



VIRGINIA

REGISTER OF REGULATIONS

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December 7, 2020

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2020 through January 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 (Monday)	January 4, 2021
37:11	December 28, 2020 (Monday)	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	June 7, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 (Monday)	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 13, 2021 (Monday)	January 3, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: 18VAC60-30. Regulations Governing the Practice of Dental Assistants.

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

Name of Petitioner: Carmen Chilton.

Nature of Petitioner's Request: To amend regulations to create a pathway for dental assistants with five to 10 years of experience to take the Certified Restorative Functions Dental Assistant Exam and have the employing dentist observe and approve of their capabilities to be a dental assistant II.

Agency Plan for Disposition of Request: The petition will be published on December 7, 2020, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending December 31, 2020. The request to amend regulations and any comments for or against the petition will be considered by the board at the first scheduled meeting in 2021. The petitioner will receive information on the board's decision after that date.

Public Comment Deadline: December 31, 2020.

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

VA.R. Doc. No. R21-334; Filed November 6, 2020, 1:56 p.m.

BOARD OF MEDICINE

Agency Decision

Title of Regulation: 18VAC85-101. Regulations Governing the Practice of Radiologic Technology.

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

Name of Petitioner: Virginia Society of Radiologic Technologists.

Nature of Petitioner's Request: To amend sections on renewal, reinstatement, or reactivation to require a licensee to hold current American Registry of Radiologic Technologists or Nuclear Medicine Technology Certification Board credentials in good standing for biennial renewal, reinstatement, or reactivation of a license under the Board of Medicine.

Agency Decision: Request denied.

Statement of Reason for Decision: The meeting of the Advisory Board on Radiologic Technology scheduled for June 2020, was canceled, so the matter was on the agenda for its

meeting on October 7, 2020. At that time, the advisory board considered the pros and cons of amending its regulations and recommended that the Board of Medicine take no action on the petition at this time. The advisory board would like to gather additional information and continue the discussion of the merits of the petition.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804) 367-4558, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R20-26; Filed November 6, 2020, 2:15 p.m.

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants.

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

Name of Petitioner: Sharon Watson.

Nature of Petitioner's Request: To amend regulations to specify that certified substance abuse counselors cannot engage in independent or autonomous practice regardless of supervision and that such practice may be grounds for disciplinary action.

Agency Decision: Request denied.

Statement of Reason for Decision: The board decided not to initiate rulemaking but did refer the issue of practice by certified substance abuse counselors to the regulation committee for development of guidance to clarify the law and regulation.

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

VA.R. Doc. No. R20-58; Filed November 6, 2020, 2:05 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-190, Litter Receptacle Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated October 1, 2020, to support this decision.

This regulation is necessary to meet the requirements of the Code of Virginia and to protect human health and the environment. This regulation assists with the prevention of litter by providing requirements for litter receptacles to be placed and maintained for use by the public. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation is effective and continues to be needed and is being retained. This regulation continues to be needed to protect human health and the environment. This regulation requires litter receptacles to be placed and maintained for the public to use. These receptacles are a critical component of the prevention of litter in the Commonwealth. Without these receptacles, the public would not have receptacles to deposit their trash in while they are in public, which would potentially lead to an increase in littering in the Commonwealth and the associated negative impacts to human health and the environment.

No public comments were received during the comment period.

This regulation is not complex. It requires placement of litter receptacles at certain places throughout the Commonwealth. In most cases, the regulation requires a minimum of one litter receptacle to be placed at locations where litter needs to be deposited to prevent it from being improperly discarded. The regulation allows the entity that is required to provide and maintain litter receptacles the ability to decide the appropriate number of litter receptacles needed to collect the litter and the frequency for them to be emptied.

This regulation does not overlap, duplicate, or conflict with any state law or state regulation. A periodic review was last conducted on this regulation in 2016. Since that time, changes to technology and economic conditions have not impacted this regulation.

As currently written, the regulation meets the requirements of state law while minimizing the impacts on small businesses.

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



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Psychology conducted a periodic review and a small business impact review of **18VAC125-30, Regulations Governing the Certification of Sex Offender Treatment Providers**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 5, 2020, to support this decision.

