~~G.~~ 6. In the event a license granted under 20VAC5-340-30 is transferred to another entity with approval from the commission, the subscriber organization must notify the

utility within five business days of approval by the commission.

~~H. The utility may require~~ 7. Providing reasonable financial security ~~from the subscriber organization~~ if required by the utility to safeguard the utility and its customers from the reasonably expected net financial impact due to the nonperformance of the subscriber organization. The amount of such financial security shall be commensurate with the level of risk assumed by the utility [but shall not be greater than $50 per kilowatt (kW) alternating current]. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the utility and the subscriber organization. ~~I.~~ Subscriber organizations deemed bona fide nonprofits shall be exempt from [~~the $50 per kilowatt alternating current~~ any] security deposit or [~~surety~~] bond.

B. The utility shall provide to the subscriber organization the names, telephone numbers, and email addresses of appropriate internal points of contact to address operational, business coordination, and customer account issues.

C. The utility shall notify the subscriber organization within 30 days after the subscriber organization submits a shared solar facility registration to the utility whether the shared solar facility has been awarded capacity in the program queue or placed on a waiting list. When awarded capacity in the program queue, [if required by the utility,] the subscriber organization shall pay to the utility a security deposit or [~~surety~~] bond, [whichever the subscriber organization chooses,] in [~~the~~ an] amount [determined by the utility] of [up to] $50 per [~~kilowatt (kW)~~ kW] of alternating-current (AC) rated capacity of the shared solar facility within 10 days. ~~This deposit~~ Security deposits shall be held by the utility in an interest-bearing account. Deposits shall be returned in full, including interest, upon commercial operation of the shared solar facility and demonstration that [the subscriber organization has satisfied its] low-income subscription [~~requirements have been met~~ plan commitments]. ~~As program capacity is awarded, the utility shall ensure that the cumulative capacity of such projects meets or exceeds 30% of project capacity (or savings equivalent) for low-income customers as demonstrated by approved low-income subscription plans. Subscriber organizations deemed bona fide nonprofits shall be exempt from the $50 per kW alternating current (AC) utility deposit.~~

~~J.~~ D. Shared solar facility meter requirements. A shared solar facility must have a utility-provided meter capable of measuring output of the facility on a 30-minute interval basis.

1. The shared solar facility's meter shall not be located behind another utility customer account.

2. Costs of installation, maintenance, and reading of the meter shall be billed to the subscriber organization.

E. If a project [approved January 1, 2025, or later] fails to reach ~~mechanical~~ substantial completion within 24 months of the date ~~it~~ the project was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of ~~$25~~ $75 per kW to maintain its position within the program queue. If, after paying the additional deposit, the project still fails to reach ~~mechanical~~ substantial completion within an additional ~~12~~ [~~four~~ nine] months, the utility shall remove the project from the program queue. [However, if the subscriber organization notifies the utility that the subscriber organization is prepared to proceed with the commissioning tests, as set forth in 20VAC5-314-90, or comparable project milestone, and the utility must delay proceeding with the interconnection for reasons beyond the utility's control, the time periods in this subsection will be tolled until the utility is able to proceed with the interconnection.

If a project approved prior to January 1, 2025, fails to reach substantial completion within 36 months of the date it was awarded capacity, the utility shall remove the project from the program queue unless the subscriber organization of the project provides to the utility an additional deposit of $25 per kW to maintain its position within the program queue for an additional 12 months.]

~~K.~~ F. The utility shall maintain, on a publicly available website, a list of projects accepted into the program queue and those projects that are on the wait list. ~~This project list shall rank projects primarily by the date of the awarded capacity and secondarily by the date of a fully executed interconnection agreement. The utility shall update the list within two business days of any change to the projects in the program queue.~~ The list shall include project applicant name, project location, the alternating current capacity rating of the project, the date the application was accepted into the program queue, and ~~whether the project is a low-income shared solar facility. L.~~ [either] the date [the project is anticipated to reach substantial completion or the date] the project reached substantial completion.

1. For each accepted project in the program queue, the project list shall rank projects primarily by the date of the awarded capacity and secondarily by the date of anticipated substantial completion. [Any subscriber organization with a project in the program queue shall notify the utility within 10 days of any reduction in a project's anticipated installed AC capacity or its ability to achieve the anticipated substantial completion date.] The utility shall update the list within two business days of any change to the [~~primary project dates~~ date of awarded capacity] in the program queue, and within 14 business days of any change to the [~~secondary project~~] date [of substantial completion].

2. For each wait-listed project in the program queue, the list shall rank projects by the date the project was placed on the

wait list. [For a Phase II Utility's program, a single project may have some portion of its capacity allocated to the utility's part one aggregate capacity and the remaining portion allocated to the utility's part two aggregate capacity.]

G. [Once 90% of the part one aggregate capacity for a Phase II Utility has been subscribed and the related project construction is substantially complete, the Phase II Utility shall file a notification of this occurrence with the commission.

H.] Any project on the wait list that is moved off the wait list and receives a capacity award in the program queue shall have 10 business days to make the required deposit of $50 per kW of alternating-current rated capacity to retain the project's award.

~~M.~~ [~~H.~~ I.] As part of its public program queue, the utility shall monitor and report the amount of capacity that has been allocated to low-income customers, which also shall be published on the utility's website. ~~Upon qualification of 45 megawatts (MW) of alternating current (AC) of capacity committed to low-income subscribers as demonstrated by the approved low-income subscription plans of projects that have secured capacity in the program, the utility shall submit a request to the commission to release an additional 50 MW of capacity for the program, which~~ Capacity shall be released without undue delay and allocated first to projects on the wait list and, if capacity remains, to new applicants on a first-come, first-served basis following the registration requirements and process set forth in this section.

[~~I.~~ J.] Certain shared solar program projects shall be entitled to receive incentives, as established by the Virginia Department of Energy, when they are located on rooftops, brownfields, or landfills; are dual-use agricultural facilities; or meet the definition of another category established by the Department of Energy.

20VAC5-340-50. Marketing and enrollment.

A. A subscriber organization shall not conduct any marketing activities related to participation in the shared solar program until after the subscriber organization ~~(i) receives~~:

1. Receives a license, exemption, or waiver from the commission; and

~~(ii) has~~ 2. Has begun registration with the utility, as set forth in 20VAC5-340-40.

B. A subscriber organization shall not enroll subscribers until ~~after the earlier of when the utility's customer information system is operating or July 1, 2023, and the project receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70 and any other applicable local and state permits for the shared solar facility.~~ the project receives the executed Small Generator Interconnection Agreement pursuant to 20VAC5-314-40 through 20VAC5-314-70, [~~non-ministerial permits, and any~~ ~~ministerial~~ all required] permits for the shared solar facility, and:

1. For a Phase I Utility, after July 1, 2025; or

2. For a Phase II Utility, after July 1, 2023.

C. A subscriber organization shall not use credit checks as a means to establish the eligibility of a residential customer to become a subscriber.

D. A subscriber organization is prohibited from credit reporting and charging early termination fees for any low-income customer receiving service from a Phase II Utility.

E. A subscriber organization shall maintain adequate records allowing it to verify the customer's enrollment authorization. Authorization shall be in the form of a written contract with affirmed written signature, electronic signature, or recorded verbal affirmation. The subscriber organization shall maintain a copy of the contract for at least one year after the date of expiration. Such enrollment contracts shall be provided within five business days to the customer, the utility, or the commission staff upon request.

~~E.~~ F. A subscriber organization shall provide accurate and understandable information in any advertisements, solicitations, marketing materials, or customer service contracts. All such materials shall, in a manner that is not misleading, include a statement that price for the subscription does not include charges to be billed by the utility.

~~F.~~ G. A subscriber organization shall provide to prospective subscribers, prior to executing a written contract, consumer disclosure information and a description of how the shared solar program will function. Such description shall include explanations of the respective roles of the subscriber organization and the utility, and a detailed description of how customers will be billed, frequency of contract reviews, and methods of continued customer education and engagement.

~~G.~~ H. Subscriber contracts shall include, at a minimum, the following information:

1. Contract price expressed in per kilowatt-hour, or if price is not easily specified, an explanation of how the subscription price will be calculated.

2. Size of the subscriber subscription. The contract must address modification of subscriptions in the event a shared solar facility underperforms during a period.

3. Length of the contract.

4. Provisions for terminating the contract, including any termination fees.

5. Location of the shared solar facility.

6. Size of the shared solar facility.

7. Description of billing terms and conditions.

8. List of applicable fees, including start up fees, cancellation fees, late payment fees, and fees for returned payments for insufficient funds.

9. Clear descriptions of the responsibilities of the subscriber organization and the utility, consistent with this chapter.

10. Toll-free number and address for complaints and inquiries.

11. A clear statement that ~~(i) the~~:

a. The maximum size of the subscriber's subscription shall not exceed their estimated annual usage;

~~(ii) each~~ b. Each customer may [~~only participate in one shared solar facility or one multi-family solar facility; and~~ own one or more subscriptions of a shared solar facility;

c. A shared solar subscriber may not also participate in a multi-family solar facility; and]

~~(iii) a~~ [~~c.~~ d.] A net metering customer may not participate in this program.

