



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

**Members of the Virginia Code Commission:** **John S. Edwards**, Chair; **Marcus B. Simon**, Vice Chair; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **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.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## January 2021 through January 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	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	May 10, 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 ( <b>Monday</b> )	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Initial Agency Notice

**Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

**Name of Petitioner:** Tasha Burnette.

**Nature of Petitioner's Request:** To modify the regulation on required supervision hours for endorsement.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on December 21, 2020, with comment requested until January 20, 2021. It will also be placed on the Virginia Regulatory Town Hall and available for comments to be posted electronically at [www.townhall.virginia.gov](http://www.townhall.virginia.gov).

At its first meeting following the close of comment, which is scheduled for February 5, 2021, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

**Public Comment Deadline:** January 20, 2021.

**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](mailto:jaime.hoyle@dhp.virginia.gov).

VA.R. Doc. No. PFR21-335; Filed December 1, 2020, 10:44 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF LAW

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Law conducted a periodic review and a small business impact review of **1VAC45-10, Regulations Governing Disclosure of CID (Civil Investigative Demand)**, and determined that this regulation should be amended. The department is publishing its report of findings dated November 17, 2020, to support this decision.

The regulation meets the criteria set out in Executive Order No. 14 (2018). It is necessary to interpret the law and identify the specific state law-enforcement authorities with whom the Office of the Attorney General (OAG) may share civil investigative demand (CID) investigative material. The regulation protects the public health, safety, and welfare by limiting the Virginia law-enforcement authorities with which the OAG may share access to CID material, restricting the use and disclosure of such material by any state law-enforcement authorities that receive it and generally by ensuring the confidentiality of such material when it is shared. The regulation is clearly written and easily understandable.

After periodic review, the OAG is recommending two amendments to the CID regulation: (i) amending 1VAC45-10-10, 1VAC45-10-70, and 1VAC45-10-80 to include the Bad Faith Assertions of Patent Infringement law, §§ 59.1-215.1 through 59.1-215.4 of the Code of Virginia, in the list of statutes for which the Attorney General can share CID material with other Virginia law-enforcement authorities and (ii) amending 1VAC45-10-30 to make clear that the chapter does not apply to law-enforcement authorities that represent states other than the Commonwealth. The first proposed amendment is needed for consistency. The amendment will allow the OAG to share CID material it receives with the other Virginia law-enforcement authorities that can enforce the Bad Faith Assertions of Patent Infringement law, similar to the manner in which the OAG currently can share relevant CID materials with other law-enforcement authorities that can enforce the Virginia Antitrust Act, the Solicitation of Contributions law, the Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act. The second proposed amendment also is needed for consistency. The amended provision currently states that the chapter "shall not apply to federal law-enforcement authorities." Without the amendment, the OAG is concerned that someone may have the mistaken impression that we do not on occasion share CID material with the Attorneys General and agencies of other states that enforce similar consumer protection laws. Similar to our ability to share CID material with federal law-enforcement authorities, the OAG takes the position that § 59.1-9.10 N of the Code of Virginia authorizes it to share CID material it receives with the Attorneys General and agencies of other states who enforce

similar laws, so long as such Attorneys General or agencies are subject to confidentiality restrictions similar to those imposed on the OAG.

The amendments proposed resulted from a periodic review. The existing regulation was promulgated in 1981 and last amended in 2015 as part of another periodic review. Because the regulation governs the procedures that apply to the OAG sharing CID material with other Virginia law-enforcement authorities that enforce the same laws, there is a continued need for, and there will be a continued benefit from, having the regulation. The number of Virginia statutes where the OAG shares enforcement authority with other Virginia law-enforcement authorities continues to grow. The regulation is not complex, has no direct impact on small businesses, and does not conflict with any federal or state law or regulation. The OAG has not received any complaints or comments from the public concerning the regulation as part of the periodic review process or otherwise.

Contact Information: David B. Irvin, Senior Assistant Attorney General, Unit Manager, Department of Law, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-4047.



## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health Codes Board conducted a periodic review and a small business impact review of **16VAC25-11, 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 12, 2020, to support this decision.

The agency's public participation guidelines afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, including an online public comment forum on the Virginia Regulatory Town Hall, and other specially designated subordinate, and interested persons may be accompanied by and represented by counsel or other representative. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community, and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The Safety and Health Codes Board voted to retain the regulation without change. As a result of this periodic review, the department has determined that the regulation has no negative economic impact on small business.

Contact Information: Holly Trice, Senior Staff Attorney; Regulatory Coordinator, Department of Labor and Industry,

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# Periodic Reviews and Small Business Impact Reviews

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600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health Codes Board conducted a periodic review and a small business impact review of **16VAC25-180, Virginia Field Sanitation Standard, Agriculture**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated November 12, 2020, to support this decision.

The regulation requires agricultural employers to provide potable drinking water, regardless of the number of employees, hand washing, and toilet facilities to field workers performing hand agricultural labor. It is identical to the current federal Occupational Safety and Health Administration standard, except for the requirement that employers provide potable drinking water regardless of the number of employees.

The regulation has three goals: (i) reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards, (ii) require sanitary facilities for agricultural workers equal to those required for construction workers, and (iii) protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Provision of sanitary facilities and potable drinking water serve to reduce or eliminate the following four major categories of occupational diseases: heat-related illnesses, communicable diseases, urinary tract infections, and pesticide-related illnesses.

The regulation is essential to reduce or eliminate the health problems faced by agricultural laborers in the field by providing them with potable drinking water and sanitary facilities. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community, and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The Safety and Health Codes Board voted to retain the regulation without change. As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.

Contact Information: Holly Trice, Senior Staff Attorney, Regulatory Coordinator, Safety and Health Codes Board, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641.



## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services conducted a periodic review and small business impact review of **22VAC30-50, Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund**, and determined that this regulation should be amended. The department is publishing its report of findings dated November 30, 2020, to support this decision.

The regulation is required by § 51.5-181 of the Code of Virginia and meets the criteria set out in Executive Order 14 (2018). The regulation ensures fidelity to the legislative intent for the Commonwealth Neurotrauma Initiative (CNI) Trust Fund Program. The regulation requires the CNI Trust Fund Advisory Board to evaluate project applications to ensure projects will benefit Virginians with acquired neurotrauma. No comments have been received indicating that the regulations were not clearly written and easily understandable.

The agency recommends that the regulation be amended. The CNI Trust Fund is a special nonreverting fund established in §§ 51.5-178 et seq. of the Code of Virginia that provides funding to Virginia-based organizations, institutions, and researchers to address the needs of people with acquired neurotrauma. Neurotrauma is defined as "injury to the central nervous system (i.e., a traumatic spinal cord or brain injury) that results in loss of physical functions, cognitive functions, or both" (22VAC30-50-10). The source of revenue for the CNI Trust Fund is a portion of the reinstatement fees that are charged before restoring an operator's license to any person whose driver's license has been revoked or suspended upon conviction for specified dangerous driving offenses. In accordance with the Code of Virginia and 22VAC30-50, the CNI Trust Fund Program provides funding for projects that are either (i) research based or (ii) community-based rehabilitative programs and services. As outlined in 22VAC30-50-30 (Disbursement of funds), the regulatory chapter establishes (i) policies and procedures for soliciting and receiving applications for grants from the fund, (ii) criteria for reviewing and ranking such applications, and (iii) procedures for distributing moneys in the fund. The chapter requirements ensure fidelity to the purpose of the CNI Trust Fund and proper use of public funds to improve the lives of individuals who have acquired neurotrauma. Upon review of the chapter during the periodic review, the department identified several areas that could benefit from minor revisions. The changes align the regulatory chapter with the Code of Virginia and current practices and reduce potential ambiguities.

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## Periodic Reviews and Small Business Impact Reviews

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There is a continued need for the regulation as the regulation is mandated by § 51.5-181 of the Code of Virginia. The regulation ensures fidelity to the legislative intent for the CNI Trust Fund Program. No complaints or comments about the chapter were received during the periodic review. The regulation is designed to support clarity and ensure transparency with the administration of the CNI Trust Fund Program. The regulation comprises only those requirements for the implementation of the CNI Trust Fund Program.

There are no federal requirements for the CNI Trust Fund Program. It is a state-established program operated in accordance with Virginia law and with Virginia funding. As such, the regulation does not conflict with federal or state law or regulation.

The regulation was last revised in 2016 to (i) clarify that requests for proposals shall be issued at the discretion of the CNI Trust Fund Advisory Board and shall depend upon the availability of funds; (ii) emphasize that grants provided by the CNI Trust Fund Program are not to be used for long-term funding of research or community based rehabilitative programs; (iii) require that applicants for grants under the CNI Trust Fund Program provide a plan for sustaining the proposed project following the termination of the grant award; and (iv) make technical corrections, update statutory references, and make other necessary changes.

There is a potential small business impact as a result of this regulation. Virginia-based organizations and institutions of higher education that seek funding from the CNI Trust Fund Program are impacted by the regulation. The CNI Trust Fund Program currently funds 11 projects. Seven projects are based in Virginia higher education institutions. Four projects are based in community organizations or private research entities, all of which are likely small businesses. However, the regulation does not include overly burdensome requirements to those entities seeking to use the CNI Trust Fund resources for research-based or community-based rehabilitative programs and services.

Contact Information: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7063.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services conducted a periodic review and a small business impact review of **22VAC30-70, The Virginia Public Guardian and Conservator Program**, and determined that this regulation should be amended. The department is publishing its report of findings dated December 2, 2020, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety, and welfare of the individuals in the Commonwealth. The regulation protects the health and safety of 1,049 clients who are found by a Virginia circuit court to be (i) incapacitated and (ii) who meet the criteria for public guardianship as set forth in § 64.2-2010 of the Code of Virginia. No comments have been received indicating that the regulations were not clearly written and easily understandable.

The agency recommends that the regulation be amended. The Virginia Public Guardian and Conservator Program (program), operated within the Department for Aging and Rehabilitative Services provides public guardian and conservator services for adults who are incapacitated and indigent and for whom no other proper or suitable person can be identified who is willing and able to serve as the individual's guardian, conservator, or both, as applicable. The program has capacity to provide public guardianship services, public conservatorship services, or both to 1,049 clients who are found by a Virginia circuit court to be (i) incapacitated and (ii) who meet the criteria for public guardianship as set forth in Virginia Code § 64.2-2010. These services are provided by 13 local public guardian program, which are operated by local public guardian program contractors under contract with department. This chapter prescribes the requirements that the 13 local public guardian programs must meet in order to receive state funds provided in accordance with §§ 51.5-149.1 et seq. of the Code of Virginia and Items 340 and 344 of the 2020 Appropriation Act. With increasing attention on both public and private guardianships in the Commonwealth, the primary advantage of the regulatory chapter is the protection and clarity it provides to program clients and public guardian programs. The current chapter requires regulatory changes in order to further define program requirements; protect the health, safety, and welfare of the vulnerable clients; and bring conformity to program standards and operations across the commonwealth.

There is a continued need for the regulations as they are mandated by law and they protect the health, welfare, and safety of program clients. No complaints or comments about the chapter were received during the periodic review. The regulation is designed to support clarity and ensure transparency with the program and the operations of public guardian program contractors. The chapter comprises only those requirements for the implementation of the program. As a state-based and state-funded program, there are no other federal or state regulations for public guardian or conservator programs or services. As such, the regulation does not conflict with federal or state law or regulation. The regulation was last revised in 2016 to incorporate person-centered planning components as required by Chapter 322 of the 2012 Acts of Assembly. There is a small business impact as a result of this regulation. All 13 public guardian program contractors would likely be considered small businesses. However, the regulation does not include overly burdensome requirements, reinforces

common standards for business management, and protects the health and safety of the program's vulnerable clients.

Contact Information: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093.

## 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 **22VAC40-675, Personnel Policies for Local Departments of Social Services**, and determined that this regulation should be amended. The department is publishing its report of findings dated August 19, 2020, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018). The regulation is necessary for the protection of public health, safety, and welfare of the individuals, families, groups, communities, and organizations that are served because it establishes the merit system standards that directly affects the effectiveness of personnel administration, performance, and quality of public service across 120 local departments of social services. The regulation is clearly written and easily understandable. When the regulation uses or references legal terms, it is often for consistency with the corresponding provisions of the United States Code, Code of Federal Regulations, and the Code of Virginia. Such consistency better serves the public in understanding the regulation.

The agency recommends that the regulation be amended. The amendments will make the regulation compliant with federal equal employment opportunity and nondiscrimination laws in all aspects of personnel administration, update affirmative action requirements, and provide accurate name and date information.

This regulation is not applicable to small businesses and therefore will not have an impact on small businesses.