Treatment of sex offenders requires special training and expertise. The goal is to treat the offender to avoid recidivism and to also protect the public. The board determined that additional standards of practice were necessary to ensure a certified provider could be held accountable for unprofessional conduct similar to any other mental health provider. Therefore, the regulation is absolutely necessary for public health, safety, and welfare. 18VAC125-30 is generally clearly written and understandable, but some sections will be amended for greater clarity.

Upon recommendation from a regulatory advisory panel, the Board of Psychology decided to amend the regulation via a fast-track rulemaking action.

The Code of Virginia requires mandatory certification for persons who practice as sex offender treatment providers regardless of whether they hold another license or work in an exempt setting in which no license is required. Therefore, there is a continued need for the regulation.

There are occasionally questions from applicants about what documentation is needed for certification or from certificate holders about continuing education, so those sections are being amended for greater clarity. Generally, there have been no complaints and few comments received concerning the regulation.

The regulation is not considered to be complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The last regulatory review amendments for this chapter became effective on January 15, 2016. Since then, there have been two actions to reduce the renewal fee and one action to increase the handling fee for dishonored payments for consistency with the fee required in the Code of Virginia.

In the practice of sex offender treatment, some of the terminology has changed and is updated in the regulation. Additionally, there is a greater utilization of technology in the provision of supervision and in the treatment of offenders. Accordingly, the definition of "face-to-face" includes the use of real-time interactive contacts in which there is an

Periodic Reviews and Small Business Impact Reviews

opportunity for interaction by visual and audio means. Standards of practice are amended to clarify that they are applicable regardless of the means by which treatment is provided.

There are no changes recommended that will create any economic impact on small businesses.

Contact Information: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406.



TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 13, 2020, to support this decision.

The Department of Taxation has determined that the regulation is required by law and is clearly written and easily understandable.

The regulation was revised in 2009 to adopt the model public participation guidelines issued by the Department of Planning and Budget. The department recommends that this regulation stay in effect without change because it is required by § 2.2-4007.02 of the Code of Virginia and assists in notifying the public of the agency's regulatory actions. No significant statutory changes have occurred since this regulation was promulgated that necessitate amending it.

The regulation continues to be necessary as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the agency will advise the public of the agency's regulatory actions. The department has received no complaints or comments from the public concerning the regulation. The regulation is based on the Department of Planning and Budget's model guidelines and is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. Since this regulation's adoption in 2008, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending this regulation. As the regulation is concise and up-to-date, it has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-230, Watercraft Sales and Use Tax**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 10, 2020, to support this decision.

The Department of Taxation has determined that the regulation is necessary for the administration of the tax and thus necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Six sections of the regulation that duplicated state law were repealed in 2007. As the regulation was last amended in 2009, and there have been no significant change in the Watercraft Sales and Use Tax statutes subsequent to the amendments, the Department of Taxation has determined that the regulation should be retained as is without making changes.

The Watercraft Sales and Use Tax is administered by the Department of Taxation as provided by rules and regulations promulgated by the Tax Commissioner. Accordingly, the regulation continues to be necessary to clarify the administration of the tax. The department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last revised in 2009. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, the regulation has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-310, Tax on Wills and Administration**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 10, 2020, to support this decision.

The Department of Taxation has determined that the regulation is necessary for the administration of the tax and thus necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Two sections of the regulation that duplicated state law were repealed in 2006. As the regulation was last amended in 2016, and there have been no significant change in the Tax on Wills and Administrations statutes subsequent to the amendments,

Periodic Reviews and Small Business Impact Reviews

the Department of Taxation has determined that the regulation should be retained as is without making changes.

The Tax on Wills and Administrations is administered by the Department of Taxation as provided by rules and regulations promulgated by the Tax Commissioner. Accordingly, the regulation continues to be necessary to clarify the administration of the tax. The department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last revised in 2016. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, the regulation has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-370, Cigarette Tax Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 13, 2020, to support this decision.