12. In a conspicuous location, confirmation of the customer's authorization for the utility and subscriber organization to exchange, at a minimum, the following billing information:

a. Customer name;

b. Billing address and premise address;

c. Utility account number; and

d. Share solar subscription information, including, at a minimum:

(1) Pricing;

(2) Subscription size;

(3) Contract start date and length; and

(4) Terms of subscription.

13. In a conspicuous location, signatures confirming the customer's request to enroll and the approximate date the enrollment will be effective.

~~H.~~ I. Upon a subscriber's request, the subscriber organization may transfer the subscription to a new address under the existing contract without restriction provided the new address is also located in the utility's service territory. An existing subscriber may transfer the subscription to a new subscriber so long as the new subscriber meets applicable requirements established by the utility and subscriber organizations that exist at the time of transfer. The subscriber organization must provide the utility with updated billing information set forth in subdivision ~~F~~ H 12 of this section.

~~I.~~ J. The subscriber organization shall provide to the utility, in a format acceptable to the utility, an initial list of subscribers enrolled in the shared solar facility and their subscription information at least 60 days prior to the shared solar facility supplying service to any customer.

~~J.~~ K. In the event multiple enrollment requests are submitted for the same customer, the utility shall process the request with the earliest dated contract and shall notify the customer within five business days of receipt of the enrollment request of such enrollment. The utility shall only terminate enrollment with sufficient proof of termination presented by either the customer or the subscriber organization.

~~K.~~ L. At least 60 days prior to the termination or abandonment of a shared solar facility, a subscriber organization must provide advanced written notice to the customer, the utility, and the commission.

~~L.~~ M. A subscriber organization shall ~~safeguard~~ adequately safeguard all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as permitted currently or required by federal and state statutes.

~~M. A subscriber may remain subscribed to the program even if the subscriber moves to another location within the utility's territory and may transfer the subscription to a new subscriber so long as the new subscriber meets applicable requirements established by the utility and subscriber organizations that exist at the time of transfer.~~ N. Phase I Utility low-income customer net financial savings. The subscriber organization must ensure net financial savings of at least 10% relative to the subscription fee throughout the life of the subscription for a low-income customer. Any contract not meeting the 10% minimum on an annual basis must have the financial savings difference returned to the low-income customer in a lump sum payment.

20VAC5-340-60. ~~Billing~~ Phase I Utility: billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.

2. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.

3. Monthly subscriber information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

a. Data components;

b. Data format;

c. Timing of monthly data exchanges;

d. Encryption level; and

e. Channel of data submission.

B. A subscriber organization ~~may offer separate billing or consolidated billing service (net crediting) in which the utility will be the billing party to the customer~~ shall separately bill the subscriber for any applicable portion of the shared solar subscription fee.

~~1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.~~

~~2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.~~

~~3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.~~

C. Credits to ~~subscriber's~~ subscriber bills shall occur within two billing cycles following the cycle during which the energy was generated by the shared solar facility.

D. ~~Each~~ The utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

E. ~~Failure~~ Except for low-income customers, failure of a subscriber to pay any regulated charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including the potential requirement to post a security or disconnection of service. The utility shall ~~advise~~ provide a notice of intent to terminate service to the subscriber directly of any pending disconnection action for nonpayment, consistent with ~~current~~ the utility's practice~~, separate~~ as found in its approved tariff and 20VAC5-330, and this notice will occur separately from the customer bill. ~~Such notice~~ The bill shall clearly identify ~~clearly~~ the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges.

F. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.

2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill, minus the minimum bill, shall be carried over and applied to subsequent bills until the earlier of when the credit is satisfied or up to 12 months.

3. In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.

4. The commission shall establish the yearly applicable bill credit rate for the subscriber's residential, commercial, or industrial rate class.

5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.

6. The bill credits associated with the shared solar program shall be applied through the utility's fuel factor.

G. Minimum bill. ~~1.~~ In a proceeding, as prescribed in 20VAC5-340-80, the commission will ~~a~~ determine the specific costs and formula to determine the minimum bill for program participants.

~~2. Low-income customers shall be exempt from the minimum bill. Costs associated with such customers' participation shall be recovered by the utility in a manner to be determined by the commission in the proceeding set forth in 20VAC5-340-80.~~

~~H. Net crediting.~~

~~1. Net crediting functionality shall be part of any new customer information platform approved by the commission.~~

~~2. Under net crediting, the utility shall include the shared solar subscription fee on the customer's utility bill and provide the customer with a net credit equivalent to the total bill credit value for that generation period minus the shared solar subscription fee as set by the subscriber organization.~~

~~3. The net crediting fee shall not exceed 1.0% of the bill credit value.~~

~~4. Net crediting shall be optional for subscriber organizations, and any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.~~

~~I. Shared solar facility requirements. A shared solar facility must have a utility provided meter capable of measuring output of the facility on a 30-minute interval basis.~~

~~1. The shared solar facility's meter shall not be located behind another utility customer account.~~

~~2. Costs of installation, maintenance, and reading of the meter shall be billed to the subscriber organization.~~

H. Termination fees and credit reporting. Early termination fees and credit reporting are prohibited for any low-income customer.

I. Environmental attributes associated with a shared solar facility, including renewable energy [~~credits~~ certificates] or RECs.

1. Any renewable energy certificates associated with a shared solar facility shall be distributed to a Phase I Utility to be retired for compliance with such Phase I Utility's renewable portfolio standard obligations pursuant to § 56-585.5 C of the Code of Virginia. [Any contract between a subscriber organization and a participating customer must make clear that all RECs associated with a shared solar facility belong to the Phase I Utility only for compliance with such Phase I Utility's renewable portfolio standard obligation pursuant to § 56-585.5 C of the Code of Virginia.]

2. As directed by § 56-594.4 B 7 of the Code of Virginia, mandatory distribution or transfer to the utility of the previous calendar year's RECs, ending December 31, shall take place prior to the annual report filing date for FERC Form 1 as defined in 18 CFR [~~§~~] 141.1.

20VAC5-340-65. Phase II Utility: billing and payment.

A. Subscriber organizations shall provide subscriber information to the utility as follows:

1. Subscriber organizations must provide, on a monthly basis and in a standard electronic format and pursuant to this chapter, a subscriber list indicating the kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility.

2. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.

3. Monthly subscriber information must be provided by the fifth business day of the month.

4. Data transfer protocols for exchange of data between the subscriber organization and the utility shall be established to include:

a. Data components;

b. Data format;

c. Timing of monthly data exchanges;

d. Encryption level; and

e. Channel of data submission.

B. A subscriber organization may offer separate billing of its subscription fees or choose to use the utility's consolidated billing service.

C. Consolidated billing will reflect net crediting, as set forth in subsection I of this section, and the utility will be the billing party to the customer.

1. Where a subscriber organization chooses to use consolidated billing, the subscriber organization's marketing materials and contracts must identify clearly that the utility may charge a net crediting fee not to exceed 1.0% of the bill credit value.

2. Where a subscriber organization chooses to use net crediting, any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

3. All billing of the customer shall occur and comply with the utility's normal billing and credit cycles.

D. Credits to subscriber bills shall occur within two billing cycles following the cycle during which the energy was generated by the shared solar facility.

E. The utility shall, on a monthly basis and in a standardized electronic format, provide the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month, as well as the amount of the bill credit applied to each subscriber.

F. [~~Except for low-income customers, failure~~ Failure] of a subscriber to pay any regulated charges shall subject the subscriber to the same credit consequences set forth in the utility's commission-approved terms and conditions of service, including the potential requirement to post a security or disconnection of service. The utility shall provide a notice of intent to terminate service to the subscriber directly of any pending disconnection action for nonpayment consistent with the utility's practice as found in its approved tariff and 20VAC5-330, and this notice of intent to terminate service will occur separately from the customer bill. The bill shall clearly identify the amount that must be paid and the date by which such amount must be received and provide instructions for direct payment to the utility to avoid disconnection. A subscriber may not be disconnected for nonpayment of unregulated service charges. [Low-income customers shall not be subject to early termination fees or credit reporting by the utility or a subscriber organization.]

G. Bill credits.

1. Bill credits shall be for a particular calendar month, regardless of the billing period or billing cycle of the individual customer's account.

2. Bill credits shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any portion of a bill credit that exceeds the subscriber's monthly bill, minus the minimum bill, shall be carried over and applied to

subsequent bills until the earlier of when the credit is satisfied or up to 12 months.

3. In the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month, a subscriber organization may accumulate bill credits. The subscriber organization shall provide the utility allocation instructions for distributing excess bill credits to subscribers on an annual basis.

4. The commission shall establish the yearly applicable bill credit rate for the subscriber's residential, commercial, or industrial rate class.

5. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational.

6. The bill credits associated with the shared solar program shall be applied through the utility's fuel factor.

H. Minimum bill.

1. In a proceeding, as prescribed in 20VAC5-340-80, the commission will determine the specific costs and formula to determine the minimum bill for program participants.

2. Low-income customers shall be exempt from the minimum bill. Costs associated with low-income customer participation shall be recovered by the utility in a manner to be determined by the commission in the proceeding set forth in 20VAC5-340-80.

I. Net crediting.

1. Net crediting functionality shall be part of any new customer information platform approved by the commission.

2. Under net crediting, the utility shall include the shared solar subscription fee on the customer's utility bill and provide the customer with a net credit equivalent to the total bill credit value for that generation period minus the shared solar subscription fee as set by the subscriber organization.

3. The net crediting fee shall not exceed 1.0% of the bill credit value.

4. Net crediting shall be optional for subscriber organizations, and any shared solar subscription fees charged via the net crediting model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill credits.

J. Environmental attributes associated with a shared solar facility, including renewable energy certificates or RECs.

1. A subscriber organization that registers a shared solar facility in the program within the first 200 megawatts alternating current of awarded capacity shall own all environmental attributes. At such subscriber organization's discretion, such environmental attributes may be distributed to subscribers, sold to load-serving entities with compliance obligations or other buyers, accumulated, or retired.

2. For a shared solar facility registered in the program after the first 200 megawatts alternating current of awarded capacity, the registering subscriber organization shall transfer renewable energy certificates to a Phase II Utility to be retired for compliance with such Phase II Utility's renewable portfolio standard obligations pursuant to § 56-858.5 C of the Code of Virginia. [Any contract between a subscriber organization and a participating customer must make clear that all RECs associated with a shared solar facility belong to the Phase II Utility only for compliance with such Phase II Utility's renewable portfolio standard obligations pursuant to § 56-585.5 C of the Code of Virginia.]

3. As directed by § 56-594.3 B 7 of the Code of Virginia mandatory distribution or transfer to the utility of the previous calendar year's RECs, ending December 31, shall take place prior to the annual report filing date for FERC Form 1 as defined in 18 CFR [~~§~~] 141.1.

20VAC5-340-70. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the shared solar program process according to the provisions of this section.

B. A subscriber organization shall establish an explicit dispute resolution procedure that ~~identifies~~ clearly identifies the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the commission upon request.

C. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies ~~it~~ the party may have in equity or law.

D. A subscriber organization shall furnish to customers ~~an~~ a website, email address, and mailing address and a 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the subscriber organization. The 24-hour toll-free telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.

E. A subscriber organization shall direct a customer to contact the utility immediately if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on ~~its~~ the subscriber organization's 24-hour toll-free telephone number.

F. A subscriber organization shall retain customer billing and account records and complaint records for at least three years

and provide copies of such records to a customer or the commission upon request.

G. In the event that a customer has been referred to the utility by a subscriber organization, or to a subscriber organization by the utility, for response to an inquiry or a complaint, the party that is contacted second shall ~~(i) resolve~~:

1. Resolve the inquiry or complaint in a timely fashion; or

~~(ii) contact~~ 2. Contact the other party to determine responsibility for resolving the inquiry or complaint.

H. In the event a subscriber organization and customer cannot resolve a dispute, the subscriber organization shall provide the customer with the toll-free number and address of the commission.

20VAC5-340-80. Minimum bill composition.

~~A.~~ The commission shall convene a proceeding to determine any monthly administrative charge and the components of the minimum bill.

With respect to the minimum bill:

1. Each subscriber, other than a low-income customer of a Phase II Utility, shall pay a minimum monthly bill, which shall, as approved by the commission, include the costs of all utility infrastructure and services used to provide electric service and administrative costs of the shared solar program. The commission may modify the minimum bill over time. ~~In establishing the minimum bill, the commission shall (i) consider further costs the commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers, and (ii) minimize the costs shifted to customers not in a shared solar program.~~

2. In establishing the minimum bill for a Phase I Utility, the commission shall:

a. Consider further costs the commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services;

b. Minimize the costs shifted to customers not in a shared solar program; and

c. Calculate the benefits of shared solar to the electric grid and to the Commonwealth [, including avoided costs,] and deduct such benefits from other costs.

3. In establishing the minimum bill for a Phase II Utility, the commission shall:

a. Consider further costs the commission deems relevant to ensure subscribing customers pay a fair share of the costs of providing electric services and generation sufficient to meet customer needs at all times;

b. Minimize the costs shifted to customers not in a shared solar program;

c. Calculate the benefits of shared solar to the electric grid and to the Commonwealth [, including avoided costs,] and deduct such benefits from other costs; and

d. Exempt low-income customers from the minimum bill.

4. The minimum bill components established as set forth in ~~subdivision 1~~ subdivisions 2 and 3 of this subsection and updated as deemed necessary by the commission shall be limited to such costs as determined by the commission to be just and reasonable based on evidence provided by the parties to the evidentiary hearing process. Such costs must reflect incremental costs of the shared solar program and not otherwise recovered by the utility from participating subscribers. The following factors shall be considered by the commission in determining whether costs proposed by the utility are incremental to the shared solar program and eligible for inclusion in the minimum bill:

a. The extent to which the costs are utility infrastructure and services used to provide electric service for the shared solar program;

b. The extent to which the costs are administrative costs of the shared solar program;

c. Whether including the cost in the minimum bill is necessary to ensure subscribing customers pay a fair share of the costs of providing electric services to the subscribers;

d. Whether including the cost in the minimum bill will minimize the costs shifted to customers not in a shared solar program; and

e. Whether including the cost in the minimum bill is otherwise consistent with the requirements of ~~§~~ §§ 56-594.3 and 56-594.4 of the Code of Virginia.

~~3.~~ 5. The commission shall also consider how the utility will recover the minimum bill charges for exempt low-income customers.

~~B. The bill credit shall be calculated in accordance with 20VAC5-340-60 F, and § 56-594.3 C of the Code of Virginia.~~

6. The commission shall explicitly set forth its findings as to each cost and benefit or other value used to determine the minimum bill.

20VAC5-340-90. Recordkeeping and reporting requirements.

A. Subscriber organizations. Prior to commercial operation of any shared solar facility, each subscriber organization shall report to the commission and the applicable utility its achievement of contracting with low-income customers. Thereafter, this report shall be updated and filed semi-annually with the commission by January 31 and July 31, respectively, of each calendar year for the previous calendar year, commencing in 2024. When making the annual report, the subscriber organization shall provide the following information:

1. Total number of subscribers and the amount of kilowatts subscribed to by each subscriber;

2. Total number of low-income customers and the amount of kilowatts subscribed to by each low-income customer;

3. Detailed plan for meeting ~~its~~ the organization's low-income customer target in the upcoming year if the target was not met for the annual period covered by the report; and

4. Certification that there is no subscriber whose subscription size exceeds the subscriber's average annual bill over the past 12 months for the customer account to which the subscription is attributed.

[~~The utility shall maintain a list of requests from active subscriber organizations associated with providing access to customer billing and usage data. The utility~~ Each subscriber organization] shall keep complete documentation of the customer's affirmative consent [for the utility to provide to the subscriber organization access to the subscriber's billing and usage data] and duration of consent by written or electronic signature [~~as provided by the subscriber organization to the utility~~]. If the affirmative consent documentation is in the form of a copy of the customer's contract with the subscriber organization, the [~~utility~~ subscriber organization] shall maintain a copy of the contract for at least one year after the date of expiration. Such affirmative consent contracts shall be provided within five business days to the customer, the [~~active subscriber organization~~ utility], or the commission staff upon request.

The utility shall maintain a consolidated list of active subscriber organizations, including the number of low-income customers for each organization.

Each subscriber organization shall retain a record of all disclosure forms, low-income customer proof of eligibility, and subscriber allocation lists for a period of at least three years. Each subscriber organization shall retain copies of subscriber contracts for a period of at least one year from the date of ~~their~~ expiration. Each of these documents must be made available immediately upon request from the commission or commission staff.

A subscriber organization shall retain customer billing and account records and complaint records for at least three years.

B. Affordable housing providers. Affordable housing providers subscribing on behalf of ~~their~~ low-income tenants shall annually, on or before January 31, commencing in 2024, submit a written report for the shared solar program to the commission staff describing how bill savings or other tangible benefits were provided to the tenants in the last year. The report shall include a detailed accounting and expense report for the bill savings achieved.

C. Utility. The utility shall maintain conformance with the commission's Regulations Governing Interconnection of Small Electric Generators (20VAC5-314), and specifically, 20VAC5-314-130.

20VAC5-340-100. ~~Low-income participation stakeholder process.~~ (Repealed.)

~~The Commission shall initiate a stakeholder process including low-income community representatives and community solar providers to facilitate low-income customer and low-income service organization participation in the program.~~

20VAC5-340-110. Licensing exemption process for subscriber organizations.