Contact Information: Lori Schamerhorn, Human Resource Policy Consultant, Senior, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264.



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# NOTICES OF INTENDED REGULATORY ACTION

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## 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 **12VAC5-90. Regulations for Disease Reporting and Control**. The purpose of the proposed action is to add COVID-19 reporting requirements for physicians and directors of medical care facilities. The proposed amendments require reports of suspected and confirmed cases and hospitalizations and intensive care unit admissions; require case report forms be submitted electronically; clarify that the category "laboratory directors" includes pharmacies that hold Clinical Laboratory Improvement Amendments Certificates of Waiver; require laboratory directors to report positive and negative COVID-19 tests; add ethnicity to the fields required to be reported by all parties related to COVID-19; and add "coronavirus, severe" to the list of infectious disease that shall be reported to persons practicing funeral services.

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

Public Hearing Information: The agency does not intend to hold a public hearing at the proposed stage.

Public Comment Deadline: January 20, 2021.

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

VA.R. Doc. No. R21-6359; Filed November 17, 2020, 1:49 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### 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:** 10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-30, 10VAC5-200-60 through 10VAC5-200-120; repealing 10VAC5-200-33, 10VAC5-200-35, 10VAC5-200-40).

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

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

**Public Comment Deadline:** January 5, 2021.

**Agency Contact:** Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9703, FAX (804) 371-9416, or email [susan.hancock@scc.virginia.gov](mailto:susan.hancock@scc.virginia.gov).

#### Summary:

*The proposed amendments align the regulation with Chapters 1215 and 1258 of the 2020 Acts of Assembly, eliminate obsolete provisions and references, and clarify requirements.*

AT RICHMOND, NOVEMBER 30, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2020-00109

Ex Parte: In the matter of Adopting Revisions to the Regulations Governing Licensees under Chapter 18 of Title 6.2 of the Code of Virginia

## ORDER TO TAKE NOTICE

Section 6.2-1815 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code ("Chapter 18"). The Commission's regulations governing licensees under Chapter 18 are set forth in Chapter 200 of Title 10 of the Virginia Administrative Code ("Chapter 200").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 200. The proposed amendments are prompted by Chapters 1215 and 1258 of the 2020 Virginia Acts of Assembly ("Chapters 1215 and 1258"), which make extensive changes to Chapter 18 that will become effective on January 1, 2021. In particular, this legislation eliminates all existing references to payday loans and instead authorizes licensees under Chapter 18 to make short-term loans. Furthermore, Chapters 1215 and 1258 alter many of the requirements, prohibitions, and limitations that govern loans made pursuant to Chapter 18. Accordingly, the Bureau has proposed substantial revisions to Chapter 200, which are needed in order to conform the regulations to Chapter 18 once Chapters 1215 and 1258 become effective.

The vast majority of the Bureau's proposal aligns Chapter 200 with Chapters 1215 and 1258, eliminates obsolete provisions and references from Chapter 200, and clarifies certain issues that stem from the legislation. However, the Bureau is also proposing various technical changes as well as an assortment of revisions that are not prompted by the legislation. These revisions include the following:

#### Definitions

The proposed amendments to section 10 VAC 5-200-10 define the term "advertisement," modify the definition of "liquid assets," and remove terms that are now defined in § 6.2-100 of the Code.

#### Requirements for licensees; operating rules; acquisitions

In section 10 VAC 5-200-20, the Bureau proposes to eliminate the requirements that licensees must satisfy in order to receive replacement or reissued licenses. The proposal also provides for the Bureau to retain an applicant's surety bond in the event that a person's application for a license is withdrawn or denied, and clarifies that licensees need to continuously maintain the requirements and standards for licensure prescribed in § 6.2-1806 of the Code.

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## Short-term lending pamphlet

The proposed revisions to section 10 VAC 5-200-30 remove the requirement that a licensee provide each prospective borrower with a separate printed notice before the licensee furnishes the borrower with a loan application or receives information relating to loan qualification. The proposal also relocates the acknowledgment for the borrower rights and responsibilities pamphlet to the end of the licensee's application form.

## Posting of charges

The proposed modifications to section 10 VAC 5-200-60 require a licensee to post its schedule of payments, fees, and interest charges with certain loan examples on its website as well as in each licensed location.

## Additional business requirements and restrictions

In section 10 VAC 5-200-70, the Bureau proposes to clarify (i) where licensees need to post the days and hours during which they are open for business, (ii) that each applicant for a short-term loan must sign and date a written loan application prior to a licensee making a credit decision, and (iii) that no person in a licensee's office may charge a borrower a fee for cashing the licensee's loan proceeds check.

## Annual reporting requirements

The proposed amendments to section 10 VAC 5-200-75 update the required contents of the annual report that licensees are required to furnish to the Commissioner of Financial Institutions ("Commissioner"). The proposal also authorizes the Commissioner to waive the provision of any information that is prescribed by this section.

## Short-term lending pamphlet text

The proposed revisions to section 10 VAC 5-200-80 include amendments that update the prescribed text of the borrower rights and responsibilities pamphlet to reflect changes that are being proposed elsewhere in Chapter 200.

Schedule of annual fees for the examination, supervision, and regulation of short-term lenders.

The modifications proposed by the Bureau in section 10 VAC 5-200-90 eliminate the annual fee that is imposed on companies that are granted a license under Chapter 18 between January 1 and September 15 of the year of the assessment.

## Conducting other business

In section 10 VAC 5-200-100, the Bureau is proposing to eliminate various provisions relating to the conduct of open-end credit business or open-end auto title lending business from a licensee's offices. The proposal also establishes that if a licensee performs certain loan functions on or through its website or mobile application and any other products or services are offered or sold to Virginia residents using such website or mobile application, then the offer or sale of such

other products or services constitutes other business under section 10 VAC 5-200-100.

In addition, the proposed revisions clarify that although Commission approval is not required for either a registered check cashing business or a licensed motor vehicle title lending business to be conducted from a licensee's short-term lending offices, the conduct of these businesses from such offices is otherwise governed by section 10 VAC 5-200-100. In this regard, the proposal adds specific conditions for the conduct of a check cashing business from a licensee's short-term lending offices, whereas specific conditions applicable to the conduct of a motor vehicle title lending business from a licensee's offices are already established by this section. Additionally, the proposal revises the condition that pertains to the operation of an automated teller machine from a licensee's offices.

## Short-term lending database

The proposed modifications to section 10 VAC 5-200-110 include allowing licensees to accept photocopies, facsimiles, or other reproductions of an applicant's driver's license or identification card. In proposed subdivision H 3 of this section, "calendar days" is changed to "days" in order to be consistent with provisions found elsewhere in Chapter 200 that specify a period of time.

## Database inquiry fee

Subject to the cap set forth in section 10 VAC 5-200-115, the amount of the database inquiry fee that licensees are required to pay to the database provider has traditionally been prescribed through Commission orders, and the fee is currently \$1.98 for each consummated loan. The Bureau is proposing to amend section 10 VAC 5-200-115 by replacing the cap with the actual amount of the database inquiry fee. Furthermore, the database provider, Veritec Solutions, LLC, has requested that the amount of the database inquiry fee be increased to \$6.98 for each consummated loan in order to establish a sustainable financial model for its ongoing support of the database.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 5, 2021. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2020-00109. Interested persons desiring to submit comments or request a hearing electronically may do so by following the

instructions available at the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments).

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

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

A COPY of this Order and the attached proposed regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached proposed regulations to all licensees under Chapter 18 and such other interested persons as he may designate; and a copy of this Order and the attached proposed regulations shall be sent by electronic mail to: Thomas Reinheimer, Chief Executive Officer, Veritec Solutions, LLC, at [thomas.reinheimer@veritecs.com](mailto:thomas.reinheimer@veritecs.com), 6735 Southpoint Drive South, Suite 300, Jacksonville, Florida 32216.

Chapter 200  
Payday Short-Term Lending

**10VAC5-200-10. Definitions.**

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

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

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

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of ~~clause 1 (vi) of § 6.2-1816 of the Code of Virginia~~ the Act and this chapter means a day on which the licensee's office is open for business ~~as posted as required by subsection A of 10VAC5-200-70~~ licensee is able to make loans pursuant to the Act.

"Commission" means the State Corporation Commission.

"Duplicate original" ~~for purposes of subdivision 2 of § 6.2-1816 of the Code of Virginia and this chapter~~ means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of ~~clause 1 (vi) of § 6.2-1816 of the Code of Virginia~~ the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment

effected by use of a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system.

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

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

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

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

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

~~"Short maturity loan," as used in the definition of "payday loan" in § 6.2-1800 of the Code of Virginia, means a loan with a term not exceeding 120 days.~~

~~"Small," as used in the definition of "payday loan" in § 6.2-1800 of the Code of Virginia, means \$2,500 or less.~~

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

**10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.**

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

~~C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses~~

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will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business. Loans made pursuant to the Act prior to January 1, 2021, that remain outstanding on or after January 1, 2021, may be collected in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made.

D. If a person has filed a bond with the bureau, as required by § 6.2-1804 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; ~~or~~
2. The person ceases engaging in business as a payday short-term lender; ~~or~~
3. The person's application for a license is withdrawn or denied.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

F. For purposes of clause 1 (v) of § 6.2-1816 of the Code of Virginia, the number of days in a borrower's pay cycle and the corresponding minimum loan term shall be determined by a licensee in accordance with the following:

- ~~1. If a borrower is paid on a weekly or more frequent basis, there are seven days in the borrower's pay cycle and the minimum loan term shall be 14 days.~~
- ~~2. If a borrower is paid on a biweekly basis, there are 14 days in the borrower's pay cycle and the minimum loan term shall be 28 days.~~
- ~~3. If a borrower is paid on a semimonthly basis, there are 15 days in the borrower's pay cycle and the minimum loan term shall be 31 days.~~
- ~~4. If a borrower is paid on a monthly basis, there are 30 days in the borrower's pay cycle and the minimum loan term shall be 62 days.~~
- ~~5. If a borrower is paid either (i) less frequently than monthly, or (ii) on an irregular basis (but less frequently than weekly), there are 30 days in the borrower's pay cycle and minimum loan term shall be 62 days.~~

G. A licensee shall retain supporting documentation for a borrower's pay cycle in each loan file, which may consist of (i) a copy of a borrower's pay stub or similar periodic earnings statement that clearly reflects the borrower's pay cycle, or (ii) a representation by the borrower in the written loan application.

H. F. A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic

check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution. ~~However, this subsection shall not be construed to prohibit a licensee from printing a replacement security check on behalf of a borrower, at the borrower's request, at such time that the borrower is present in the licensed office and makes a payment on an extended payment plan or an extended term loan. A replacement security check shall be (i) dated as of the date the loan or final installment is due, (ii) issued for the remaining amount owed to the licensee, (iii) manually signed by the borrower, and (iv) exchanged for the check that was previously held as security.~~

~~I. With the exception of the check given by a borrower to a licensee as security for a payday loan, a licensee shall not collect or receive from a borrower any interest or fees permitted by § 6.2-1817 of the Code of Virginia, either in whole or in part, prior to the date of loan maturity unless the borrower is voluntarily making a full or partial prepayment pursuant to 10VAC5-200-40. If a borrower enters into an extended payment plan or extended term loan, a licensee shall not collect or receive any interest or fees, either in whole or in part, prior to the due date of a scheduled installment unless the borrower is voluntarily making a payment in advance.~~

~~J. G.~~ The amount of the check given by a borrower to a licensee as security for a payday short-term loan shall not exceed the sum of the principal amount advanced to the borrower and the interest and fees and charges permitted by § 6.2-1817 of the Code of Virginia. ~~If a borrower enters into an extended payment plan at the time a loan is obtained, the amount of the check shall not include any interest.~~

~~K. H.~~ Upon satisfaction of a loan or upon learning that a loan has been satisfied, a licensee shall ~~attach to each loan agreement~~ retain either (i) a copy of the signed and dated receipt for the payment that satisfied the loan or (ii) if a judgment was obtained and satisfied, a copy of the judgment marked satisfied.

~~L. Except as otherwise provided in subdivision B 2 of 10VAC5-200-33 or subdivision D 1 of 10VAC5-200-35, the check used to secure a payday loan shall be dated as of the date the loan is due. I.~~ A licensee shall not deposit or otherwise present for payment a check given as security for a loan, including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan, prior to the date stated on the face of the check. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with a payday short-term loan.

~~M. J.~~ If a borrower (i) cancels or rescinds a loan ~~in accordance with subsection G of 10VAC5-200-40~~, or (ii) repays a loan in full with cash or a good funds instrument and not with ~~the~~ a check securing the loan, the licensee shall immediately return ~~the~~ any check given as security for the loan to the borrower.