The Department of Taxation has determined that the cigarette tax regulation is necessary for the administration of the tax and therefore necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

In 2007 and 2019 regulatory actions, the department repealed 10 of the 16 Cigarette Tax regulation sections it had promulgated. The 2019 action also streamlined the regulation to reflect current law and strike language that was outdated and provided no additional guidance to statutes that are clear and unambiguous. The only change in the Cigarette Tax statutes subsequent to the amendments was in the 2019 Session of the General Assembly to amend § 58.1-1000 of the Code of Virginia to strike the reference to tobacco that is heated rather than burned from the definition of the term "cigarette." As "heat not burn" tobacco was not commercially available in Virginia at the time, the product was never subject to the tax and thus never addressed in the regulation. Accordingly, the department has determined that the cigarette tax regulation should be retained as is without making changes.

The regulation continues to be necessary to clarify the administration of the tax. The department has received no complaints or comments from the public concerning the regulation. After the 2019 revision of the regulation, it is not complex. The regulation does not overlap, duplicate, or

conflict with federal or state law or regulation. The regulation was last evaluated in 2019 and was amended to reflect statutory changes since the regulation was last amended. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, it has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Taxation conducted a periodic review and a small business impact review of **23VAC10-390, Virginia Soft Drink Excise Tax Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 13, 2020, to support this decision.

The Department of Taxation has determined that the Soft Drink Excise Tax regulation is necessary for the administration of the tax and thus necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

As the regulation was updated in 2018, and there have been no subsequent legislative changes to the statutes imposing the tax, the Department of Taxation has determined that the Soft Drink Excise Tax regulation should be retained as is without making changes.

Under § 58.1-1703 of the Code of Virginia, the Soft Drink Excise Tax is administered by the Department of Taxation in the same manner as the state income tax, as provided by rules and regulations promulgated by the Tax Commissioner. Accordingly, the regulation continues to be necessary to clarify the administration of the tax. The department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2018 and was amended to reflect statutory changes since the regulation was last amended. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, the regulation has no economic impact on any businesses, including small businesses.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299.

REGULATIONS

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

Symbol Key

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

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Proposed Regulation

Title of Regulation: **12VAC5-550. Board of Health Regulations Governing Vital Records (amending 12VAC5-550-320).**

Statutory Authority: §§ 32.1-12 and 32.1-250 of the Code of Virginia.

Notice is hereby given that the State Board of Health has WITHDRAWN the proposed regulatory action for 12VAC5-550, Board of Health Regulations Governing Vital Records, which was published in [35:25 VA.R. 3027-3028 August 15, 2019](#). On November 10, 2020, the board withdrew its proposed action to provide for changing of gender on a birth certificate. Chapters 465 and 466 of the 2020 Acts of Assembly amended §§ 32.1-261 and 32.1-269 of the Code of Virginia to allow a change to the gender of an individual on a birth certificate by administrative process. Therefore, this regulatory action is no longer necessary and is withdrawn.

Agency Contact: Janet Rainey, State Registrar, Virginia Department of Health, 2001 Maywill Street, Richmond, VA 23230, telephone (804) 662-6200, FAX (804) 662-6256, or email janet.rainey@vdh.virginia.gov.

VA.R. Doc. No. R13-3634; Filed November 13, 2020, 2:30 p.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>
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Title of Regulation: **14VAC7-10. Rules Governing the Certified Application Counselor Program (adding 14VAC7-10-10 through 14VAC7-10-80).**

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-6515 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Richard Tozer, Bureau of Insurance Manager, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 786-9525, FAX (804) 371-9290, or email richard.tozer@scc.virginia.gov.

AT RICHMOND, NOVEMBER 5, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. HBE-2020-00002

Ex Parte: In the matter of Adopting
New Rules Governing the Certified
Application Counselor Program

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered September 4, 2020, all interested persons were ordered to take notice that subsequent to October 16, 2020, the State Corporation Commission ("Commission") would consider the entry of an order adopting new rules in Chapter 10 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Certified Application Counselor Program," (hereinafter referred to as "Rules") recommended to be set out at 14 VAC 7-10-10 through 14 VAC 7-10-80, unless on or before October 16, 2020 any person objecting to the adoption of said Rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed Rules with the Clerk on or before October 16, 2020.