A. Each entity seeking to conduct business as a subscriber organization that provides less than a total of 500 kW AC solar at any one location or multiple locations shall provide notice to the commission prior to commencing any business operations. Each entity must notify the commission by electronic mail to ~~PURUtilityReports@scc.virginia.gov~~ sharedsolarproject@scc.virginia.gov and contemporaneously provide a copy of the information to the ~~investor owned utility.~~ Phase I Utility or Phase II Utility, as applicable. If the applicant becomes aware of any material changes to any information within the application, the applicant shall inform the commission within 10 calendar days. Notices shall include the following information:

1. Legal name of the applicant, as well as any trade names.

2. Physical business addresses and telephone numbers of the applicant's principal office and all offices in Virginia.

3. A description of the applicant's authorized business structure.

4. Name and business address of all principal entity officers and directors.

5. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

6. A list of the states, if any, in which the applicant and the applicant's affiliates conduct business related to participation in a multi-family shared solar program, the names under which such business is conducted, and a description of the business conducted.

7. Name, title, and address of the applicant's registered agent in Virginia for service of process.

8. Name, title, address, telephone number, and email address of the applicant's liaison with the commission.

9. Sufficient information to demonstrate viability to provide ~~said~~ service to its subscribers~~.~~ (i.e., location and size of the solar installation, expected number of subscribers, expected in-service date, identity of solar developer and operator, contract term, facility maintenance agreement, revenue

source, description of facility financing, and nonprofit certification, etc.).

10. A copy of the applicant's dispute resolution procedure, including a telephone number.

11. A copy of the applicant's proposed standard agreement it plans to use with prospective subscribers.

12. A $100 notice fee payable to the commission.

13. Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the applicant.

14. An affidavit from an appropriate officer of the applicant certifying that the applicant will indemnify and hold harmless any and all subscribers from and against claim, damage, loss, and expense arising out of the applicant's negligence or misconduct.

15. A copy of the applicant's low-income subscription plan, as applicable.

B. An officer with appropriate authority shall attest that all information supplied on the notice is true and correct and that the applicant will abide by all applicable laws of the Commonwealth and regulations of the commission.

C. Notification to the commission is required for transfer or assignment of said services to any third party.

D. The commission may impose conditions on any terms it determines are appropriate.

VA.R. Doc. No. R25-7988; Filed November 25, 2024, 5:11 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-60, 22VAC40-705-70, 22VAC40-705-80; adding 22VAC40-705-200).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: January 15, 2025.

Agency Contact: Shannon Hartung, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7499, or email shannon.hartung1@dss.virginia.gov.

Summary:

Pursuant to Chapters 629 and 662 and 779 and 829 of the 2024 Acts of Assembly, the amendments (i) establish that if during a human trafficking assessment it is determined that an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department of social services (LDSS) may facilitate the interview with a children's advocacy center located in another jurisdiction; (ii) replace "child advocacy center" with the term "children's advocacy center"; (iii) outline the process for developing a parental child safety placement agreement to be established voluntarily between parents, relative or fictive kin caregivers, and LDSS to provide services and supports to prevent a child's entry into foster care when it has been determined that the child cannot remain safely in the child's current home; (iv) outline the process for the assessment of relative or fictive kin caregivers to determine whether the proposed caregiver is qualified to care for the child, willing to have a positive and continuous relationship with the child, and willing to protect the child from abuse and neglect; (v) outline the process for convening an internal out-of-home staffing and a facilitated meeting with the family at all critical decision points to support the development of a family-driven plan for the child, family, and relative or fictive kin caregivers; (vi) outline the process for criminal and child welfare history inquiries for each adult in the proposed caregiver's household; and (vii) require that the LDSS visit the relative or fictive kin caregiver's home within two weeks of the parental child safety placement agreement being established and at least one time per month thereafter to ensure the home environment is safe for the child.

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse or neglect may request that the local department's determination or records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means (i) anyone who has been found to be an abuser or neglector and appeals the founded disposition to the director of the local department of social services or to an administrative hearing officer and (ii) anyone who has been found to be an abuser or neglector and seeks judicial review of a decision by an administrative hearing officer.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care and supervision of a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) an individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after a child left in ~~his~~ the individual's care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, audio or video recordings, photographs, film, or other materials, regardless of physical form, about a specific child protective services investigation, family, or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child abuse and neglect information system" means the statewide computer system that collects and maintains information gathered by local departments regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on administrative appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system required by federal law.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children younger than 18 years of age. It also includes assessment~~,~~ and arranging for and providing necessary protective and rehabilitative services for a child and the child's family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means an individual who is qualified by virtue of education, training, and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse or neglect.

"Children's advocacy center" means a child-friendly facility that (i) enables law-enforcement, child protection, prosecution, mental health, medical, and victim advocacy professionals to work together to investigate child abuse, help children heal from abuse, and hold offenders accountable; (ii) has completed or is in the process of completing certain accreditation obligations and requires any forensic interview conducted at such facility to only be conducted by a trained child forensic interviewer in a multidisciplinary team collaborative effort; and (iii) is a member in good standing of the Children's Advocacy Centers of Virginia.

"Children's Advocacy Centers of Virginia" means the organizing entity for children's advocacy centers in Virginia.

"Chronically and irreversibly comatose" means a condition caused by injury, disease, or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation that a child is an abused or neglected child as defined in § 63.2-100 of the Code of Virginia made orally or in writing.

"Consultation" means the process by which the alleged abuser or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance, or marijuana as defined in § 18.2-247 of the Code of Virginia, including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.2 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means the system by which local departments may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse or neglect occurred and that identifies the individual responsible for the abuse or neglect of the child.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts, and evidence.

"Family Advocacy Program representative" means the individual employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence, pursuant to 22VAC40-705-50 and 22VAC40-705-140.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child; and

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts gathered as a result of an investigation shows by a preponderance of the evidence that child abuse or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"Human trafficking assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and

3. Risk of future harm to the child.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for the child's condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;

5. Whether or not abuse or neglect has occurred;

6. If abuse or neglect has occurred, who abused or neglected the child; and

7. A finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-105 of the Code of Virginia.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse or neglect pursuant to § 63.2-1509 of the Code of Virginia.

"Monitoring" means ongoing contacts with the child, family, and collaterals that provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal, and law enforcement ~~which~~ that will assist local departments in the protection and prevention of child abuse and neglect established pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Plan of safe care" means a guide developed by service providers with their clients to ensure mothers and other caretakers of a substance-exposed infant have the necessary resources to safely care for the infant. The plan should address the needs of the child, mother, and other caretakers, as appropriate.

"Preponderance of evidence" means just enough evidence to make it more likely than not that the asserted facts are true. "Preponderance of evidence" is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of persistent effort that is justifiable and appropriate under the circumstances.

"Report" means (i) a complaint as defined in this section or (ii) an official document on which information is given concerning abuse or neglect.

"Response time" means the time for the local department to initiate an investigation or family assessment after receiving a valid report of suspected child abuse or neglect based upon the facts and circumstances presented at the time the complaint or report is received.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child or the child's family in order to protect a child and the child's siblings to prevent future abuse and neglect and to preserve the family life of the parents and children whenever possible.

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act as defined in § 18.2-357.1 of the Code of Virginia.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of ~~his~~ cognitive ability and is of a maturity level capable of having intelligent views on the subject of ~~his~~ the child's own health condition and medical care.

"Terminal condition" means a condition caused by injury, disease, or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means a report or complaint of suspected child abuse or neglect for which the local department must conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child is younger than 18 years of age at the time of the complaint or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker or, for purposes of abuse or neglect described in subdivision 4 of the definition of "abused or neglected child" in § 63.2-100 of the Code of Virginia, an intimate partner of such parent or caretaker;

3. The local department receiving the complaint or report is a local department of jurisdiction; and

4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) that in the treating physician's reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22VAC40-705-60. Authorities of local departments.

A. When responding to valid complaints or reports, local departments have the following authorities:

1. To talk to any child suspected of being abused or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.

2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § 63.2-1520 of the Code of Virginia.

3. To take a child into custody on an emergency removal under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.

a. A child protective services worker planning to take a child into emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the child protective services worker's part if a supervisor cannot be contacted and the situation requires immediate action.

b. When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately as an investigation.

c. Any person who takes a child into custody pursuant to § 63.2-1517 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

d. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § 63.2-1520 of the Code of Virginia.

e. When a child in emergency custody is in need of immediate medical or surgical treatment, the local director of social services or ~~his~~ the local director's designee may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.

f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.

g. When a child is removed, every effort must be made to obtain an emergency removal order within four hours. Reasons for not doing so shall be stated in the petition for an emergency removal order.

h. Every effort shall be made to provide notice of the removal in person to the parent or guardian as soon as practicable.

i. Within 30 days of removing a child from the custody of the parents or legal guardians, the local department shall exercise due diligence to identify and notify in writing all maternal and paternal grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents) and all parents who have legal custody of any siblings of the child being removed and explain the options they have to participate in the care and placement of the child, subject to exceptions due to family or domestic violence. These notifications shall be documented in the state automated system. When notification to any of these relatives is not made, the local department shall document the reasons in the state automated system.