~~N. K.~~ A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, ~~fax numbers~~, and email addresses of a designated contact person, the person responsible for updating information in the payday short-term lending database, and the person who consumers may contact to make payment arrangements for outstanding payday loans or short-term loans; (ii) the location of the licensee's or former licensee's payday loan or short-term loan records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding payday loans or short-term loans.

~~O. L.~~ A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all payday short-term loans that the person made while licensed as a payday short-term lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making payday short-term loans.

~~P. M.~~ If a licensee or former licensee disposes of records containing a consumer's personal financial information, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee or former licensee may arrange for service from a business record destruction vendor.

~~Q. N.~~ Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the ~~Commissioner of Financial Institutions~~ commissioner describing the event and its expected impact, if any, on the activities of the licensee in Virginia:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.
2. The Attorney General or any other Virginia governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).
3. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
4. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's payday short-term lender license, ~~deferred presentment~~ license, or similar license; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its payday short-term lending, ~~deferred presentment~~, or similar business; or (iii) takes any other action against the licensee relating to its payday short-term lending, ~~deferred presentment~~, or similar business where the total amount of restitution or other

payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the ~~Commissioner of Financial Institutions~~ commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

5. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed payday short-term lending, ~~deferred presentment~~, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in payday short-term lending, ~~deferred presentment~~, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in payday short-term lending, ~~deferred presentment~~, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

~~R. O.~~ Pursuant to ~~subsection B of~~ § 6.2-1801 of the Code of Virginia, a licensee shall not make a payday short-term loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating payday short-term loans through its own employees.

~~S. P.~~ A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including ~~but not limited to~~ the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

~~T. Q.~~ A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a payday short-term loan transaction.

~~U. R.~~ A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

~~V. S.~~ A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of the Act or this chapter.

T. Any person licensed under the Act to make payday loans as of December 31, 2020, shall be deemed licensed and authorized to make short-term loans pursuant to the Act beginning on January 1, 2021. Licenses issued by the commission prior to January 1, 2021, shall remain in force until they have been surrendered, revoked, or suspended.

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~~U. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1806 of the Code of Virginia.~~

## **10VAC5-200-30. ~~Notice and payday Short-term lending pamphlet.~~**

~~A. Before entering into a payday loan transaction, a licensee shall provide each prospective borrower applicant for a short-term loan with a pamphlet which explains the borrower's rights and responsibilities. This pamphlet shall use that uses the exact language appearing in the "Payday Lending Pamphlet" set forth in 10VAC5-200-80. The form pamphlet shall be printed or typed without alteration separate from all other papers or documents obtained by the licensee in type of size not less than that known as 12 point. The title of the pamphlet ("Payday Short-Term Lending in the Commonwealth of Virginia—Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," "Short-Term Lending Database," "Limitations on Security Interest / Obtaining PINs," etc.) shall be in bold-face print or type.~~

~~B. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide each prospective borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short term cash needs."~~

~~1. The notice and acknowledgement shall be printed or typed on 8 1/2 x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also end of each application form shall contain an acknowledgement a separate acknowledgment stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Short-Term Lending in the Commonwealth of Virginia—Borrower Rights and Responsibilities."~~

~~2. The notice acknowledgment must be signed initialed and dated by each prospective borrower applicant for a short-term loan. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.2-1809 of the Code of Virginia.~~

## **10VAC5-200-33. ~~Extended payment plans. (Repealed.)~~**

~~A. In any rolling 12 month period, an eligible borrower may elect to pay an outstanding payday loan from any licensee by means of an extended payment plan. A borrower shall not be eligible to obtain an extended payment plan if the borrower obtained an extended payment plan within the preceding 12 months.~~

~~B. A borrower may enter into an extended payment plan at any time on or after the date a loan is made through the date that the loan is due to be repaid. A borrower shall not be permitted to repay a past due payday loan by means of an extended payment plan. If a loan is past due and a borrower cannot obtain an extended payment plan, a licensee may voluntarily accept payments from a borrower in accordance with subsection H of 10VAC5-200-70.~~

~~1. If an eligible borrower elects an extended payment plan, a licensee shall permit the borrower to repay the amount owed in at least four equal installments over a term of at least 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended payment plan (e.g., if the term is 60 days and there are four installments, an installment shall be due every 15 days).~~

~~2. If a borrower enters into an extended payment plan on the date a loan is made, the check used to secure the loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended payment plan. A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended payment plan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.~~

~~3. A borrower who elects to repay a payday loan with an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.~~

~~C. A licensee shall provide notice to borrowers of the potential availability of the extended payment plan option in accordance with the provisions of this subsection.~~

~~1. A licensee shall conspicuously post in each licensed location a written notice in at least 24 point bold type informing borrowers that they may be eligible to enter into an extended payment plan. The minimum size for such written notice shall be 24 inches by 18 inches.~~

~~2. The title of the written notice, which shall appear in at least 48 point bold type, shall be "NOTICE — EXTENDED PAYMENT PLANS AVAILABLE TO ELIGIBLE BORROWERS AT NO ADDITIONAL COST."~~

~~3. The required text of the written notice shall be as follows:~~

~~If you are eligible, you have the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12 month period (even if you obtain loans from different lenders or locations). You may obtain an~~

extended payment plan at any time on or after the date that you receive your loan through the date that your loan is due to be repaid. Under an extended payment plan, you will be permitted to repay the amount you owe in at least four equal installments over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan. When you make a payment on an extended payment plan, you will have the option of providing a replacement security check for the remaining amount you owe. Please be advised that if you obtain an extended payment plan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall immediately provide oral notice to the applicant that (i) the applicant is eligible to repay the payday loan through an extended payment plan; (ii) information about extended payment plans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended payment plans. When providing this notice, the licensee shall also direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Extended Payment Plans."

D. A licensee shall immediately give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended payment plan. The receipts shall also state the loan balance due after each payment.

E. A licensee shall retain the written and signed extended payment plan document identifying the terms of the extended payment plan and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subsection D of this section. Upon full repayment or satisfaction of an extended payment plan, a licensee shall mark both the original loan agreement and original extended payment plan document with the word "paid" or "canceled," return both items to the borrower, and retain copies in its loan records.

**10VAC5-200-35. Five payday loans within 180 days. (Repealed.)**

A. A borrower obtaining a fifth payday loan within any rolling 180-day period may elect, at the option of the borrower, (i) to repay the loan through an extended payment plan, unless the borrower previously elected an extended payment plan within the preceding 12 months, or (ii) to obtain the loan in the form of an extended term loan.

B. If a borrower does not obtain an extended payment plan or extended term loan in connection with his fifth payday loan in 180 days, the borrower shall not be eligible for another payday

loan until 45 days after the date the fifth payday loan is paid or otherwise satisfied in full.

C. If a borrower previously obtained an extended payment plan within the preceding 12-month period, the borrower shall not be eligible to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan. However, if an eligible borrower elects to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan, the provisions of 10VAC5-200-33 shall apply. A borrower who elects to repay such loan by means of an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

D. The following provisions shall apply to extended term loans:

1. An extended term loan is a payday loan, as this term is defined in § 6.2-1800 of the Code of Virginia. As with other payday loans, an extended term loan shall be secured by a check that does not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § 6.2-1817 of the Code of Virginia. The check used to secure an extended term loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended term loan. A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended term loan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.

2. If an eligible borrower elects an extended term loan, a licensee shall permit the borrower to repay the amount owed in four equal installments over a term of 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended term loan (i.e., an installment shall be due every 15 days).

3. The terms of an extended term loan shall be set forth in a written agreement signed and dated by the borrower. An eligible borrower may elect the extended term loan option only on the date a payday loan is made.

4. A borrower who obtains an extended term loan shall not be eligible for another payday loan during the longer of 90 days following the date the extended term loan is paid or otherwise satisfied in full, or 150 days following the date the extended term loan is obtained. Subject to one of the applicable waiting periods associated with a fifth loan in any rolling 180-day period, a borrower may be eligible for consecutive extended term loans or multiple extended term loans in any rolling 12-month period.



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5. A licensee shall immediately give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended term loan. The receipts shall also state the loan balance due after each payment.

6. A licensee shall retain the written and signed extended term loan agreement and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subdivision 5 of this subsection. Upon full repayment or satisfaction of an extended term loan, a licensee shall mark the original extended term loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its loan records.

E. A licensee shall provide notice to borrowers of the potential availability of the extended term loan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24 point bold type informing borrowers that they may be eligible to obtain an extended term loan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48 point bold type, shall be "NOTICE — EXTENDED TERM LOANS AVAILABLE TO BORROWERS OBTAINING A FIFTH PAYDAY LOAN WITHIN 180 DAYS."

3. The required text of the written notice shall be as follows:

Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia gives borrowers obtaining their fifth payday loan within 180 days the option to receive it in the form of an extended term loan. An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. When you make a payment on an extended term loan, you will have the option of providing a replacement security check for the remaining amount you owe. Please be advised that if you obtain an extended term loan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer). However, even if you do not choose an installment payment arrangement, you will still be unable to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended term loan, the licensee shall immediately provide

oral notice to the applicant that (i) the applicant is eligible to obtain an extended term loan; (ii) information about extended term loans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended term loans. When providing this notice, the licensee shall also direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Five Payday Loans within 180 days." In addition, if the payday lending database advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall also comply with subdivision C 4 of 10VAC5-200-33.

## **10VAC5-200-40. Borrower prepayment; right to cancel. (Repealed.)**

A. In order to prepay a payday loan in full, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees. A borrower shall be permitted to make partial payments, in increments of not less than \$5.00, on the loan at any time without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

B. For purposes of the Act and this chapter, the interest and loan fee permitted by subsections A and B of § 6.2-1817 of the Code of Virginia shall be deemed accrued on a straight line basis over the term of a payday loan. A licensee shall calculate interest charges using either a 360-day year or a 365-day year. The verification fee permitted by subsection C of § 6.2-1817 of the Code of Virginia shall be deemed accrued in full at the time a payday loan is made.

C. 1. A borrower choosing to prepay his payday loan in full shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days that have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 28 days, and a 360-day year is prepaid in full after seven days, the borrower shall only be required to pay in cash or good funds instrument \$427.80 (\$400 \$2.80 interest \$20 loan fee \$5.00 verification fee) to the licensee.)

2. A borrower choosing to make partial payments on a payday loan shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the timing and amount of such partial payments. (For example, given a \$500 loan with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 31 days, and a 360-day year, a borrower making a partial payment of \$200 after 15 days shall only be required to pay a total of \$603.91 to the licensee (\$500 principal \$103.91 interest and fees). In this example, \$60.89 of the borrower's \$200 partial payment would be applied toward interest (\$7.50) and fees (\$48.39 loan fee \$5.00 verification

fee) and the remaining \$139.11 would be applied toward principal, thereby resulting in an outstanding balance of \$360.89 until maturity. Based on this outstanding balance, the charges for the remainder of the term are \$5.77 (interest on \$360.89 for 16 days) \$37.25 (loan fee on \$360.89 prorated for 16 days).

D. If a borrower enters into an extended payment plan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee, any interest that accrued prior to the borrower entering into the extended payment plan, and the pro-rata portion of the total loan fee based upon the number of days that have elapsed between the loan disbursement date and the date the loan would have been due if the borrower had not entered into the extended payment plan. The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended payment plan in full.

1. Example: Assume that a borrower who is paid on a semimonthly basis (minimum term of 31 days) obtains a \$500 loan on April 1 with an extended payment plan, an extended payment plan term of 60 days, no interest (interest does not accrue during the term of an extended payment plan), a 20% loan fee, a \$5.00 verification fee, and installment payments of \$151.25 due on April 16, May 1, May 16, and May 31. Since the borrower is paid on a semimonthly basis, the loan fee shall accrue over a period of 31 days. If the borrower prepays the extended payment plan in full on April 21, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), a pro-rata portion of the loan fee (\$64.52), and the verification fee (\$5.00) for a total of \$569.52 to the licensee. If the borrower made an installment payment of \$151.25 on April 16, the payoff amount on April 21 would be \$418.27 (\$569.52 - \$151.25).

2. Example: Assume that a borrower who is paid on a semimonthly basis obtains a \$500 loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 31 days, and a 360-day year. Next assume that the borrower elects an extended payment plan on April 23 with a term of 60 days and installment payments of \$154 due on May 8, May 23, June 7, and June 22. If the borrower prepays the extended payment plan in full on June 2, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued prior to the borrower electing an extended payment plan (\$11), the entire loan fee (\$100), and the verification fee (\$5.00) for a total of \$616 to the licensee. If the borrower made installment payments of \$154 on both May 8 and May 23, the payoff amount on June 2 would be \$308 (\$616 - \$154 - \$154).