The proposed Rules are necessary in light of the enactment of § 38.2-6514 of Chapter 65 of Title 38.2 of the Code of Virginia. This Code section requires the Health Benefit Exchange ("Exchange") to establish a Certified Application Counselor program pursuant to 45 C.F.R. § 155.225. Certified application counselors are individuals who are trained and able to help consumers seeking health insurance coverage options in the Exchange marketplace. The Exchange may designate certain organizations to certify and oversee certified application counselors. The Rules establish processes and criteria for the designation of organizations, the certification of application counselors, and the duties and obligations of both.

Following entry of the Order to Take Notice, the Exchange received comments from one stakeholder, the Virginia Health Care Foundation. No requests for a hearing were filed with the Clerk. The Exchange carefully considered the comments and

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responded to those comments via letter, which was filed in the case file on October 29, 2020. As a result of those comments, no revisions to the proposed Rules are recommended. It is noted that the Exchange has added two newly developed forms to the Rules.

NOW THE COMMISSION, having considered the proposal to adopt new Rules, the comments filed, the Exchange's Response and the Exchange's recommendation that no amendments are necessary to the Rules as proposed, is of the opinion that the attached new Rules and appurtenant forms should be adopted, effective January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) Chapter 10 of the new Rules entitled "Rules Governing the Certified Application Counselor Program," set out at 14 VAC 7-10-10 through 14 VAC 7-10-80 which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2021.

(2) The Exchange shall provide notice of the adoption of the new Rules to all carriers licensed in Virginia to write accident and sickness insurance and to all Life & Health interested persons.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached new Rules on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Exchange shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

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, at mbrowder@oag.state.va.us, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Health Benefit Exchange in care of Director Victoria Savoy.

Summary:

Chapters 916 and 917 of the 2020 Acts of Assembly add Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia and establish the Virginia Health Benefit Exchange. Section 38.2-6514 of the Code of Virginia requires the exchange to establish a certified application counselor program pursuant to 45 CFR 155.225. Certified application counselors are individuals who are trained to be able to help consumers seeking health insurance coverage options in the exchange marketplace. The exchange may

designate certain organizations to certify and oversee certified application counselors. The new regulation establishes processes and criteria for the designation of organizations, the certification of application counselors, and the duties and obligations of both.

Chapter 10

Rules Governing the Certified Application Counselor Program

14VAC7-10-10. Scope and purpose.

The purpose of this chapter is to establish standards for a certified application counselor program by the Health Benefit Exchange in accordance with § 38.2-6514 of the Code of Virginia.

14VAC7-10-20. Definitions.

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

"Certified application counselor" means an individual certified by a CDO to perform the duties described in in this chapter and 45 CFR 155.225(c).

"Certified application counselor designated organization" or "CDO" means an organization designated by the exchange to certify its staff members or volunteers to act as certified application counselors who perform the duties and meet the standards and requirements for certified application counselors set forth in this chapter and 45 CFR 155.225.

"CHIP" means the Children's Health Insurance Program under Title XXI (42 USC 7) of the Social Security Act, including FAMIS.

"Exchange" means the Virginia Health Benefit Exchange established pursuant to the provisions of Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia.

"FAMIS" means the Family Access to Medical Insurance Security Plan, including the FAMIS Plus program, established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia.

"Navigator" means an individual or entity that is registered pursuant to § 38.2-3457 of the Code of Virginia.

"Personal information" has the same meaning assigned to the term in § 38.2-602 of the Code of Virginia.

"Qualified dental plan" means a limited scope dental plan that has been certified in accordance with § 38.2-6506 of the Code of Virginia.

"Qualified health plan" means a health benefit plan that meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, and has been certified in accordance with § 38.2-6506 of the Code of Virginia.

14VAC7-10-30. Designation of organizations.

A. The exchange may designate an organization to certify its staff members or volunteers as certified application counselors. An organization seeking designation as a CDO shall:

1. Register with the exchange and provide any information required for registration purposes in the form and manner prescribed by the exchange;
2. Submit a compliance agreement with the exchange that outlines the standards and requirements in accordance with 45 CFR 155.225, including subdivisions (d)3 through (d)5; and
3. Attest to the organization's ability to carry out the required duties as set forth in 14VAC7-10-40, and if requested by the exchange, provide documentation or other information evidencing compliance with these duties.