4. To enter into a parental child safety placement agreement with a parent, guardian, or legal custodian of a child if it is determined that the child cannot remain safely with the child's parent, guardian, or legal custodian, in accordance with Article 7 (§ 63.2-1531 et seq.) of Chapter 15 of Title 63.2 of the Code of Virginia and 22VAC40-705-200.

a. A child protective services worker who determines a child cannot remain safely in the care of the child's parent, guardian, or legal custodian must first consult with a supervisor. However, this requirement must not delay action on the child protective services worker's part if a supervisor cannot be contacted and situation requires immediate action.

b. Pursuant to § 63.2-1534 of the Code of Virginia, the local department must conduct a criminal history inquiry and child welfare history inquiry on all adults 18 years of age and older residing in the home of the proposed caregiver under a parental child safety placement agreement. The assessment of the criminal history inquiry and child welfare history inquiry must be completed in accordance with the provisions of 22VAC40-705-200.

B. When responding to a complaint or report of abuse or neglect involving the human trafficking of a child, local departments may take a child into custody and maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child has been identified as a victim of human trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) and pursuant to § 63.2-1517 of the Code of Virginia.

1. After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person.

2. The local department shall also notify the Child-Protective Services Unit within the department whenever a child is taken into custody.

3. When a child is taken into custody by a child-protective services worker of a local department pursuant to this subsection, that child shall be returned as soon as practicable to the custody of ~~his~~ the child's parent or guardian. However, the local department shall not be required to return the child to ~~his~~ the child's parent or guardian if the circumstances are such that continuing in ~~his~~ the child's place of residence or in the care or custody of such parent or guardian, or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to

the extent that severe or irremediable injury would be likely to result or if the evidence of abuse is perishable or subject to deterioration before a hearing can be held.

4. If the local department cannot return the child to the custody of ~~his~~ the child's parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia.

C. When conducting a human trafficking assessment pursuant to § 63.2-1506.1 of the Code of Virginia, the local department may interview the alleged child victim or any sibling of that child without the consent and outside the presence of such child's or such child's sibling's parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

22VAC40-705-70. Collection of information.

A. When conducting an investigation, the local department shall seek first-source information about the allegation of child abuse or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical, and psychological reports; and any electronic recordings of interviews.

B. When completing a human trafficking assessment or family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

If at any time during the human trafficking assessment it is determined that a forensic interview of the child is needed, such interview may be performed by a children's advocacy center within the jurisdiction; however, if an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the forensic interview may be conducted by a children's advocacy center located in another jurisdiction.

C. All information collected for a human trafficking assessment, family assessment, or an investigation must be entered in the state automated system and maintained according to § 63.2-1514 for unfounded investigations, family assessments, or invalid reports, or according to 22VAC40-705-130 for founded investigations. The automated record entered in the state automated system is the official record. When documentation is not available in electronic form, it must be maintained in the hard copy portion of the record. Any hard copy information, including photographs and recordings, shall be noted as an addendum to the official record.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.

4. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians or any caretaker named in the report.

5. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report. If a local multidisciplinary team has determined that an interview of the child by a ~~child~~ children's advocacy center ~~recognized by the National Children's Alliance~~ is needed and an interview with a ~~recognized child~~ children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a ~~recognized child~~ children's advocacy center located in another jurisdiction. All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:

a. The child's safety may be endangered by electronically recording ~~his~~ the child's statement;

b. The age or developmental capacity of the child makes electronic recording impractical;

c. The child refuses to participate in the interview if electronic recording occurs;

d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that electronic recording is not appropriate; or

e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the exceptions in this subdivision apply, it is appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an electronic recording is unavailable due to equipment failure or the exceptions in this subdivision 1.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.

4. The child protective services worker shall conduct a face-to-face interview with the alleged abuser or neglector.

a. The child protective services worker shall inform the alleged abuser or neglector of ~~his~~ the alleged abuser or neglector's right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.

b. If requested by the alleged abuser or neglector, the local department shall provide the necessary equipment in order to electronically record the interview and retain a copy of the electronic recording.

5. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

6. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints or reports of child abuse and neglect that took place in state licensed and religiously exempted child day centers, regulated and unregulated family day homes, private and public schools, group residential facilities, hospitals, or institutions where the alleged abuser or neglector is an employee or volunteer at such facility.

7. The child protective services worker shall observe the site where the alleged incident took place.

8. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

C. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the Central Registry on any individual who is the subject of a child abuse and neglect investigation or family assessment where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check and a Central Registry check on all adult household members residing in the home of the alleged abuser or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information except as authorized by the Code of Virginia.

D. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments must determine whether the subject of an investigation or family assessment has resided in another state within the last five years, and if he has resided in another state, shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state.

22VAC40-705-200. Parental Child Safety Placement Program.

A. The local department must prevent the unnecessary entry of children into foster care by promoting and supporting placements with relatives and fictive kin. Parental child safety placements are protective interventions used when (i) a family assessment or investigation has been initiated in response to a valid complaint alleging that the child has been abused or neglected; (ii) the safety assessment conducted by the local department indicates that a child cannot remain safely in the home; and (iii) the child's parent, guardian, or legal custodian is in agreement with the parental child safety placement arrangement. The parent, guardian, or legal custodian must willingly agree to voluntarily place the child with a caregiver pursuant to a parental child safety placement agreement.

B. This program is only available if the local department determines that the parent, guardian, or legal custodian can remedy the identified safety factors within 90 calendar days.

C. The local department must determine that the proposed caregiver meets all of the following qualifications: (i) is 18 years of age or older; (ii) is a non-parent relative or fictive kin;

(iii) is willing to receive and care for the child in the proposed caregiver's home; (iv) is willing to have a positive and continuous relationship with the child; (v) is willing and able to protect the child from abuse and neglect; (vi) is willing to use age-appropriate behavior management techniques; (vii) agrees not to use corporal punishment; and (viii) is willing to support the relationship and contact between the child and parent and the parent's efforts to remedy the safety issues.

D. Prior to the child's placement with the proposed caregiver identified by the parent, the local department must conduct an assessment of the proposed caregiver and the caregiver's home where the child will be placed. The proposed caregiver assessment must include:

1. Completion of a criminal history inquiry with the person locator tool identified by the department at https://www.accurint.com/ and a child welfare history inquiry with the child welfare information system established in § 63.2-1514 of the Code of Virginia on all individuals 18 years of age or older residing in the home.

a. If the inquiry results in the identification of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or a negative child welfare history, including any validated child protective services referrals or founded child protective services dispositions, and the local department continues its consideration of the proposed caregiver, the local department must (i) conduct a further assessment, which must include a discussion with the individual about the circumstances surrounding each conviction and negative child welfare history and the current status of disposition, sentencing, probation, or other condition; and (ii) conduct a supervisory review of the information gathered from the further assessment described in clause (i) of this subdivision 1 a by the local department director, or, if the local department director is not available, the assistant director, program manager, or supervisor.

b. The results of the supervisory review and consultation must be documented in the child welfare information system.

2. An assessment and inquiry into substance use must be conducted. The local department must document the outcome of the assessment and screening deemed necessary or any refusal to consent to screening. This information must be used to evaluate the appropriateness of the proposed caregiver for the child's placement and recorded in the child welfare information system.

3. Completion and documentation of a visit to the home of the proposed caregiver to ensure the home environment is safe for the child, including an assessment of other children living in the home. The local department must complete the Permanency Assessment Tool form. The results must be used in making the best interest determination and documented in the child welfare information system.

4. A written determination that the placement is in the child's best interest and does not pose a threat to the child's safety or well-being, which must be completed and documented prior to the child's removal from the home of origin.

5. Written notification of the child's placement in the home to the Commissioner of the Department of Social Services and the local board within 72 hours of placement in circumstances when the caregiver has a barrier crime or founded child protective services disposition.

6. Notification to the child's parent, guardian, or legal custodian if the local department determines that it is not in the best interest of the child to be placed with the proposed caregiver. The local department is prohibited by law from disclosing the results of any criminal or child protective services history, unless the proposed caregiver provides consent for such disclosure.

E. The best interest determination assessment must be ongoing during the entire time the child is placed in the caregiver's home, as new information may be obtained at any time and must be documented in the child welfare information system.

F. The local department must schedule a facilitated meeting with the family within seven calendar days of the child's placement in the caregiver's home to discuss all potential options for the child, family, and caregiver. If the facilitated meeting cannot be scheduled prior to the change in living arrangements, the local department must discuss the benefits, requirements, advantages, and disadvantages of the available options, including (i) the child's entry into foster care and the potential for the caregiver to become an approved kinship foster parent and (ii) financial assistance that may be available to the caregiver if the child remains with the caregiver under the Parental Child Safety Placement Program, including the process for accessing such financial assistance.