E. If a borrower enters into an extended term loan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days

that have elapsed between the loan disbursement date and the loan maturity date (i.e., the date the fourth installment is due). The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended term loan in full.

Example: Assume that a borrower obtains a \$500 extended term loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a 360-day year, a 60-day term, and installment payments of \$158.75 due on April 16, May 1, May 16, and May 31. If the borrower prepays the extended term loan in full on May 20, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued for 49 days (\$24.50), a pro-rata portion of the loan fee (\$81.67), and the verification fee (\$5.00) for a total of \$611.17 to the licensee. If the borrower made installment payments of \$158.75 on April 16, May 1, and May 16, the payoff amount on May 20 would be \$134.92 (\$611.17 - \$158.75 - \$158.75 - \$158.75).

F. Unless it results in the prepayment in full of an extended payment plan or extended term loan pursuant to subsection D or E of this section, a partial payment, excess payment, installment payment, or other payment received by a licensee in advance of the date the funds are due under the terms of the extended payment plan or extended term loan shall not result in a modification of the payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee. Payments made by a borrower pursuant to an extended payment plan or extended term loan shall be first applied to any past due installment and then to the next regularly scheduled installment.

G. Notwithstanding any provision of this section, a borrower shall have the right to cancel a payday loan (including an extended term loan or a loan repayable by means of an extended payment plan) at any time before the close of business on the next business day following the date of the loan by paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. The licensee shall not be entitled to charge or receive any interest or fees, including a verification fee, when a borrower cancels a payday loan.

#### 10VAC5-200-60. Posting of charges.

A. A licensee shall conspicuously post the following in its each licensed location and on its website:

1. A schedule of payments, fees and interest charges, with examples using (i) a \$300 loan payable in 14 days that is repaid in three months; (ii) a \$300 \$500 loan payable in 30 days that is repaid in five months; and (iii) a \$300 \$1,000 loan payable in 31 days; (iv) a \$300 loan payable in 62 days; and (v) a \$300 extended term loan that is repaid in 10 months. A licensee may post additional examples when posting the information required by this subsection.

2. A notice with this statement: "If you wish to file a complaint against us, you may contact the Virginia Bureau

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of Financial Institutions at (800) 552-7945 or at [scc.virginia.gov](http://scc.virginia.gov)."

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Regulation Z (12 CFR Part 1026).

## **10VAC5-200-70. Additional business requirements and restrictions.**

A. A licensee shall ~~conspicuously~~ post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

B. ~~A licensee shall not deposit or otherwise present for payment more than two times any check given by a borrower as security for a loan, and in no event shall a licensee recover from a borrower more than a total of \$25 attributable to returned check fees incurred by the licensee with respect to a single check. Subject to subdivision 11 or 12 of § 6.2-1816 of the Code of Virginia, if applicable, a licensee may charge and collect from a borrower the actual amount of one or more deposit item return fees incurred by the licensee provided that (i) the conditions prescribed in § 6.2-1817 A 3 of the Code of Virginia are met, and (ii) the amount charged and collected does not exceed \$25 per deposit item return fee.~~

C. A licensee shall not knowingly make a payday short-term loan to a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States. To enable a licensee to make this determination, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before ~~obtaining~~ making a payday short-term loan. A licensee shall not make a payday short-term loan to an applicant unless the applicant answers "no" to all of these questions:

1. Are you a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
2. Are you married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
3. Are you under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
4. Was more than one-half of your financial support for the past 180 days provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?

D. A licensee shall maintain in its licensed offices such books, accounts, and records as the ~~Commissioner of Financial Institutions~~ commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of the Act and all rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved. Such records relating to loans, including loan applications, shall be retained for at least three years after final payment is made on any loan.

E. ~~A licensee shall report, in accordance with § 6.2-1812 of the Code of Virginia, the institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia) by the Attorney General or any other governmental authority require each applicant for a short-term loan to sign and date a written loan application prior to the licensee making a credit decision.~~

F. A licensee shall endeavor to provide the loan documents, ~~printed notice~~, and pamphlet required by 10VAC5-200-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

G. ~~A licensee shall not file or initiate a legal proceeding against a borrower until 60 days after the date of default on a payday loan, including defaults under extended payment plans or extended term loans, during which time the licensee and borrower may voluntarily enter into a repayment arrangement.~~

H. Nothing in the Act or this chapter shall be construed to prohibit a licensee from voluntarily accepting a payment on an outstanding loan from a borrower after the date that such payment was due to the licensee. However, except as otherwise permitted by the Act and this chapter, the licensee shall not collect, receive, or otherwise recover any additional interest, fees, or charges from the borrower.

H. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either an affiliate or any person in the same office as the licensee to charge the borrower a fee for cashing the check.

## **10VAC5-200-75. Annual reporting requirements.**

~~When~~ Unless otherwise directed by the commissioner, licensees shall provide the following data regarding loans made pursuant to the Act when making the annual report required by § 6.2-1811 of the Code of Virginia, in addition to other information required by the commissioner, licensees shall provide the following data:

1. The total number and dollar amount of payday loans made.
2. The total number of individual borrowers to whom loans were made.
3. The minimum, and maximum, and average dollar amount of payday loans made contracted loan amount.

4. The average contracted annual percentage rate, ~~and range of annual percentage rates, charged on payday loans made.~~
5. The ~~average number of days, and the range of number of days, of the term of payday loans made~~ total amount of contracted loan charges.
6. The total amount of loan charges actually paid.
- ~~7. The total number and dollar amount of borrower checks returned unpaid by the drawee depository institution~~ deposit item return fees paid by borrowers.
- ~~7. The total number and dollar amount of returned checks ultimately paid.~~
8. The total number ~~and dollar amount of returned checks charged off as uncollectible~~ defaulted loans.
9. The total number of charged-off loans and the total dollar amount ~~of returned check fees collected from borrowers whose checks are returned for insufficient funds~~ charged off.
10. The total number of individual borrowers against whom ~~lawsuits were instituted~~ civil actions were brought.
11. ~~The number of individual borrowers who received more than one loan but less than 13 loans, and the number of individual borrowers who received 13 loans or more~~ Any additional information required by the commissioner.

**10VAC5-200-80. Payday Short-term lending pamphlet text.**

The required text of the payday short-term lending pamphlet referred to in 10VAC5-200-30 is as follows:

**PAYDAY SHORT-TERM LENDING IN THE COMMONWEALTH OF VIRGINIA**

**BORROWER RIGHTS AND RESPONSIBILITIES**

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a payday short-term loan in Virginia under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. If you have any questions about payday short-term lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or ~~on the Internet at <http://www.sec.virginia.gov/bfi>~~ [scc.virginia.gov](http://scc.virginia.gov). ~~The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" that may be viewed at this website or obtained by calling the toll free telephone number listed above.~~

In General: You are responsible for evaluating whether a payday short-term loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection, ~~or a loan repayable over several months.~~

Advertisements: A lender is prohibited from sending you an envelope or other written material that gives the false impression that it is an official communication from a governmental entity, unless it is required by the United States Postal Service.

~~Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long term financial needs and that you should use a payday loan only to meet occasional or unusual short term cash needs.~~

Information from Lender: Virginia law prohibits the lender from providing you with any false, misleading, or deceptive information.

Payday Short-Term Lending Database: Before making a payday short-term loan to you, a lender is required by Virginia law to access a database that ~~contains detailed information about payday loans made to Virginia residents by all lenders licensed to do business in Virginia.~~ The database will inform the lender whether you are eligible for a payday short-term loan. The Bureau of Financial Institutions is unable to advise you of your eligibility for a payday short-term loan. If you are ineligible for a payday loan, the lender will provide you with the toll-free telephone number of the database provider, which you can use to find out the specific reason for your ineligibility. To enable the lender to check the database, you will be required to provide the lender with a written signed and dated loan application and ~~you~~ the original or a copy of your current driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia). ~~If you wish to obtain a payday loan but do not have a driver's license or identification card, you will need to obtain a driver's license or identification card from the driver's licensing authority in your home state.~~

~~Prohibition on Loans to Individuals with Certain Previous or Outstanding Loans: Virginia law prohibits a lender from making a payday loan to you if (i) you currently have an outstanding payday loan; (ii) you paid or satisfied in full a previous payday loan on the same day that you are applying for a new payday loan; (iii) in the past 90 days you paid or satisfied in full a previous payday loan by means of an extended payment plan; (iv) in the past 45 days you paid or satisfied in full a fifth payday loan that you obtained within a period of 180 days; (v) in the past 90 days you paid or satisfied in full an extended term loan; or (vi) in the past 150 days you entered into an extended term loan.~~

It is important to note that the previous or outstanding payday loans referred to above include loans made by the same lender as well as any other lender conducting payday lending business ~~in Virginia.~~

Verification of Income: Before making a short-term loan to you, a lender must make a reasonable attempt to verify and document your income.

Prohibition on Loans to Members of the Military and their Spouses and Dependents: Virginia law prohibits lenders from

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making payday short-term loans to members of the military services of the United States as well as their spouses and dependents. If you are a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer, the lender is prohibited from making a payday short-term loan to you. The lender is also prohibited from making a loan to you if (i) you are married to such a member, (ii) you are less than 18 years old and the son or daughter of such a member, or (iii) more than one-half of your financial support for the past 180 days was provided by such a member.

~~Limitations on Security Interest / Prohibition on Obtaining Funds Electronically /~~ Obtaining PINs: The lender cannot require you to provide more than one check as security for any payday short-term loan. The check must be dated as of no earlier than the date your loan is due of the first required loan payment shown in your loan agreement. The lender cannot require you to provide any security for your payday short-term loan other than a check payable to the lender. ~~The lender is also prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.~~ The lender also cannot obtain any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. Additionally, the lender is prohibited from obtaining or receiving a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with your loan.

One Loan at a Time / ~~\$500~~ \$2,500 Maximum: ~~The lender cannot have~~ Virginia law prohibits you from having more than one short-term loan outstanding ~~to you~~ at any one time. If you ~~currently have an outstanding payday a short-term loan or a motor vehicle title loan from any lender that is licensed to make these types of loans, then you cannot obtain another payday are prohibited from obtaining a short-term~~ loan. The maximum loan amount is ~~\$500~~ \$2,500.

~~Minimum~~ Loan Term: Under Virginia law, your loan term ~~must be at least twice as long as your pay cycle. For example, if you are paid on a weekly basis, your minimum loan term would be 14 days~~ cannot be more than 24 months. Your loan term also cannot be less than four months unless your total monthly payment will not exceed the greater of (i) 5.0% of your verified gross monthly income or (ii) 6.0% of your verified net monthly income.

Fees, Charges, and Interest: Your loan is payable in substantially equal installments of principal, fees, and interest combined. The lender is permitted to charge you (i) interest at a simple annual rate of not to exceed 36%, (ii) a loan fee not exceeding 20% of the amount of money advanced to you (i.e., \$20 per \$100 advanced), and (iii) a verification fee not exceeding \$5.00; and (ii) a monthly maintenance fee that does not exceed the lesser of \$25 or 8.0% of your originally contracted loan amount, provided that the maintenance fee is not added to your loan balance on which interest is charged.

For example, if the lender advances you \$300 for 31 days, the lender may charge you up to \$9.30 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of \$74.30. If the lender advances you \$300 for 62 days, the lender may charge you up to \$18.60 interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of \$83.60. Other than the specific fees and costs discussed in this section and the section of this pamphlet entitled "Failure to Repay" (see below), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by the lender. Note that if your originally contracted loan amount is \$1,500 or less, the lender cannot charge or receive from you a total amount of fees and charges greater than 50% of your loan amount. If your loan amount is more than \$1,500, the total amount of fees and charges cannot exceed 60% of your loan amount.

In addition to interest and the monthly maintenance fee, the lender may charge you a deposit item return fee for the actual amount incurred by the lender, not to exceed \$25, if your check or electronic payment is returned unpaid because the account on which it was drawn was closed by you or contained insufficient funds, or you stopped payment on the check or electronic payment. If you make a payment more than seven calendar days after its due date, the lender may also impose a late charge of up to 5.0% of the amount of the payment, but not to exceed \$20.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, ~~a check-casher affiliated with an affiliate of the lender or a person in the lender's office~~ cannot charge you a fee for cashing the lender's check.