B. If the exchange finds that the applicant meets the requirements of this chapter, it may designate the applicant as a CDO.

C. A designation issued under this chapter shall expire two years from the date it was issued. Each applicant for renewal of designation as a CDO shall submit an application to the exchange in the form and manner prescribed by the exchange. A designation issued under this chapter is required to maintain application counselor certification.

D. The exchange may withdraw a designation or refuse to designate or renew a designation of an organization for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete, or untrue information in the CDO application or any other document filed with the exchange;
2. Obtaining or attempting to obtain a designation through misrepresentation or fraud;
3. Failing to comply with the requirements to certify application counselors; or
4. Failing to comply with requirements in this chapter, § 38.2-6514 of the Code of Virginia, or any other applicable provision of the Code of Virginia.

14VAC7-10-40. Duties of a certified application counselor designated organization.

A CDO shall perform the duties and meet the standards and requirements to certify application counselors. The CDO shall:

1. Meet the terms of the compliance agreement executed with the exchange pursuant to 14VAC7-10-30 A 2;
2. Maintain a registration process and method to track the performance of certified application counselors;
3. Provide data and information to the exchange regarding (i) the identity, number, and performance of its certified application counselors; and (ii) the consumer assistance

provided by its certified application counselors in the form and manner specified by the exchange. Beginning in the first quarter of calendar year 2021, each CDO shall submit quarterly reports that include, at a minimum, data regarding the number and identifying information of individuals who have been certified by the organization; the total number of consumers who received application and enrollment assistance from the organization; and of that number, the number of consumers who received assistance in applying for and selecting a qualified health plan or qualified dental plan, enrolling in a qualified health plan or qualified dental plan, or applying for Medicaid or CHIP;

4. Establish procedures to withdraw certification from or refuse to recertify any individual certified application counselor upon a finding of noncompliance with the requirements for certification or a failure to perform duties as required by this chapter; and

5. Establish consumer protection procedures to ensure that:

a. Consumers are informed prior to receiving assistance of the functions and responsibilities of a certified application counselor, including that a certified application counselor may not act as a tax adviser or attorney and cannot provide tax or legal advice when providing assistance in their capacity as a certified application counselor;

b. Consumers provide the CDO with a signed authorization on a form prescribed and furnished by the exchange prior to a certified application counselor obtaining access to a consumer's personal information. The CDO shall maintain a record of the authorization for a period of at least six years; and

c. Consumers understand that they may revoke at any time the authorization provided to the certified application counselor.

14VAC7-10-50. Certification of application counselors.

A. A CDO may certify an individual staff member or volunteer to perform the duties of a certified application counselor only if the individual staff member or volunteer:

1. Completes exchange-approved training regarding qualified health plan and qualified dental plan options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in Virginia, as implemented in Virginia, and completes and achieves a passing score on all exchange-approved certification examinations, prior to functioning as a certified application counselor;

2. Discloses to the CDO and potential applicants any relationships the certified application counselor or sponsoring agency has with any qualified health plan, qualified dental plan, insurance affordability program, or other potential conflicts of interest;

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3. Complies with the exchange's privacy and security standards adopted consistent with 45 CFR 155.260 and applicable authentication and data security standards;

4. Agrees to act in the best interest of the applicants assisted;

5. Provides, either directly or through an appropriate referral to a navigator or non-navigator assistance personnel authorized under 45 CFR 155.205(d) and (e) or 45 CFR 155.210 or to the exchange call center, information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act (42 USC § 12101 et seq.) and § 504 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act (29 USC § 794); and

6. Enters into an agreement with the CDO regarding compliance with the standards specified in 45 CFR 155.225(d), (f), and (g).

B. The CDO may recertify a certified application counselor on at least an annual basis after the certified application counselor has successfully completed recertification training as required by the exchange.

C. A CDO shall withdraw certification from or refuse to recertify an individual certified application counselor upon a finding of noncompliance with the requirements for certification or any failure to perform required duties in accordance with this chapter.

D. A CDO that does not renew or is no longer designated by the exchange shall result in all application counselors certified by that CDO to become decertified.

14VAC7-10-60. Duties of certified application counselors.