Prior to the facilitated meeting with the family, the local department should hold an internal staffing within one business day of the child's placement to prepare for the facilitated meeting.

G. If it is determined at the facilitated meeting that the family is willing to participate in the Parental Child Safety Placement Program, the parent, guardian or legal custodian must enter into a parental child safety placement agreement using the designated form within four calendar days of the facilitated meeting. The parental child safety placement agreement must:

1. Be in writing and contain the terms outlined in § 63.2-1533 of the Code of Virginia;

2. Include the signatures of the child's parent, guardian, or legal custodian, the caregiver, and the local department;

3. Be provided to the child's parent, guardian, or legal custodian; and

4. Be scanned into the child welfare information system.

H. The local department must open an In-Home Services case, as defined in § 63.2-1531 of the Code of Virginia, at the time the parental child safety placement agreement is signed and keep the case open for the duration of the agreement. The local department must:

1. Complete another visit to the home of the caregiver within two weeks of the child's placement with the caregiver and at least once per month thereafter to ensure the home environment is safe for the child;

2. Complete routine assessments of the child's safety and progress made to safely return the child to the care of the parent, guardian, or legal custodian; and

3. Provide services and referrals for appropriate services to the child, parent, guardian, or legal custodian, and the caregiver to promote safety, permanence, and well-being.

I. The parental child safety placement agreement is limited to no more than 90 calendar days from the child's placement in the caregiver's home.

J. The parental child safety placement agreement may be extended an additional 90 calendar days, not to exceed 180 days total, if appropriate and mutually agreed upon by the caregiver, parent, and the local department, and the reasons for such extension must be documented. However, prior to such extension, the local department must complete a safety assessment and hold a facilitated meeting with the family to discuss options for the child's care and determine whether to:

1. Return the child to the care of the parent, guardian, or legal custodian with the continued provision of services;

2. Extend the parental child safety placement agreement for no longer than an additional 90 calendar days; or

3. Initiate court action deemed necessary to ensure the child's safety, permanence, and well-being.

K. Prior to the termination or conclusion of the parental child safety placement agreement, the local department must complete a safety assessment, which must be documented in the child welfare information system.

1. If it is determined that the child can be safely returned home, the local department must hold a facilitated meeting to develop a safety plan with the child's parent, guardian, or legal custodian and the caregiver for the safe return of the child to the child's parent, guardian, or legal custodian or to another legal custodian. Such safety plan must be documented in the child welfare information system. If continued services are required for the child to safely return home, the local department must:

a. Maintain the In-Home Services case for continued services with the agreement of the child's parent, guardian, or legal custodian; or

b. Seek a child protective order or other appropriate court action to order continued services if the child's parent, guardian, or legal custodian does not agree to the In-Home Services case remaining open for continued services.

2. If the child cannot be safely returned home, the local department must seek removal of the child from the child's parent, guardian, or legal custodian upon a petition alleging abuse or neglect pursuant to § 16.1-251 or 16.1-252 of the Code of Virginia. The local department must hold a facilitated meeting with the family in accordance with § 63.2-1535 of the Code of Virginia.

a. If temporary custody of the child is granted by the court to the caregiver, the local department must maintain the In-Home Services case to provide continued services pursuant to the Alternative Living Arrangement Service Plan developed with the family at the facilitated meeting. If, at the time of the disposition hearing, the child cannot be safely returned to the home, the local department must take such action as appropriate in accordance with § 63.2-1535 of the Code of Virginia.

b. If the court denies the removal of the child, the local department must seek a child protective order to provide continued services for the child and the child's parent, guardian, or legal custodian to ensure the child's safety and welfare. If the child protective order is granted, the case must remain open as an In-Home Services case.

L. A monthly maintenance payment may be available each fiscal year by application to the department from allocations established through the Appropriations Act for the caregiver to take care of the child as long as there is a current parental child safety placement agreement or an alternative living arrangement agreement. Each caregiver applicant must provide income information for the applicant's household to the department that may be subject to verification. Caregivers with household incomes over 400% of the federal poverty level may claim financial hardship by written declaration in the application and be placed in another countable income category. Temporary Assistance for Needy Families money may be used to fund a portion of the monthly maintenance payment for those caregivers who qualify as a relative of the child, but the monthly payment remains the same whether the caregiver is a relative or fictive kin. The department will monitor the funding on a monthly basis and will prioritize the available funding each fiscal year as follows:

1. Existing recipients of this financial assistance must continue to receive such payments unless otherwise ineligible or until funding is exhausted.

2. Payments will be available on a first-come, first-served basis without any consideration of income unless the department determines that more than 50% of the available funding will be expended before the sixth month of the fiscal year.

3. If the department determines that more than 50% of the available funding will be expended before the sixth month of the fiscal year, subsequent caregiver households will be prioritized based upon the following order: (i) caregiver households that include an individual who receives a public assistance payment; (ii) caregiver households with countable income less than 130% of the federal poverty level; (iii) caregiver households with countable income less than 250% of the federal poverty level; (iv) caregiver households with countable income less than 400% of the federal poverty level; and (v) caregiver households with countable income greater than or equal to 400% of the federal poverty level.

M. Every applicant or recipient of this financial assistance has the right to request a hearing before a hearing officer. No hearing must be granted when the funds have been expended for the fiscal year. An opportunity for a hearing must be granted to any applicant or recipient who requests a hearing if financial assistance is denied or is not acted upon with reasonable promptness, and to any applicant or recipient who is aggrieved by any agency action resulting in suspension, reduction, or termination of assistance for reasons other than lack of available funding.

1. The department must provide a written notice of action to the caregiver of any denial or reduction action within 10 calendar days of its decision. The notice of action will inform the caregiver of the following: (i) the right to a hearing; (ii) the method by which to obtain a hearing; and (iii) the right to be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or that caregivers may represent themselves.

2. The applicant or recipient must request in writing a hearing within 10 calendar days after receipt of the department's notice of action. Within 10 calendar days of receipt of the applicant's written request for a hearing, the department must inform the caregiver of a date and time for the virtual hearing, which must take place within 10 calendar days of the notice.

3. The department's hearing officer must render a final agency decision within 10 calendar days of the hearing, which is then subject to judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

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, Fourth Floor, Richmond, Virginia 23219.

FORMS (22VAC40-705)

Permanency Assessment Tool 032-25-161-02 eng (eff. 10/2024)

Parental Child Safety Placement Agreement 032-03-0306-01-eng (eff. 9/2024)

VA.R. Doc. No. R25-7974; Filed November 18, 2024, 8:40 a.m.

EXECUTIVE ORDER NUMBER FORTY-THREE (2024)

Empowering and Supporting Parents to Protect Their Children from Addictive Social Media and Establishment of the Reclaiming Childhood Task Force

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order directing the Secretary of Health and Human Resources, Secretary of Education, Secretary of Public Safety and Homeland Security, Superintendent of Public Instruction, and the State Health Commissioner to coordinate with the Department of Behavioral Health and Developmental Services, Virginia Department of Health, and other relevant agencies to disseminate information to parents, medical professionals, and educators regarding the effects of cell phone usage on academic and mental health development and chronic health conditions–such as depression and anxiety–that affect adolescents and other school-aged children; as well as tools to promote healthy social media and phone usage for youth.

In addition, I am establishing the Reclaiming Childhood Task Force to sustain ongoing collaboration of these efforts to improve youth mental health outcomes by combatting the dangers of addictive social media and creating opportunities for cultural change.

Importance of the Initiative

The data are clear: there is a youth mental health crisis in America. In 2023, 40 percent of high school students reported experiencing persistent feelings of sadness or hopelessness.[1] Among adolescents aged 12 to 17, nearly 20 percent had a major depressive episode in the past year. Twelve percent of adolescents have experienced suicidal ideations in the past year.[2] Suicide is the second leading cause of death for 10 to 14-year-olds.[3] Over 30 percent of adolescents have experienced an anxiety disorder at some point in their lives.[4] Fifty-seven percent of teen girls have persistent feelings of loneliness or hopelessness.[5] Additionally, emergency room visits for adolescent girls with eating disorders have doubled.[6]

Experts draw a connection between decline in youth mental health and the rise of cell phones and social media use. Jonathan Haidt, a leading researcher in social psychology at New York University, formerly at the University of Virginia, has extensively studied the impact of technology on adolescence, and argues in his 2024 book The Anxious Generation: How the Great Rewiring of Childhood Is Causing an Epidemic of Mental Illness, that the widespread adoption of smartphones and social media since the early 2010s has significantly contributed to increased rates of anxiety, depression, and self-harm among adolescents. Looking at the staggered introduction of Facebook across U.S. college campuses, a study in the American Economic Review showed a negative impact on student mental health and an increased likelihood that students reported experiencing impairments to academic performance due to poor mental health.[7] Ninety percent of studies showed an association between screen media use and loss of sleep, impacting cognitive function, obesity rates, and academic performance.[8]

Social media use among youth is essentially ubiquitous. According to a 2022 study by the Pew Research Center, 95 percent of U.S. teens age 13 to 17 report using social media [9] and 98 percent of children have at least one social media account by the age of 18.[10] Studies by Gallup show that the average teen spends 33 hours a week on social media apps like Instagram, Snapchat, and TikTok. Forty-one percent of the highest frequency social media users report having poor or very poor mental health, but that number jumps to nearly 60 percent for teens with low monitoring/weak relationships with their parents.[11]

Concerns are not strictly limited to mental health outcomes. Kids are dying from fentanyl overdoses, often buying the deadly drugs on Snapchat due to its disappearing communications features.[12] Forty-seven percent of teen girls have been approached online by someone they did not know, 40 percent of kids in grades 4-8 chatted with a stranger online,[13] and 69 percent of tweens and 91 percent of teens have encountered sexual content online. Fifty-nine percent of U.S. teens have experienced some form of bullying online.[14]

As concerns over the impact of social media on the overall wellbeing of children and teens continues to grow, it is paramount that the Commonwealth provide resources and guidance to support families to combat social media companies who cause addictive behavior.