The fees, charges, and interest mentioned in this section may not be charged, collected, or received unless they are included in your written loan agreement.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan agreement is a binding, legal document that requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original copy of the signed loan agreement at the time of your loan transaction. If any provision of your loan agreement violates Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

~~Extended Payment Plans: Under Virginia law eligible borrowers have the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you received your loan through the date that your loan is due to be repaid.~~

Under an extended payment plan, you are permitted to repay the amount you owe in at least four equal installments spread

~~out evenly over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan.~~

~~If you obtain an extended payment plan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.~~

~~Five Payday Loans within 180 Days: If you are obtaining a fifth payday loan within a rolling 180-day period, you have the option to (i) repay the fifth loan through an extended payment plan, unless you previously obtained an extended payment plan within the preceding 12 months, or (ii) obtain the loan in the form of an extended term loan.~~

~~You do not have to choose either one of these options. However, even if you do not obtain an extended payment plan or extended term loan, you will not be able to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.~~

~~Extended payment plans are discussed above. If you are eligible to repay your fifth payday loan by means of an extended payment plan and choose to do so, you will not be able to obtain another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.~~

~~An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. If you obtain an extended term loan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer).~~

~~Other Businesses: A lender is prohibited by statute from engaging in other businesses, besides check cashing, unless permitted by order of the State Corporation Commission. A lender is also prohibited by statute from selling you any type of insurance coverage.~~

~~Loans for Other Products & Services: You are prohibited from using any of the money from your payday short-term loan to purchase any other product or service sold (i) at the lender's business location, or (ii) on or through the lender's website or mobile application.~~

~~Right to Cancel or Rescind: You have the right to cancel or rescind your short-term loan at any time prior to the close 5 p.m. of the third business on the next day immediately following the day the lender is open following the date your loan is made you entered into the loan agreement by returning the loan proceeds check or paying the lender the amount advanced to you in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such~~

payments, by using a credit card, prepaid card, or debit card, or the Automated Clearing House system. If you timely cancel or rescind your loan, the lender must mark your original loan agreement with the word "canceled" and return it to you along with any check that you provided as security for the loan.

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time prior to its specified due date without penalty. If you make a partial payment, the total interest and loan fee you pay will be reduced (unless you have an extended payment plan or extended term loan — see "Payments on Extended Payment Plans and Extended Term Loans" below). You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. If you have authorized electronic payments for your loan, you have the right to remove your authorization at any time. You also have the right to prepay your loan in full before its specified due maturity date without penalty by paying the lender in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by use of a credit card, prepaid card, or debit card, or the Automated Clearing House system, the amount of money advanced to you remaining outstanding balance as well as any accrued and unpaid interest and fees. If you prepay your loan in full or your loan is refinanced with another short-term loan, the lender must refund to you a prorated portion of fees and charges, except for any deposit item return fees and late charges, based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted.

~~Payments on Extended Payment Plans and Extended Term Loans: You have the right to prepay an extended payment plan or extended term loan without penalty. However, unless it results in the prepayment in full of an extended payment plan or extended term loan, a partial payment, excess payment, installment payment, or other payment you give to the lender in advance of the date the funds are due does not result in either a change to your payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee that you will be required to pay. Payments you make on an extended payment plan or extended term loan are first applied to any past due installment and then to your next regularly scheduled installment. The lender must give you receipts, signed and dated by the lender, for all payments you make on an extended payment plan or extended term loan. When you make a payment on an extended payment plan or extended term loan, you have the option to give the lender a replacement security check for the remaining amount you owe. At your request, the lender may print a replacement security check on your behalf when you are in the lender's office and make a payment on an extended payment plan or extended term loan.~~

~~Lender to Return Original Loan Agreement: Upon repayment of your loan in full, the lender must mark your original loan agreement with the word "paid" or "canceled" and return it to you. If you obtained an extended payment plan, the lender is~~

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~~also required to mark your original extended payment plan document with the word "paid" or "canceled" and return it to you.~~

~~Lender to Return Security Check: If your loan is secured by a check and you cancel or rescind your loan (see "Right to Cancel or Rescind" above) or repay it in full with cash or by certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit card, prepaid card, or debit card, the lender must immediately return the check you gave as security for the loan.~~

~~No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.~~

~~Failure to Repay: Pay back your loan! Know when your payment is payments are due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest on the principal amount of your loan at a maximum rate of 6.0% per year.~~

~~In collecting or attempting to collect a payday short-term loan, the lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections. The lender is also prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces or if you fail to pay any amount owed according to your loan agreement. If a lender knowingly violates this prohibition, the lender is required to pay you a civil monetary penalty equal to three times the amount of the dishonored check.~~

~~If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.~~

~~The If you default on your loan, the lender cannot file or initiate a legal proceeding may bring a civil action against you until 60 days or more after the date that you default on a payday loan, including a default under an extended payment plan or extended term loan. During this 60-day period the lender may voluntarily enter into a repayment arrangement with you.~~

~~Legal Action Against Lender: You have the right to bring a civil action against the lender if you suffer a loss as a result of the lender violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs~~

you have incurred in connection with your civil action. Losses suffered as the result of the lender's violation of Chapter 18 of Title 6.2 of the Code of Virginia may also be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a payday short-term lender, please contact the Bureau of Financial Institutions toll free at (800) 552-7945 or ~~on the Internet at <http://www.scc.virginia.gov/bfi>~~ [scc.virginia.gov](http://scc.virginia.gov). Complaints must be filed in writing with the Bureau of Financial Institutions and include copies of supporting documentation. ~~Complaints should be mailed to Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218 0640, or faxed to Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.~~

## **10VAC5-200-85. Advertising.**

A. A licensee shall disclose the following information in its advertisements in a conspicuous manner:

1. The name of the payday short-term lender as set forth in the license issued by the commission.
2. A statement that the payday short-term lender is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the payday short-term lender (i.e., PL-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

C. Every advertisement used by, or published on behalf of, a licensee shall comply with the disclosure requirements for advertisements contained in Regulation Z (12 CFR Part 1026).

D. ~~For purposes~~ The information required by subsection A of this section, the term "conspicuous" shall have the meaning set forth be disclosed in accordance with the disclosure standards prescribed in subdivision 20 subsection C of § 6.2-1816 6.2-1819 of the Code of Virginia.

E. Every licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, print media proofs, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

## **10VAC5-200-90. Schedule of annual feed for the examination, supervision, and regulation of payday short-term lenders.**

Pursuant to § 6.2-1814 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by ~~payday lenders licensed licensees~~ under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia the Act.

Such fees are to defray the costs of the examination, supervision, and regulation of licensees by the bureau. The fees are related to the actual costs of the bureau, to the number of offices operated by licensees, to the volume of business of licensees, and to other factors relating to their supervision and regulation.

The annual fee shall be \$500 per office plus \$.47 per payday loan made by each licensee. The annual fee shall be computed on the basis of (i) the number of offices, authorized and opened, as of December 31 of the year preceding the year of the assessment, and (ii) the number of payday loans made under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia the Act during the calendar year preceding the year of the assessment.

Fees shall be assessed on or before September 15 for the current calendar year. The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment (i.e., the number of offices and payday loans made). In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened, as of September 15 of that year.

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the reimbursement for expenses authorized by subsection B of § 6.2-1814 of the Code of Virginia.

**10VAC5-200-100. Other Conducting other business in payday lending offices.**

A. This section governs the conduct of any business other than payday short-term lending where a licensed payday short-term lending business is conducted. As used in this section, the term "other business operator" refers to a licensed payday lender licensee or third party, including an affiliate or subsidiary of the licensed payday lender licensee, who conducts or wants to conduct other business from one or more payday short-term lending offices.

1. Pursuant to § 6.2-1820 of the Code of Virginia, a licensee shall not conduct the business of making payday short-term loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a registered check cashing business registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, a motor vehicle title lending business licensed under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. Notwithstanding any provision of this section or order entered by the commission prior to October 1, 2010, the following other businesses shall not be conducted from any office, suite, room, or place of business where a licensed payday short-term lending business is conducted:

a. Selling insurance or enrolling borrowers under group insurance policies.

b. Making loans under an open-end credit plan as described in § 6.2-312 of the Code of Virginia. ~~However, if prior to October 1, 2010, a licensee received commission authority for an other business operator to conduct open end credit business or open end auto title lending business from the licensee's payday lending offices, the other business operator may continue collecting payments on any outstanding open end loans (i) in accordance with the terms of its existing open end credit agreements and (ii) subject to the conditions imposed by this section.~~

3. ~~Pursuant to § 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed payday lending business is conducted, unless the person is licensed under the Act and the loans are made in accordance with the Act. This section shall not apply to any other business that is transacted solely with persons residing outside of the Commonwealth.~~

4. Notwithstanding any provision of this section or order entered by the commission prior to January 1, 2021, a licensee shall not make short-term loans at the same location at which the licensee, or any affiliate or owner of the licensee, conducts business under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia. However, if prior to January 1, 2021, a licensee obtained authority under § 6.2-1820 for the licensee or its affiliate or owner to make consumer finance loans from the licensee's payday lending offices, then the licensee or its affiliate or owner may continue collecting payments on any outstanding consumer finance loans (i) in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made, and (ii) subject to the general conditions set forth in subsection E of this section.

5. If a licensee accepts loan applications, sends or receives loan-related information or documents, disburses loan funds, or accepts loan payments on or through the licensee's website or mobile application, and any other products or services are or will be offered or sold to Virginia residents on or through such website or mobile application, then the offer or sale of such other products or services shall constitute the conduct of other business and shall be subject to all of the provisions of this section to the same extent as if such other business was conducted by an other business operator from the licensee's short-term lending offices.

B. No other business shall be conducted in a location where a licensee conducts a payday short-term lending business unless the proposed other business is financial in nature and the licensee obtains prior approval from the commission.



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Applications for approval shall be made in writing on a form provided by the ~~Commissioner of Financial Institutions, commissioner~~ and shall be accompanied by payment of ~~the a~~ \$300 fee ~~required by law~~ and any information relating to the application that the ~~Commissioner of Financial Institutions commissioner~~ may require. In acting upon an application, the commission shall consider (i) whether the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; (ii) whether the applicant has been operating its ~~payday lending~~ business in accordance with the Act and this chapter; and (iii) any other factors that the commission deems relevant.

1. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

2. Prior approval from the commission shall not be required for a licensee to conduct a short-term lending business from one or more locations where an other business operator will conduct (i) a registered check cashing business under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, or (ii) a licensed motor vehicle title lending business under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. However, the conduct of these other businesses from a licensee's short-term lending offices shall otherwise be governed by this section, including the conditions prescribed in subsections E, F, and G of this section.

C. Nonfinancial other business may be conducted pursuant to any order of the commission entered on or before June 15, 2004. However, this subsection shall not be construed to authorize any person to begin engaging in such other business at ~~payday lending~~ locations where such other business was not conducted as of June 15, 2004.

D. ~~Written~~ Except as provided in subdivision B 2 of this section, written evidence of commission approval of each other business conducted by an other business operator should be maintained at each approved location ~~where such other business is conducted~~.

E. Except as otherwise provided in subsection O of this section, all ~~approved~~ other businesses in payday short-term lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a payday short-term loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's payday short-term lending offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other

business, including any applicable licensing or registration requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a payday short-term loan or vary the terms of a payday short-term loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday short-term loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's payday short-term lending business and in a different location within the licensee's payday short-term lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

F. ~~If a licensee received commission authority for an other business operator to conduct open end credit~~ conducts a check cashing business or open end auto title lending business from the licensee's payday short-term lending offices, the following additional conditions shall be applicable:

1. The other business operator shall ~~not (i) enter into any new open end credit agreements or (ii) make any new loans pursuant to its existing open end credit agreements~~ be registered or exempt from registration under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia.

2. ~~The licensee shall not make a payday loan to a person if (i) the person has an outstanding open end loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full an open end loan from~~ If the other business operator is registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, then the other business operator shall not make any loans unless the other business operator is licensed under the Act and the loans are made in accordance with the Act.

3. The other business operator shall not charge a fee to cash a check issued by the licensee or any other person operating in the licensee's short-term lending offices.

G. If a licensee received or receives commission authority for an other business operator to ~~conduct~~ conducts a motor vehicle title lending business from the licensee's payday short-term lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.
2. The licensee shall not make a payday short-term loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.
3. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday short-term loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday short-term loan from the licensee.
4. The other business operator and the licensee shall not make a motor vehicle title loan and a payday short-term loan contemporaneously or in response to a single request for a loan or credit.
5. The licensee and other business operator shall provide each applicant for a payday short-term loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday short-term lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

H. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's payday short-term lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

I. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation ~~and or~~ electronic tax filing services, or (ii) facilitating third party tax preparation ~~and or~~ electronic tax filing services, from the licensee's payday short-term lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, ~~arrange, or broker~~ a payday short-term loan that is secured by an interest in a borrower's

~~tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.~~

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

J. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's payday short-term lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a payday short-term loan transaction.
2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a payday short-term loan contemporaneously or in response to a single request for a loan or credit.
3. The licensee shall not make, ~~arrange, or broker~~ a payday short-term loan that is secured by an interest in a borrower's tax refund, ~~or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.~~
4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a payday short-term loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday short-term lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

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K. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's payday short-term lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be licensed or exempt from licensing under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia.