A certified application counselor certified by a CDO shall:

1. Provide information to individuals and employees about the full range of qualified health plan or qualified dental plan options and insurance affordability programs for which they are eligible, including providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarify the distinctions among health coverage options, including qualified health plans or qualified dental plans; and help consumers make informed decisions during the health coverage selection process;

2. Assist individuals and employees to apply for coverage in a qualified health plan or qualified dental plan through the exchange and for insurance affordability programs;

3. Help to facilitate enrollment of eligible individuals in a qualified health plan or qualified dental plan and any insurance affordability programs; and

4. Adhere to all the requirements and responsibilities set forth by the CDO or the exchange in the performance of the certified application counselor's duties under this chapter.

14VAC7-10-70. Prohibitions on fees, consideration, solicitation, and marketing.

A CDO or a certified application counselor may not:

1. Impose any charge on a consumer, an applicant, or an enrollee for application or other assistance related to the exchange;

2. Act as an insurance agent or broker;

3. Receive any consideration directly or indirectly from any health insurance issuer or other insurance issuer in connection with the enrollment of any individual in a qualified health plan or qualified dental plan or a nonqualified health plan or nonqualified dental plan;

4. Provide compensation to any individual certified application counselor on a per-application, per-individual-assisted, or per-enrollment basis;

5. Provide to an applicant or potential enrollee a gift of any value as an inducement for enrollment. The value of a gift provided to an applicant and potential enrollee for purposes other than as an inducement for enrollment shall not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. For purposes of this subdivision the term "gift" includes gift items, gift cards, cash cards, cash, or promotional items that market or promote the products or services of a third party but does not include the reimbursement of legitimate expenses incurred by a consumer in an effort to receive exchange application assistance, such as travel or postage expenses;

6. Solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact with a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a preexisting relationship with the individual certified application counselor or CDO and other applicable state and federal laws are otherwise complied with; or

7. Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual certified application counselor or CDO has a relationship with the consumer and so long as other applicable state and federal laws are otherwise complied with.

14VAC7-10-80. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

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

FORMS (14VAC7-10)

[~~CDO Compliance Agreement~~ [Agreement Between the Virginia Health Benefit Exchange and Certified Counselor Designated Organization, Form 10-A \(eff. 1/2021\)](#)]

VA.R. Doc. No. R21-6514; Filed November 5, 2020, 2:32 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1024).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: January 7, 2021.

Agency Contact: Holly Trice, Senior Staff Attorney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641, FAX (804) 371-6524, or email holly.trice@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) is amending its existing general industry standard for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance and maintain or enhance worker protections. In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety

and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 12, 2020, the Safety and Health Codes Board adopted federal OSHA's Occupational Exposure to Beryllium in General Industry, Final Rule, published in 85 FR 42582 through 85 FR 42628 on July 14, 2020, with an effective date of January 7, 2021.

Federal Terms and State Equivalents: When the regulations as set forth in federal OSHA's final rule for the Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 14, 2020	January 7, 2021

VA.R. Doc. No. R21-6579; Filed November 13, 2020, 10:23 a.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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1024).**

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.1024).

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: January 7, 2021.

Agency Contact: Holly Trice, Senior Staff Attorney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219,

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telephone (804) 786-2641, FAX (804) 371-6524, or email holly.trice@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) is amending its existing construction and shipyard standards for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance (i) to more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the requirements of the beryllium standards and other OSHA standards, (ii) to aid compliance and enforcement across the beryllium standards by avoiding inconsistency between the shipyards and construction standards and recent revisions to the general industry standard, and (iii) to clarify certain requirements with respect to materials containing only trace amounts of beryllium. In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR 1915 (Shipyard Employment Standards) and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 12, 2020, the Safety and Health Codes Board adopted federal OSHA's Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, Final Rule, as published in 85 FR 53910 through 85 FR 539998 on August 31, 2020, with an effective date of January 7, 2021.

Federal Terms and State Equivalents: When the regulations as set forth in federal OSHA's final rule for the Occupational Exposure to Beryllium for Shipyard Employment Standards and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 30, 2020	January 7, 2021

VA.R. Doc. No. R21-6580; Filed November 13, 2020, 10:23 a.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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16VAC25-175. **Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.1440, 16VAC25-175-1926.1442).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: January 7, 2021.