What is also clear is that many social media technology companies benefit from their monetization of data collected by social media youth. In 2019, Google and YouTube were fined $170 million for allegedly collecting personal information from children without their parents' consent in violation of the Children's Online Privacy Protection Act (COPPA) Rule.[15] Thirty-four attorneys general have sued Meta, the parent company of Instagram and Facebook, for collecting kids' personal information without parental consent in violation of federal law.[16] The U.S. Department of Justice has recently sued TikTok for collecting personal information from children under 13 without their parents' knowledge.[17] While these legal actions are encouraging, and there are opportunities at the state and federal level to enhance protections for youth and tools for parents to combat the harmful effects of social media and cell phone use on youth, the crisis is immediate.

Code of Virginia § 1-240.1 affirms that parents have "a fundamental right to make decisions concerning the upbringing, education, and care of' their children. Government action alone will not solve the youth mental health crisis, but the government can and must support parents, empowering

them and arming them with the information they need to drive healthy choices for their children.

From public schools to public health, every aspect of government that plays a role in the life of a child must support parents, including on this issue. While we acknowledge that technology is an integral part of society and has many positive impacts, including on children, parents deserve information and support in mitigating negative impacts on their children.

This Executive Order activates every health and child welfare agency of the Commonwealth in a coordinated awareness campaign to make sure every Virginia parent has knowledge they need to protect their kids from unrestricted cell phone use and addictive social media, to reclaim childhood, and ensure that our future workforce, future military and future parents themselves have the best shot at living out their true purpose and potential.

This Executive Order also creates the Reclaiming Childhood Task Force to continue this collaboration among not only among government agencies that impact the lives of children, but to partner with family, community, faith, non-profit, and private sector companies as well to foster outside cultural change, empowering parents to lead government agencies towards additional actions to help them combat the mainstream culture and ensure our children play and learn in healthy ways as social media companies continue to methodically create addictive products and games that treat future leaders as commodities to be monetized and not children to be nurtured.

Directive

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of the Commonwealth, I hereby order the Secretary of Education, the Secretary of Health and Human Resources, the Secretary of Public Safety and Homeland Security, the Superintendent of Public Instruction, and the State Health Commissioner, and the Commissioner of the Department of Behavioral Health and Developmental Services, collaborating with all relevant agencies, including the Department of Behavioral Health and Developmental Services (DBHDS), Virginia Department of Health (VDH), Department of Education (VDOE), Virginia Department of Social Services (VDSS), Department of Medical Assistance Services (DMAS), Office of Children's Services (OCS), the Department of Health Professions (DHP), and Virginia Information Technology Agency (VITA), to:

Send a coordinated dear colleague letter to pediatricians, family practitioners, primary care providers, and mental health providers, to promote screening for unhealthy internet and social media use in youth and provide resources to address this issue.

Develop a plan for providing regional technical assistance to Community Services Boards (CSBs) through DBHDS that includes specialized training for providers to support treatment of behavioral health concerns linked to social media use and other types of problematic internet use.

Create and disseminate a Social Media and Mental Health Toolkit to: (a) provide training materials, educational resources, and practical solutions to help children and teens navigate the digital world; and (b) offer educational and technical support for clinicians, parents, and youth to promote healthy social media use. DBHDS shall collaborate with the Virginia Foundation for Healthy Youth in the development of materials related to the impact of social media and screen use on substance use and obesity in youth. VOSS, in collaboration with OCS, shall provide social media safety education to foster youth, foster families, case workers, and Family Assessment Planning Team (FAPT) members.

Launch a public health initiative and strategy related to the impact of social media and screen use in youth, with VDH and DBHDS as the lead, and with a strong emphasis on prevention strategies including a focus on nutrition, exercise, and other non-screen related activities that support wellness.

Conduct sessions across the Commonwealth with parents, educators, child welfare and child mental health experts to gather best practices on managing social media and screen use among youth and inform the ongoing development of resources and programs to promote healthy digital habits, reducing mental and physical health risks, ensuring online safety, and reinforcing non-screen-based activities and actions that contribute to mental well-being and resilience.

Further, I direct the secretaries and agency heads to establish the Reclaiming Childhood Task Force. The Task Force shall utilize existing resources that support families in reducing screen time and promoting digital health literacy.

The Task Force will be convened by the Secretary of Health and Human Resources, and will include parents and kids from around Virginia, as well as pediatricians, mental health experts, educators, faith leaders, community leaders, private sector technology experts, and public safety leaders to:

Raise awareness about the potentially harmful effects of social media on children's physical and mental health;

Recognize that government cannot solve this problem alone and therefore must collaborate and create opportunities and avenues for private sector cultural change to ensure healthy child development;

Convene experts and thought leaders to highlight best practices and approaches to improving children's mental health outcomes; and

Make recommendations to the Governor and General Assembly on additional government solutions.

The Reclaiming Childhood Task Force will also incorporate feedback from the 21 stakeholder meetings and community conversations already held in the Commonwealth after

Executive Order 33, requiring Cell Phone-Free Education, and complement the Secretary of Education and Department of Education's efforts to improve health outcomes of school-aged children. The Task Force will also coordinate with the Secretary of Public Safety and Homeland Security to incorporate public safety measures to protect children from dangers like fentanyl, human trafficking, and sexual predators.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by a future executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 21st day of November 2024.

/s/ Glenn Youngkin, Governor

---

[1] Centers for Disease Control and Prevention, "Youth Risk Behavior Survey Data Summary & Trends Report: 2013-2023," Mental Health, DASH, CDC.

[2] Psychiatry.org - New Reports Examine Trends in Youth Mental Health.

[3] National Vital Statistics System, Mortality 2018-2022 on CDC WONDER Online Database, released in 2024.

[4] Any Anxiety Disorder - National Institute of Mental Health (NIMH).

[5] U.S. Teen Girls Experiencing lncreases Sadness and Violence, CDC Online Newsroom, CDC.

[6] Radhakrishnan L, et al. Pediatric Emergency Department Visits Associated with Mental Health Conditions Before and During the COVID-19 Pandemic–United States, January 2019-January 2022. MMWR Morb Mortal Wkly Rep 2022;71:319-324.

[7] Social Media and Mental Health - American Economic Association.

[8] Youth screen media habits and sleep: sleep-friendly screen-behavior recommendations for clinicians, educators, and parents–PMC.

[9] Teens, Social Media and Technology 2022, Pew Research Center.

[10] Social Media and Teens.

[11] Parenting Mitigates Social Media-Linked Mental Health Issues; Rothwell, J. (2023). How Parenting and SelfControl Mediate the Link Between Social Media Use and Mental Health.

[12] Western District of Virginia, SnapChat Sale of Fentanyl-Laced Pills Leads to Federal Prison Term for Harrisonburg Man, United States Department of Justice.

[13] New Thorn Research Examines Youth Experiences and Attitudes about Online Grooming, Thorn.

[14] A Majoritv of Teens Have Experienced Some Form of Cyberbullying, Pew Research Center.

[15.] Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law, Federal Trade Commission.

[16] Attorney General Miyares Files Lawsuit Against Meta for Harming Youth Mental Health Through its Social Media Platforms.

[17] Office of Public Affairs, Justice Department Sues TikTok and Parent Company ByteDance for Widespread Violations of Children's Privacy Laws, United States Department of Justice.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Title of Document: Disposition of Cases Involving Unlicensed Use of the CPA Title by Previously Licensed Individuals.

Public Comment Deadline: January 15, 2025.

Effective Date: January 16, 2025.

Agency Contact: Alessandra Gabriel, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, telephone (804) 367-0728, or email alessandra.gabriel@boa.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Virginia Public School Bus Specifications.

Public Comment Deadline: January 15, 2025.