2. Pursuant to subdivision A 4 of this section, the other business shall be conducted by a person other than the licensee or an affiliate or owner of the licensee.

3. The licensee shall not make a payday short-term loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

~~2.~~ 4. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding payday short-term loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday short-term loan from the licensee.

~~3.~~ 5. The licensee and other business operator shall not make a payday short-term loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. 6. The licensee and other business operator shall provide each applicant for a payday short-term loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday short-term lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

L. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's payday short-term lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a payday loan ~~from that was made by the licensee or any other lender conducting business from the licensee's short-term lending offices.~~

M. The commission may impose any additional conditions upon the conduct of other business in payday short-term lending offices that it deems necessary and in the public interest.

N. Except as otherwise provided in subsection O of this section, the conditions set forth or referred to in subsections E through M of this section shall supersede the conditions set

forth in the commission's approval orders entered prior to January 1, ~~2011~~ 2021.

O. If prior to January 1, 2011, a licensee received commission authority for an other business operator to conduct a business not identified in subsections F through L of this section, the conditions that were imposed by the commission at the time of the approval shall remain in full force and effect.

P. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-200-120.

### **10VAC5-200-110. Payday Short-term lending database.**

A. This section sets forth the rules applicable to the payday short-term lending database referred to in § 6.2-1810 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. After receiving a completed written loan application but prior to making a payday short-term loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday short-term loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.
3. First and last name or identification number of employee entering information into the database.
4. Applicant's first and last name.
5. Last four digits of applicant's driver's license number or identification card number.
6. Applicant's address.
7. Applicant's date of birth.
8. Type of card (e.g., driver's license or identification card issued by a state driver's licensing authority) provided by the applicant pursuant to subdivision D 1 of this section.

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, 6, 7, and 8 of this section ~~directly~~ from the applicant's unexpired ~~original~~ driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia), regardless of whether the information on the driver's license or identification card is still accurate. A licensee ~~shall not~~ may accept photocopies, facsimiles, or other reproductions of a driver's license or identification card.

2. A licensee shall ~~photocopy~~ retain a copy of the applicant's driver's license or identification card, ~~partially redact the in its records. The~~ driver's license number or identification card number shall be partially redacted by the licensee so that only the last four digits of the number remain visible, ~~and retain the redacted photocopy in its records.~~

3. A licensee shall not accept a driver's license or identification card from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a ~~payday short-term~~ loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. ~~If~~ Except as otherwise provided in subsection O of this section, if the database advises a licensee that an applicant is eligible for a ~~payday short-term~~ loan, then the licensee shall transmit the following additional information to the database prior to making a ~~payday short-term~~ loan:

1. Application date.
2. Loan number.
3. Date of loan.
4. Principal amount of loan.
5. Interest rate.
6. Dollar amount of precomputed interest to be charged until date of loan maturity.
7. Dollar amount of ~~loan~~ monthly maintenance fee to be charged.
8. Dollar amount of ~~verification fee to be charged each payment.~~
9. Dollar amount of total ~~finance fees and~~ charges.
10. Annual Percentage Rate (APR) of loan.
11. ~~Number of days in applicant's pay cycle~~ Applicant's verified (i) gross monthly income and (ii) net monthly income.

12. ~~Number~~ Total number of days in loan term payments.

13. Date of ~~loan is due~~ maturity.

14. ~~Dollar~~ If applicable, dollar amount of check given by applicant to secure the loan (i.e., at the time the loan is made).

~~G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:~~

1. ~~Date the extended payment plan or extended term loan is entered into.~~
2. ~~Principal amount owed under the extended payment plan or extended term loan.~~
3. ~~Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.~~
4. ~~Date each installment payment is due under the extended payment plan or extended term loan.~~
5. ~~Number of days in term of extended payment plan or extended term loan.~~

~~H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.~~

~~I. G. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.~~

~~J. H. Except as otherwise provided in subsection O of this section and~~ subdivisions 3, 7, and 8 of this subsection, a licensee shall transmit the following additional information relating to loans made under the Act, as applicable, to the database no later than the time the licensee closes for end of the business day on the date of the event:

1. If a borrower cancels or rescinds a ~~payday~~ loan, the date of the cancellation or rescission.
2. If a ~~payday~~ loan (~~including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan~~) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, and (ii) the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ ~~6.2-1817 and 6.2-1818~~ of the Code of Virginia, less any amount refunded to the borrower ~~as a result of overpayment~~).

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3. If a ~~borrower's check used to repay a loan in full is returned unpaid~~ or electronic draft is returned unpaid because the account on which it was drawn was closed by the borrower or contained insufficient funds, (i) the date the check or electronic draft is returned unpaid, and (ii) the dollar amount of the check or electronic draft. A licensee shall transmit such information to the database no later than five ~~calendar~~ days after the date the check or electronic draft is returned unpaid.

4. If a licensee collects a ~~returned check deposit item return~~ fee from a borrower, the dollar amount of the ~~returned check deposit item return~~ fee.

5. If a licensee ~~initiates~~ brings a legal proceeding civil action against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.

6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.

7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.

8. If a licensee ~~obtains a judgment against a borrower and~~ collects any ~~court damages or costs or attorney's fees~~ from a the borrower, the dollar amount of the ~~court damages or costs or attorney's fees~~. A licensee shall transmit such information to the database on the date the licensee learns that the ~~court damages or costs or attorney's fees~~ have been paid.

9. If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

~~K. I.~~ 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

~~L. J.~~ The following provisions address a licensee's inability to access the database via the Internet at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section and

obtaining applicant eligibility information from the database.

2. If a licensee makes a payday short-term loan based on applicant eligibility information obtained from the database provider's alternative means of database access, then the licensee shall transmit to the database any remaining information required by this section no later than ~~the time the licensee closes for business on~~ the date that the database becomes accessible to the licensee via the Internet.

3. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control and the database provider's alternative means of database access is unavailable or otherwise unable to provide the licensee with applicant eligibility information (~~including eligibility for an extended payment plan or extended term loan~~), then the licensee may make a payday short-term loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be ~~printed~~ in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday short-term lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original.

a. The representations to be made by an applicant are as follows:

(1) I do not currently have any outstanding payday loans or short-term loans under Chapter 18 of Title 6.2 of the Code of Virginia.

~~(2) I did not repay or otherwise satisfy in full a payday loan today.~~

~~(3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.~~

~~(4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.~~

~~(5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.~~

~~(6) I did not obtain an extended term loan within the past 150 days.~~

~~(7)~~ (2) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

~~(8)~~ (3) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty

under a call or order that does not specify a period of 30 days or fewer.

~~(9)~~ (4) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

~~(10)~~ (5) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

~~b. The questions to be presented to an applicant are as follows:~~

~~(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision C 4 of 10VAC5-200-33.~~

~~(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision E 4 of 10VAC5-200-35.~~

~~e. b. If a licensee makes a payday short-term loan pursuant to subdivision 3 of this subsection, then the licensee shall transmit to the database the information required by this section no later than ~~the time the licensee closes for business on~~ the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.~~

4. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to access the database.

~~M. K.~~ The following provisions address a licensee's inability to access the database via the Internet subsequent to making a loan:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section to the database. If the database provider's alternative means of database access is unavailable or otherwise unable to accept the information, then the licensee shall transmit to the

database the information required by this section no later than ~~the time the licensee closes for business on~~ the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

~~N. L.~~ A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday short-term loan; and (ii) if an applicant is ineligible for a new payday short-term loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday short-term loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. Except as otherwise provided in this subsection or 10VAC5-200-113, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

~~O. M.~~ If the ~~Commissioner of Financial Institutions~~ commissioner determines that a licensee or former licensee has ceased business but still has one or more outstanding payday loans or short-term loans that cannot be repaid due to the licensee's or former licensee's closure, the ~~Commissioner of Financial Institutions~~ commissioner may authorize the database provider to administratively close the outstanding loans in the database in order to enable the affected borrowers to obtain payday short-term loans in the future. A licensee or former licensee shall be deemed by the ~~Commissioner of Financial Institutions~~ commissioner to have ceased business if it (i) fails to respond to the bureau after two written requests mailed to the address on file with the bureau or (ii) fails to maintain its contact information in accordance with subsection ~~N. K.~~ of 10VAC5-200-20.

~~P. 1. N.~~ Payday loans made ~~on or after October 1, 2008, and prior to January 1, 2009~~ 2021, that ~~remained~~ remain outstanding on January 1, ~~2009~~ 2021, shall be considered for purposes of determining a borrower's eligibility for a payday short-term loan.

~~2. For every payday loan made on or after October 1, 2008, that remained outstanding as of January 1, 2009, a licensee shall (i) transmit to the database all applicable information required by subsection J of this section within the time~~

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prescribed therein and (ii) retain the photocopies specified in subdivision D 2 of this section in accordance with § 6.2-1809 of the Code of Virginia.

O. If the database provider is unable to complete the modifications to the database that are needed to accommodate the transmission of certain information required by this section, then the commissioner shall notify all licensees of this in writing and identify the specific information that they are not required to transmit until the commissioner further notifies them that the database provider has completed the modifications. Once the modifications have been completed, licensees shall not be required to transmit any information that they were previously unable to transmit due to the database being unable to accommodate it. The database provider shall complete all of the modifications no later than January 1, 2022.

### **10VAC5-200-113. Limited disclosure of data from payday short-term lending database.**

A. Pursuant to § 6.2-1810 of the Code of Virginia, the information contained in the payday short-term lending database is confidential. However, provided that it does not directly or indirectly identify or pertain to any specific borrowers, licensees, or loan transactions, aggregate data and data that is otherwise derived from information contained in the database is not confidential and may be furnished by the database provider to the public. The database provider may charge and collect a fee to defray the cost of compiling and furnishing such data.

B. The database provider shall notify the bureau prior to furnishing data pursuant to this section.

### **10VAC5-200-115. Database inquiry fee.**

Pursuant to subdivision B 4 of § 6.2-1810 of the Code of Virginia, a ~~licensed payday lender~~ licensee shall pay a database inquiry fee to the database provider in connection with every payday short-term loan consummated by the licensee. The amount of the database inquiry fee shall ~~not exceed \$5.00~~ be \$6.98 per loan, ~~which and all database inquiry fees~~ shall be remitted by each licensee directly to the database provider on a weekly basis.

### **10VAC5-200-120. Enforcement.**

A. Failure to comply with any provision of the Act or this chapter may result in  ~~fines~~  civil penalties, license suspension, or license revocation.

B. Pursuant to § 6.2-1824 of the Code of Virginia, a licensee shall be subject to a separate  ~~fine~~  civil penalty of up to \$1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate  ~~fine~~  civil penalty for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of

this chapter that are applicable to the five loans, the licensee shall be subject to a maximum  ~~fine~~  civil penalty of \$10,000.

C. If a licensee (i) fails to transmit information to the  ~~payday~~  short-term lending database in accordance with the Act or 10VAC5-200-110, (ii) transmits incorrect information to the database, or (iii) transmits information to the database in an untimely manner, the licensee shall be subject to a separate  ~~fine~~  civil penalty under § 6.2-1824 of the Code of Virginia for each item of data that is omitted, incorrect, or untimely. For example, if a licensee makes three loans and fails to transmit two items of information to the database in connection with each of the three loans, the licensee shall be subject to a maximum  ~~fine~~  civil penalty of \$6,000.

VA.R. Doc. No. R21-6571; Filed November 30, 2020, 3:38 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Emergency Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80, 12VAC5-90-90).**

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

Effective Dates: January 20, 2021, through July 19, 2022.

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

#### Preamble:

*Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.*

*The amendments add to the reporting requirements for physicians and directors of medical care facilities for COVID-19 to (i) require physicians and directors of medical care facilities to report suspected or confirmed COVID-19 cases and COVID-19 hospitalizations and intensive care unit admissions to the Virginia Department of Health (VDH) through participation in the Emergency Department Care Coordination Program; (ii) require all suspected or confirmed COVID-19 case report forms be submitted electronically to VDH; (iii) clarify that the category "laboratory directors" includes pharmacies that hold Clinical Laboratory Improvement Amendments Certificates of Waiver so that pharmacies testing for COVID-19 are*

required to report to VDH; (iv) require laboratory directors report both positive and negative COVID-19 test results; (v) require patient telephone number, email address, and ethnicity be included in the list of fields that are reported by physicians, laboratory directors, and directors of medical care facilities; and (vi) add "coronavirus, severe" to the list of infectious diseases that shall be reported to persons practicing funeral services.