Agency Contact: Holly Trice, Senior Staff Attorney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641, FAX (804) 371-6524, or email holly.trice@doli.virginia.gov.

Summary:

In a final rule the federal Occupational Health and Safety Administration (OSHA) is revising the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. These exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration, clarifying which regulatory requirements are applicable. In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 12, 2020, the Safety and Health Codes Board adopted federal OSHA's Cranes and Derricks in Construction: Railroad Roadway Work, Final Rule, as published in 85 FR 57109 through 85 FR 57122 on September 15, 2020, with an effective date of January 7, 2021.

Federal Terms and State Equivalents: When the regulations as set forth in the final rule for Cranes and Derricks in Construction: Railroad Roadway Work is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
November 16, 2020	January 7, 2021

VA.R. Doc. No. R21-6581; Filed November 13, 2020, 10:24 a.m.

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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: **20VAC5-355. Rules Governing Operator's Responsibility to Redistribute Topsoil (adding 20VAC5-355-10, 20VAC5-355-20, 20VAC5-355-30).**

Statutory Authority: §§ 12.1-13 and 56-257.5 of the Code of Virginia.

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

Public Comment Deadline: December 21, 2020.

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

AT RICHMOND, NOVEMBER 17, 2020

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. URS-2020-00378

Ex Parte: In the matter of adopting new rules of the State Corporation Commission governing operator's responsibilities to redistribute topsoil under § 56-257.5 of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapter 666 (HB 723) of the 2020 Virginia Acts of Assembly ("Act"), which became effective on July 1, 2020. The Act, inter alia, amended the Code of Virginia by adding a section, § 56-257.5 (the "Statute"), to require the State Corporation Commission ("Commission") to establish rules by which operators are required to remove topsoil from certain planned construction sites and either redistribute it or store it for later redistribution on the disturbed area. Under the Statute, topsoil is defined as at least 12 inches of the surface soil layer or a six-inch layer of soil that includes the surface soil and the unconsolidated subsoil immediately below it. Additionally, operator is defined as any person who owns, furnishes or transports materials or services by means of a utility line. Further, underground utility line is defined as underground pipeline or conduit of an inside diameter greater than 12 inches or an underground electrical transmission or distribution line of a capacity greater than 115 kilovolts.

The Statute requires the Commission to adopt regulations applicable to any operator having the right to install an underground utility line. The Statute further requires the regulations to require that if such operator, in the course of installing the underground utility line, disturbs an area of land that measures 10,000 square feet or more and constitutes one or more agricultural operations, as defined in § 3.2-300, the operator shall, if desired by the landowner or land management agency, either redistribute the topsoil removed from the disturbed area to graded areas elsewhere on the land of the affected property owner or if insufficient graded areas are available as sites for such redistribution, stockpile the topsoil removed from the disturbed area until it can be redistributed on the area initially disturbed. The Statute mandates that redistributed topsoil be placed on scarified land and that stockpiled topsoil be protected from erosion and compaction or, if the property owner does not agree, then the topsoil shall be disposed of in accordance with applicable law.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to promulgate rules governing operator's responsibilities to redistribute topsoil. To initiate this proceeding, the Commission's Staff ("Staff") has prepared proposed rules which are appended to this Order ("Proposed Rules"). We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.¹ The Commission

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has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.² Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed as Case No. URS-2020-00378.

(2) All filings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and Format, of the Commission's Rules of Practice and Procedure.³ For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁴

(3) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

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

(5) An electronic copy of these rules may be obtained by submitting a request to Lauren C. Govoni, Deputy Director of the Division of Utility and Railroad Safety, Lauren.Govoni@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Additionally, interested persons may download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) On or before December 21, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Such comments may also include proposed modifications and hearing requests. All filings shall refer to Case No. URS-2020-00378. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(7) On or before January 18, 2021, the Staff may file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission. A copy hereof also shall be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

¹See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

²See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

³5 VAC 5-20-10 et seq.