Effective Date: January 16, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

MARINE RESOURCES COMMISSION

Title of Document: Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks.

Public Comment Deadline: January 15, 2025.

Effective Date: February 1, 2025.

Agency Contact: Randy Owen, Chief of Habitat Management, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2251, or email randy.owen@mrc.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: Mental Health Services Appendix E - Intensive Community Based Support.

Psychiatric Services Manual, Appendix C - Procedures Regarding Service Authorization.

Public Comment Deadline: January 15, 2025.

Effective Date: January 16, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

BOARD OF VETERINARY MEDICINE

Titles of Documents: Preceptorships and Externships for Veterinary Technician Students.

Guidance Regarding "Chip" Clinics Outside of Approved Facilities.

Public Comment Deadline: January 15, 2025.

Effective Date: January 16, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, or email erin.barrett@dhp.virginia.gov.

The following guidance document has been submitted for deletion and the listed agency has opened up a 30-day public comment period. The listed agency had previously identified this document as a certified guidance document, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: State Management Plan.

Public Comment Deadline: January 15, 2025.

Effective Date: January 16, 2025.

Agency Contact: Andrew Wright, Director of Policy, Communications, and Legislative Affairs, Department of Rail and Public Transportation, 600 East Main Street, Suite 2101, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

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) (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 Youth for Tomorrow New Life Center Inc. for a variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8.

Explanation: In order to maintain the safety and security of individuals (youth), the program may restrict communication via telephone and in-person visitation to only those names placed on a list generated by the parent or legal guardian and the individual.

The variance will allow Youth for Tomorrow New Life Center Inc., to utilize an approved contact list for telephone calls and an approved contact list for visitation for each individual. The lists shall be developed by the individual's parent or legal guardian in order to protect the best interests of the individual. The individual shall be present and given the opportunity to participate with the parent or legal guardian in creating the telephone and visitation lists.

How to comment: The SHRC accepts written comments by online public comment forum, email, fax, and postal mail. In order to be considered, comments must be received by January 15, 2025. All information received is part of the public record.

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, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 371-0064, FAX (833) 734-1241, TDD (804) 371-8977, or email taneika.goldman@dbhds.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for New Market Poultry LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for New Market Poultry LLC for violations of State Water Control Law and regulations in Shenandoah County, Virginia. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept written comments by email or postal mail from December 16, 2024, to January 15, 2025.

Contact Information: Francesca Wright, Senior Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, or email francesca.wright@deq.virginia.gov.

Proposed Enforcement Action for FiberLight of Virginia LLC, Brungardt Honomichl & Company P.A. Incorporated, and REEL Broadband LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for FiberLight of Virginia LLC, Brungardt Honomichl & Company P.A. Incorporated, and REEL Broadband LLC for violations of State Water Control Law and regulations and applicable permit at the Leesburg to Ashburn fiber-optic conduit installation in Loudoun County, Virginia. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices. The DEQ contact will accept written comments by email or postal mail from December 16, 2024 to January 15, 2025.

Contact Information: Katherine Mann, Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6095, or email katherine.mann@deq.virginia.gov.

Collier Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) – Wise County

Collier Solar LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Wise County, Virginia, pursuant to 9VAC15-60. The developer is Holocene Energy. The DEQ project number is RE0000335.

The project is located on approximately 160 acres at the end of Choctaw Road and on the north side of the road across from 7364 South Fork Road, Pound, VA 24279 with a geographic information system (GIS) centroid of Latitude 37.095760, Longitude -82.634524. The project will have a maximum capacity of 7.50 megawatts alternating current and will utilize approximately 17,725 solar modules mounted to a single-axis tracking system and interconnected to the local distribution network. The maximum equipment height will be 10 feet, excluding typical utility poles that connect the site to the power grid.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23233, telephone (804) 698-4238, or email matthew.a.snow@deq.virginia.gov.

Cropp Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) – Stafford County

Cropp Solar LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Stafford County, Virginia, pursuant to 9VAC15-60. The developer is Holocene Energy. The DEQ project number is RE0000336.

The project is located on approximately 55 acres at 220 Skyline Drive, Fredericksburg, VA 22406 with a geographic information system (GIS) centroid of Latitude 38.481681, Longitude -77.594115. The project will have a maximum capacity of 6.75 megawatts alternating current and will utilize approximately 16,000 solar modules mounted to a single-axis tracking system and interconnected to the local distribution network. The maximum equipment height will be 10 feet, excluding typical utility poles that connect the site to the power grid.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23233, telephone (804) 698-4238, or email matthew.a.snow@deq.virginia.gov.

Maddens Tavern Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) – Culpeper County

Maddens Tavern Solar LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Culpeper County, Virginia, pursuant to 9VAC15-60. The developer is Holocene Energy. The DEQ project number is RE0000337.

The project is located on approximately 78 acres just north of 19224 Youngs Lane, Elkwood, VA 22718 with a geographic information system (GIS) centroid of Latitude 38.443514, Longitude -77.822796. The project will have a maximum capacity of 9.50 megawatts alternating current and will utilize approximately 22,460 solar modules mounted to a single-axis tracking system and interconnected to the local distribution network. The maximum equipment height will be 10 feet, excluding typical utility poles that connect the site to the power grid.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23233, telephone (804) 698-4238, or email matthew.a.snow@deq.virginia.gov.

Mountain Run Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) – Culpeper County

Mountain Run Solar LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Culpeper County, Virginia, pursuant to 9VAC15-60. The developer is Holocene Energy. The DEQ project number is RE0000338.

The project is located on approximately 74 acres off of Swamp Poodle Lane, Brandy Station, VA 22714 with a geographic information system (GIS) centroid of Latitude 38.479637, Longitude -77.880628. The project will have a maximum capacity of 7.50 megawatts alternating current and will utilize approximately 17,730 solar modules mounted to a single-axis tracking system and interconnected to the local distribution network. The maximum equipment height will be 10 feet, excluding typical utility poles that connect the site to the power grid.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23233, telephone (804) 698-4238, or email matthew.a.snow@deq.virginia.gov.

Availability of the 2023 Fish Tissue Monitoring Data

Purpose of Notice: The Virginia Department of Environmental Quality (DEQ) is announcing the release of the 2023 fish tissue and sediment contaminant monitoring data.

Background: DEQ conducts routine studies of fish tissue and bottom sediments in state waters to assess the human health risks for individuals who may consume fish, to identify impaired aquatic ecosystems, and to plan and track the progress of cleanup efforts. Results are made available to the public each year on the agency's website. The agency selects sampling stations for routine fish tissue monitoring based on input from the public and from partner agencies such as the Department of Wildlife Resources and the Virginia Marine Resources Commission on popular fishing locations. Sites from each of Virginia's major river basins are sampled on a rotating basis such that each basin is sampled every three years, as resources allow.

In 2023, DEQ collected fish tissue samples primarily from sites in the watersheds of the middle James River, Rappahannock River, Roanoke River, Chowan River and Albemarle Sound, and Big Sandy River. Samples were analyzed for polychlorinated biphenyls (PCBs), a suite of 17 metals, including mercury, and per- and polyfluoroalkyl substances (PFAS). DEQ also collected bottom sediment samples from the watersheds of the Rappahannock River, Roanoke River, Chowan River and Albemarle Sound, and Big Sandy River, which were analyzed for PCBs.

2023 monitoring results for PCBs and Mercury are available on the agency's website at https://www.deq.virginia.gov/our-programs/water/water-quality/monitoring/fish-tissue-monitoring.

2023 monitoring results for PFAS are available on the agency's PFAS Dashboard at https://experience.arcgis.com/experience/8f8b1ad32de44d4ebcfbb98669296877/.

Additional Information: The Virginia Department of Health (VDH) uses the data generated by DEQ's fish tissue monitoring program to determine the need for fish consumption advisories. More information on VDH fish consumption advisories is available at https://www.vdh.virginia.gov/environmental-health/public-health-toxicology/fish-consumption-advisory/.

Contacts for More Information: Questions regarding DEQ's fish tissue monitoring program can be directed to the DEQ contact listed or to Gabriel Darkwah at email: gabriel.darkwah@deq.virginia.gov or Andrew Kirk at email: andrew.kirk@deq.virginia.gov. Additional information is also available on the DEQ Water Quality Monitoring website at https://www.deq.virginia.gov/water/water-quality/monitoring.

Contact Information: Richard Browder, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 212-9734, or email richard.browder@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

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

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

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

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-630. Private Well Regulations.**

Publication: 41:7 VA.R. 868 November 18, 2024.

Correction to Notice of Suspension of Effective Date:

Page 868, paragraph 3,

line 2, after "in" change "5VAC12-630-410" to "12VAC5-630-410"

line 3, after "in" change "5VAC12-630-410" to "12VAC5-630-410"

line 5, start of line, change "5VAC12-630-410" to "12VAC5-630-410"

VA.R. Doc. No. R19-5654; Filed December 03, 2024, 9:26 a.m.