**12VAC5-90-80. Lists of diseases that shall be reported.**

A. Reportable disease list. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (\*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis, unless otherwise specified in this section. Neonatal Abstinence Syndrome shall be reported as specified in subsection E of this section. COVID-19 (SARS-CoV-2) shall be reported as specified in subsection I of this section.

- Amebiasis (*Entamoeba histolytica*)
- \*Anthrax (*Bacillus anthracis*)
- Arboviral infections (e.g., CHIK, dengue, EEE, LAC, SLE, WNV, Zika)
- Babesiosis (*Babesia* spp.)
- \*Botulism (*Clostridium botulinum*)
- \*Brucellosis (*Brucella* spp.)
- Campylobacteriosis (*Campylobacter* spp.)
- Candida auris*, infection or colonization
- Carbapenemase-producing organism, infection or colonization
- Chancroid (*Haemophilus ducreyi*)
- Chickenpox (*Varicella virus*)
- Chlamydia trachomatis* infection
- \*Cholera (*Vibrio cholerae* O1 or O139)
- \*Coronavirus infection, severe
- Cryptosporidiosis (*Cryptosporidium* spp.)
- Cyclosporiasis (*Cyclospora* spp.)
- \*Diphtheria (*Corynebacterium diphtheriae*)
- \*Disease caused by an agent that may have been used as a weapon
- Ehrlichiosis/Anaplasmosis (*Ehrlichia* spp., *Anaplasma phagocytophilum*)

- Giardiasis (*Giardia* spp.)
- Gonorrhea (*Neisseria gonorrhoeae*)
- Granuloma inguinale (*Calymmatobacterium granulomatis*)
- \**Haemophilus influenzae* infection, invasive
- Hantavirus pulmonary syndrome
- Hemolytic uremic syndrome (HUS)
- \*Hepatitis A
- Hepatitis B (acute and chronic)
- Hepatitis C (acute and chronic)
- Hepatitis, other acute viral
- Human immunodeficiency virus (HIV) infection
- Influenza, confirmed
- \*Influenza-associated deaths if younger than 18 years of age
- Lead, blood levels
- Legionellosis (*Legionella* spp.)
- Leprosy (Hansen's disease) (*Mycobacterium leprae*)
- Leptospirosis (*Leptospira interrogans*)
- Listeriosis (*Listeria monocytogenes*)
- Lyme disease (*Borrelia* spp.)
- Lymphogranuloma venereum (*Chlamydia trachomatis*)
- Malaria (*Plasmodium* spp.)
- \*Measles (Rubeola)
- \*Meningococcal disease (*Neisseria meningitidis*)
- Mumps
- Neonatal abstinence syndrome (NAS)
- Ophthalmia neonatorum
- \*Outbreaks, all (including foodborne, health care-associated, occupational, toxic substance-related, waterborne, and any other outbreak)
- \*Pertussis (*Bordetella pertussis*)
- \*Plague (*Yersinia pestis*)
- \*Poliovirus infection, including poliomyelitis
- \*Psittacosis (*Chlamydia psittaci*)
- \*Q fever (*Coxiella burnetii*)
- \*Rabies, human and animal
- Rabies treatment, post-exposure
- \*Rubella, including congenital rubella syndrome



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Salmonellosis (*Salmonella* spp.)  
Shiga toxin-producing *Escherichia coli* infection  
Shigellosis (*Shigella* spp.)  
\*Smallpox (*Variola* virus)  
Spotted fever rickettsiosis (*Rickettsia* spp.)  
Streptococcal disease, Group A, invasive or toxic shock  
*Streptococcus pneumoniae* infection, invasive if younger than five years of age  
Syphilis (*Treponema pallidum*) report \*congenital, \*primary, \*secondary, and other  
Tetanus (*Clostridium tetani*)  
Toxic substance-related illness  
Trichinosis (Trichinellosis) (*Trichinella spiralis*)  
\*Tuberculosis, active disease (*Mycobacterium tuberculosis* complex)  
Tuberculosis infection  
\*Tularemia (*Francisella tularensis*)  
\*Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi)  
\*Unusual occurrence of disease of public health concern  
\*Vaccinia, disease or adverse event  
Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection  
\*Vibriosis (*Vibrio* spp.)  
\*Viral hemorrhagic fever  
\*Yellow fever  
Yersiniosis (*Yersinia* spp.)

B. Conditions reportable by directors of laboratories. Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, conditions, and toxic effects specified in this subsection for humans. Such tests include microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences. Additional condition-specific requirements are noted in this subsection and subsection D of this section. Conditions identified by an asterisk (\*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis (*Entamoeba histolytica*)  
\*Anthrax (*Bacillus anthracis*)  
Arboviral infection, for example, CHIK, dengue, EEE, LAC, SLE, WNV, or Zika  
Babesiosis (*Babesia* spp.)  
\*Botulism (*Clostridium botulinum*)  
\*Brucellosis (*Brucella* spp.)  
Campylobacteriosis (*Campylobacter* spp.)  
*Candida auris* - Include available antimicrobial susceptibility findings in report.  
Carbapenemase-producing organism - Include available antimicrobial susceptibility findings in report.  
Chancroid (*Haemophilus ducreyi*)  
Chickenpox (*Varicella* virus)  
Chlamydia trachomatis infection  
\*Cholera (*Vibrio cholerae* O1 or O139)  
\*Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)  
Cryptosporidiosis (*Cryptosporidium* spp.)  
Cyclosporiasis (*Cyclospora* spp.)  
\*Diphtheria (*Corynebacterium diphtheriae*)  
Ehrlichiosis/Anaplasmosis (*Ehrlichia* spp., *Anaplasma phagocytophilum*)  
Giardiasis (*Giardia* spp.)  
Gonorrhea (*Neisseria gonorrhoeae*) - Include available antimicrobial susceptibility findings in report.  
\**Haemophilus influenzae* infection, invasive  
Hantavirus pulmonary syndrome  
\*Hepatitis A  
Hepatitis B (acute and chronic) - For All hepatitis B patients, also report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.  
Hepatitis C (acute and chronic) - For all patients with any positive HCV test, also report all results of HCV viral load tests, including undetectable viral loads and report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.  
Hepatitis, other acute viral - Any finding indicative of acute infection with hepatitis D, E, or other cause of viral hepatitis. For any reportable hepatitis finding, submit all available results from the hepatitis panel.

Human immunodeficiency virus (HIV) infection - For HIV-infected patients, report all results of CD4 and HIV viral load tests, including undetectable viral loads. For HIV-infected patients, report all HIV genetic nucleotide sequence data associated with HIV drug resistance tests by electronic submission. For children younger than three years of age, report all tests regardless of the test findings (e.g., negative or positive).

Influenza, confirmed - By culture, antigen detection by direct fluorescent antibody (DFA), or nucleic acid detection.

Lead, blood levels - All lead results from tests of venous or capillary blood performed by a laboratory certified by the Centers for Medicare and Medicaid Services in accordance with 42 USC § 263a, the Clinical Laboratory Improvement Amendment of 1988 (CLIA-certified).

Legionellosis (*Legionella* spp.)

Leptospirosis (*Leptospira interrogans*)

Listeriosis (*Listeria monocytogenes*), invasive or if associated with miscarriage or stillbirth from placental or fetal tissue

Lyme disease (*Borrelia* spp.)

Malaria (*Plasmodium* spp.)

\*Measles (*Rubeola*)

\*Meningococcal disease (*Neisseria meningitidis*), invasive - Include identification of gram-negative diplococci.

Mumps

\*Mycobacterial diseases - (See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli;
2. *M. tuberculosis* complex or any other mycobacteria;
3. Antimicrobial susceptibility results for *M. tuberculosis* complex.

\*Pertussis (*Bordetella pertussis*)

\*Plague (*Yersinia pestis*)

\*Poliovirus infection

\*Psittacosis (*Chlamydia psittaci*)

\*Q fever (*Coxiella burnetii*)

\*Rabies, human and animal

\*Rubella

Salmonellosis (*Salmonella* spp.)

Shiga toxin-producing *Escherichia coli* infection

Shigellosis (*Shigella* spp.)

\*Smallpox (*Variola virus*)

Spotted fever rickettsiosis (*Rickettsia* spp.)

Streptococcal disease, Group A, invasive or toxic shock

*Streptococcus pneumoniae* infection, invasive if younger than five years of age

\*Syphilis (*Treponema pallidum*)

Toxic substance-related illness - By blood or urine laboratory findings above the normal range, including heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (Trichinellosis) (*Trichinella spiralis*)

Tuberculosis infection

\*Tularemia (*Francisella tularensis*)

\*Typhoid/Paratyphoid infection (*Salmonella* Typhi, *Salmonella* Paratyphi A, *Salmonella* Paratyphi B, *Salmonella* Paratyphi C)

\*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection - Include available antimicrobial susceptibility findings in report.

\*Vibriosis (*Vibrio* spp., *Photobacterium damsela*, *Grimontia hollisae*), other than toxigenic *Vibrio cholerae* O1 or O139, which are reportable as cholera

\*Viral hemorrhagic fever

\*Yellow fever

Yersiniosis (*Yersinia* spp.)

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases because of their extremely contagious nature, potential for greater harm, or availability of a specific intervention that must be administered in a timely manner require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed in this subsection, shall be made immediately by the most rapid means available, preferably by telephone to the local health department. (These same diseases are also identified by an asterisk (\*) in subsections A and B, where applicable, of this section.)

Anthrax (*Bacillus anthracis*)

Botulism (*Clostridium botulinum*)

Brucellosis (*Brucella* spp.)

Cholera (*Vibrio cholerae* O1 or O139)

Coronavirus infection, severe

Diphtheria (*Corynebacterium diphtheriae*)

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- Disease caused by an agent that may have been used as a weapon
- Haemophilus influenzae infection, invasive
- Hepatitis A
- Influenza-associated deaths if younger than 18 years of age
- Influenza A, novel virus
- Measles (Rubeola virus)
- Meningococcal disease (Neisseria meningitidis)
- Outbreaks, all
- Pertussis (Bordetella pertussis)
- Plague (Yersinia pestis)
- Poliovirus infection, including poliomyelitis
- Psittacosis (Chlamydophila psittaci)
- Q fever (Coxiella burnetii)
- Rabies, human and animal
- Rubella, including congenital rubella syndrome
- Smallpox (Variola virus)
- Syphilis, congenital, primary, and secondary (Treponema pallidum)
- Tuberculosis, active disease (Mycobacterium tuberculosis complex)
- Tularemia (Francisella tularensis)
- Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi (all types))
- Unusual occurrence of disease of public health concern
- Vaccinia, disease or adverse event
- Vibriosis (Vibrio spp., Photobacterium damsela, Grimontia hollisae), other than toxigenic Vibrio cholerae O1 or O139, which are reportable as cholera
- Viral hemorrhagic fever
- Yellow fever
- D. Submission of initial isolate or other specimen for further public health testing. A laboratory identifying evidence of any of the conditions in this subsection shall notify the local health department of the positive culture or other positive test result within the timeframes specified in subsection B of this section and submit the initial isolate (preferred) or other initial specimen to the Division of Consolidated Laboratory Services or other public health laboratory where specified in this subsection within seven days of identification. All specimens must be identified with the patient and physician information required in 12VAC5-90-90 B.
- Anthrax (Bacillus anthracis)
- Botulism (Clostridium botulinum)
- Brucellosis (Brucella sp.)
- Candida auris
- Candida haemulonii
- Carbapenem-resistant Enterobacteriaceae
- Carbapenem-resistant Pseudomonas aeruginosa
- Cholera (Vibrio cholerae O1 or O139)
- Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)
- Diphtheria (Corynebacterium diphtheriae)
- Haemophilus influenzae infection, invasive
- Influenza, unsubtypeable
- Listeriosis (Listeria monocytogenes)
- Meningococcal disease (Neisseria meningitidis)
- Plague (Yersinia pestis)
- Poliovirus infection
- Q fever (Coxiella burnetii)
- Salmonellosis (Salmonella spp.)
- Shiga toxin-producing E. coli infection (Laboratories that identify a Shiga toxin but do not perform simultaneous culture for Shiga toxin-producing E. coli should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)
- Shigellosis (Shigella spp.)
- Streptococcal disease, Group A, invasive
- Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)
- Tularemia (Francisella tularensis)
- Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi (all types))
- Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection
- Vibriosis (Vibrio spp., Photobacterium damsela, Grimontia hollisae)
- Yersiniosis (Yersinia spp.)
- Other diseases as may be requested by the health department.