⁴As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

Summary:

Pursuant to Chapter 666 of the 2020 Acts of Assembly, the proposed regulation requires a utility company installing an underground pipeline or conduit with an inside diameter greater than 12 inches or an underground electric transmission or distribution line of greater than 115 kilovolts in capacity to mitigate the effects of the project if the project disturbs 10,000 square feet or more of agricultural land by removing topsoil from the planned construction site and either redistributing it to graded areas elsewhere on the land of the affected property owner or storing it nearby protected from erosion and compaction for later redistribution on the disturbed area.

Chapter 355

Rules Governing Operator's Responsibility to Redistribute Topsoil

20VAC5-355-10. Applicability.

This chapter sets forth requirements for operators installing underground pipeline or conduit, with an inside diameter

greater than 12 inches or an underground electric transmission or distribution line of greater than 115 kilovolts in capacity, to mitigate the effects of the project if the project disturbs 10,000 square feet or more of agricultural land. Such operators shall remove topsoil from the planned construction site and either redistribute the topsoil to graded areas elsewhere on the land of the affected property owner or store it nearby protected from erosion and compaction for later redistribution on the disturbed area.

20VAC5-355-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Operator" means any person who owns, furnishes, or transports materials or services by means of a utility line.

"Topsoil" means at least 12 inches of the surface soil layer or a six-inch layer of soil that includes the surface soil and the unconsolidated subsoil immediately below it.

"Underground utility line" means an underground pipeline or conduit of an inside diameter greater than 12 inches or an underground electrical transmission or distribution line of a capacity greater than 115 kilovolts.

20VAC5-355-30. Operator's responsibilities to redistribute topsoil; waiver.

A. If any operator, in the course of installing an underground utility line, disturbs an area of land that measures 10,000 square feet or more and constitutes one or more agricultural operations, as defined in § 3.2-300 of the Code of Virginia, the operator shall, if desired by the landowner or land management agency, take the following actions:

1. Redistribute the topsoil removed from the disturbed area to graded areas elsewhere on the land of the affected property owner; or

2. If insufficient graded areas are available as sites for such redistribution, stockpile the topsoil removed from the disturbed area until it can be redistributed on the area initially disturbed.

B. Operators redistributing topsoil pursuant to this section shall place the topsoil on scarified land and shall protect the topsoil from erosion and compaction.

C. If the property owner does not agree to the redistribution of topsoil pursuant to this section, the topsoil shall be disposed of in accordance with other applicable law.

D. A request or waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon such terms and conditions as the State Corporation Commission may impose.

VA.R. Doc. No. R21-6548; Filed November 17, 2020 3:39 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

DEPARTMENT OF CONSERVATION AND RECREATION

Agency Contact: Jeffrey Selengut, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, or email jeffrey.selengut@deq.virginia.gov.

Title of Document: [Community Flood Preparedness Fund Guidelines.](#)

Public Comment Deadline: January 6, 2021.

Effective Date: March 1, 2021.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, or email lisa.mcgee@dcr.virginia.gov.

BOARD OF COUNSELING

Title of Document: [Bylaws for the Advisory Board on Art Therapy.](#)

Public Comment Deadline: January 6, 2021.

Effective Date: January 8, 2021.

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

DEPARTMENT OF TRANSPORTATION

Title of Document: [Administrative Services Division Procurement Procedures Manual.](#)

Public Comment Deadline: January 6, 2021.

Effective Date: January 7, 2021.

Agency Contact: JoAnne Maxwell, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, or email joanne.maxwell@vdot.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: [Chesapeake Bay TMDL Special Condition Guidance.](#)

Public Comment Deadline: January 6, 2021.

Effective Date: January 7, 2021.

GENERAL NOTICES

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Residential Treatment Services Manual

The draft Residential Treatment Services Manual (Chapters II, IV, VI, and V and Appendices C and D) is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until December 10, 2020.

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

STATE WATER CONTROL BOARD

Proposed Enforcement Action for the Town of Victoria

The State Water Control Board proposes to issue a consent special order to the Town of Victoria for alleged violation of State Water Control Law at the east sewage treatment plant located at 1915 5th Street and the west sewage treatment plant at 1900 Grove Avenue. A detailed description of the proposed action is available for review at the office listed or from the contact person listed. Comments will be accepted by the contact person until January 7, 2020.

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

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

General Notices