E. Neonatal abstinence syndrome. Neonatal abstinence syndrome shall be reported by physicians and directors of medical care facilities when a newborn has been diagnosed with neonatal abstinence syndrome, a condition characterized by clinical signs of withdrawal from exposure to prescribed or illicit drugs. Reports shall be submitted within one month of diagnosis by entering the information into the Department of Health's online Confidential Morbidity Report portal (<http://www.vdh.virginia.gov/clinicians>).

F. Outbreaks. The occurrence of outbreaks or clusters of any illness that may represent a group expression of an illness that may be of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone.

G. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be made immediately by the most rapid means available, preferably by telephone.

H. Unusual occurrence of disease of public health concern. Unusual or emerging conditions of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone. In addition, the commissioner or the commissioner's designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

I. COVID-19 (SARS-CoV-2). COVID-19 shall be reported by physicians and directors of medical care facilities when a person who is infected with or who is suspected of having COVID-19 is treated or examined, hospitalized, or admitted into the intensive care unit. Physicians and directors of medical care facilities shall report that person's name, phone number, email address, address, age, date of birth, race, ethnicity, sex, and pregnancy status; name of disease diagnosed or suspected; the medical record number (if applicable); the date of onset of illness; available laboratory tests and results; and the name, address, and telephone number of the physician and medical facility where the examination was made. Case reports shall be submitted immediately or within 24 hours by entering the information into the Department of Health online Confidential Morbidity Report portal at <http://www.vdh.virginia.gov/clinicians>. Hospitalization and intensive care unit admission reports should be made through

the entity's participation in the Emergency Department Care Coordination Program.

All SARS-CoV-2 tests, positive and negative, shall be reported by directors of laboratories, including pharmacies that hold Clinical Laboratory Improvement Amendments Certificates of Waiver. Each report shall give the source of the specimen and the laboratory method and result; the name, telephone number, email address, address, age, date of birth, race, ethnicity, sex, and pregnancy status (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician at whose request and medical facility at which the examination was made. Reports shall be immediately or within 24 hours to the department. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Reporting may be done by means of secure electronic transmission upon agreement of the laboratory director and the department at <http://www.vdh.virginia.gov/meaningful-use/submissionofreportablelabresults>.

#### 12VAC5-90-90. Those required to report.

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease or condition shall report that person's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease diagnosed or suspected; the date of onset of illness; available laboratory tests and results; and the name, address, and telephone number of the physician and medical facility where the examination was made, except that influenza should be reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. A physician may designate someone to report on his behalf, but the physician remains responsible for ensuring that the appropriate report is made. Any physician, designee, or organization making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a Form Epi-1, a computer generated printout containing the data items requested on Form Epi-1, or a CDC or VDH surveillance form that provides the same information and shall be made within three days of the suspicion or confirmation of disease except that those identified in 12VAC5-90-80 C shall be reported immediately by the most rapid means available, preferably by telephone, to the local health department serving the jurisdiction in which the facility is located. Reporting may be done by means of secure electronic transmission upon agreement of the physician and the department.

Additional elements are required to be reported for individuals with confirmed or suspected active tuberculosis disease. Refer to Part X (12VAC5-90-225 et seq.) for details on these requirements.

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B. Directors of laboratories. Laboratory directors shall report any laboratory examination of any clinical specimen, whether performed in-house or referred to an out-of-state laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of a disease listed in 12VAC5-90-80 B.

Each report shall give the source of the specimen and the laboratory method and result; the name, address, age, date of birth, race, sex, and pregnancy status for females (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician at whose request and medical facility at which the examination was made. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within three days of identification of evidence of disease, except that those identified in 12VAC5-90-80 C shall be reported immediately by the most rapid means available, preferably by telephone, to the local health department serving the jurisdiction in which the laboratory is located. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Reporting may be done by means of secure electronic transmission upon agreement of the laboratory director and the department. Reports of HIV genetic nucleotide sequence data associated with HIV drug resistance tests must be submitted electronically. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

A laboratory identifying evidence of any of the following conditions shall notify the local health department of the positive culture or other positive test result within the timeframes specified in 12VAC5-90-80 and submit the initial isolate or other initial specimen to the Division of Consolidated Laboratory Services within seven days of identification. All specimens must be identified with the patient and physician information required in this subsection.

- Anthrax
- Botulism
- Brucellosis
- Cholera
- Diphtheria

E. coli infection, Shiga toxin-producing. (Laboratories that use a Shiga toxin EIA methodology but do not perform simultaneous culture for Shiga toxin-producing E. coli should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)

- Haemophilus influenzae infection, invasive
- Influenza A, novel virus

- Listeriosis
- Meningococcal disease
- Pertussis
- Plague
- Poliovirus infection
- Q fever
- Salmonellosis
- Shigellosis
- Streptococcal disease, Group A, invasive
- Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)
- Tularemia
- Typhoid/Paratyphoid fever
- Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection
- Vibrio infection, including infections due to Photobacterium damsela and Grimontia hollisae
- Yersiniosis

Other diseases as may be requested by the health department

When a clinical specimen yields evidence indicating the presence of a select agent or toxin as defined by federal regulations in 42 CFR Part 73, the person in charge of the laboratory shall contact the Division of Consolidated Laboratory Services and arrange to forward an isolate for confirmation. If a select agent or toxin has been confirmed in a clinical specimen, the laboratory director shall consult with Division of Consolidated Laboratory Services or CDC regarding isolate transport or destruction.

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to notify the local health department when the director of that medical care facility assumes the reporting responsibility; however, laboratories are still required to submit isolates to the Division of Consolidated Laboratory Services or other designated laboratory as noted in this subsection.

C. Persons in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12VAC5-90-80 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38

of the Code of Virginia. The requirement to report shall include all inpatient, outpatient, and emergency care departments within the medical care facility. Such report shall contain the patient's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease being reported; available laboratory tests and results; the date of admission; ~~hospital chart~~ medical record number; date expired (when applicable); and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within three days of the suspicion or confirmation of disease except that those identified in 12VAC5-90-80 C shall be reported immediately by the most rapid means available, preferably by telephone, to the local health department serving the jurisdiction in which the facility is located. Reports shall be made on Form Epi-1, a computer generated printout containing the data items requested on Form Epi-1, or a CDC or VDH surveillance form that provides the same information. Reporting may be done by means of secure electronic transmission upon agreement of the medical care facility and the department.

A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.

D. Persons in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, or a school, child care center, or summer camp. Any person in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, or a school, child care center, or summer camp as defined in § 35.1-1 of the Code of Virginia shall report immediately to the local health department the presence or suspected presence in his program, service, facility, school, child care center, or summer camp of persons who have common symptoms suggesting an outbreak situation. Such persons may report additional information, including identifying and contact information for individuals with communicable diseases of public health concern or individuals who are involved in outbreaks that occur in their facilities, as necessary to facilitate public health investigation and disease control. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction to the Office of Epidemiology within three days of receipt. This report shall be submitted immediately by the most rapid means available if the disease is one requiring rapid communication, as required in 12VAC5-90-80 C. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology, by either a paper report or entry into a shared secure electronic disease surveillance system, within three days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction or to the Office of Epidemiology on individuals residing outside

Virginia. The Office of Epidemiology shall be responsible for notifying other state health departments of reported illnesses in their residents and for notifying CDC as necessary and appropriate.

F. Persons in charge of hospitals, nursing facilities or nursing homes, assisted living facilities, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing facility or nursing home, assisted living facility, or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

- Coronavirus, severe
- Creutzfeldt-Jakob disease
- Human immunodeficiency virus infection
- Hepatitis B
- Hepatitis C
- Rabies
- Smallpox
- Syphilis, infectious
- Tuberculosis, active disease
- Vaccinia, disease or adverse event
- Viral hemorrhagic fever

G. Employees, conditional employees, and persons in charge of food establishments. 12VAC5-421-80 of the Food Regulations requires a food employee or conditional employee to notify the person in charge of the food establishment when diagnosed with certain diseases that are transmissible through food and requires the person in charge of the food establishment to notify the regulatory authority. Refer to 12VAC5-421-80 for further guidance and clarification regarding these reporting requirements.

VA.R. Doc. No. R21-6359; Filed November 17, 2020, 1:49 p.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Withdrawal of Regulatory Action**

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

**12VAC30-120. Waivered Services (amending 12VAC30-120-924).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

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The Board of Medical Assistance Services has WITHDRAWN the regulatory action for **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**, and **12VAC30-120, Waivered Services**, which was published as a Notice of Intended Regulatory Action in [33:9 VA.R. 869 December 26, 2016](#). This action is being withdrawn because it conflicts with and is overridden by Item 313 ZZZZ of Chapter 56 of the 2020 Acts of Assembly, Special Session I. The board has withdrawn the regulatory action effective November 20, 2020.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

VA.R. Doc. No. R17-4749; Filed November 20, 2020, 2:03 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Department of Medical Assistance 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 Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-221, 12VAC30-70-231).**

**12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-36).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: January 20, 2021.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804)371-4300, FAX (804)786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

Summary:

*This regulatory action implements two mandates from the 2020 Appropriations Act (Chapter 56 of the 2020 Acts of Assembly, Special Session I) relating to hospital readmissions and emergency room visits.*

*Pursuant to Item 313 AAAAA, the amendments allow the pending, reviewing, and the reducing of fees for avoidable emergency room claims for international classification for disease (ICD) codes 99282, 99283, and 99284, both physician and facility. In addition, the Department of Medical Assistance Services (DMAS) is required to utilize*

*the avoidable emergency room diagnosis code list currently used for managed care organization clinical efficiency rate adjustments. If the emergency room claim is identified as a preventable emergency room diagnosis, DMAS must direct the managed care organizations to default to the payment amount for code 99281 commensurate with the acuity of the visit.*

*Pursuant to Item 313 BBBBB, the amendments modify the definition of readmissions to include cases when patients are readmitted to a hospital for the same or a similar diagnosis within 30 days of discharge, excluding planned readmissions, obstetrical readmissions, admissions to critical access hospitals, or in any case where the patient was originally discharged against medical advice. If the patient is readmitted to the same hospital for a potentially preventable readmission, then the payment for such cases is paid at 50% of the normal rate except that a readmission within five days of discharge is considered a continuation of the same stay and is not treated as a new case. Similar diagnoses are defined as ICD diagnosis codes possessing the same first three digits.*

## Chapter 70

### Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care

~~PREFACE: The content of this regulation has been promulgated under the requirements of the Virginia Administrative Process Act. This regulation is subject to federal approval. Prior to use, check with the agency regulatory coordinator for any changes or updates not reflected in this Code.~~

~~The state agency will pay the reasonable cost of in patient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance, the following standards apply.~~

#### **12VAC30-70-221. General.**

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.
2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per

diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. For Type Two hospitals, payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full-time equivalent (FTE) interns and residents as reported on the cost report. Effective April 1, 2012, payment for direct GME for interns and residents for Type One hospitals shall be 100% of allowable costs.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"AP-DRG" means all patient diagnosis related groups.

"APR-DRG" means all patient refined diagnosis related groups.

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" means the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-

mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" means the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid inpatient utilization rate in excess of 14%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG" means diagnosis related groups.

"DRG cases" means medical or surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" or "Medicaid inpatient utilization rate" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization



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percentage or Medicaid inpatient utilization rate includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This definition includes all paid Medicaid days and nonpaid or denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits (with appropriate documentation). The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income care, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth. Effective July 1, 2014, the definition for Medicaid utilization percentage or Medicaid inpatient utilization rate is defined in 12VAC30-70-301 C.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric distinct part unit (DPU), divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The costs shall be calculated by multiplying the per diems and ancillary cost-to-charge ratios from each hospital's cost ending in the state fiscal year used as the base year to the corresponding days and ancillary charges by revenue code for each hospital's groupable cases.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and includes (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD, as defined in 12VAC30-95-5. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" means when patients are readmitted to the same hospital for the same or a similar diagnosis ~~within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as new cases.~~ Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Type One hospitals" means those hospitals that were state-owned teaching hospitals on January 1, 1996.

"Type Two hospitals" means all other hospitals.

"Uncompensated care costs" or "UCC" means unreimbursed costs incurred by hospitals from serving self-pay, charity, or Medicaid patients without regard to disproportionate share adjustment payments.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper. Effective October 1, 2014, "ungroupable cases" means cases assigned to DRG 955 (ungroupable) and DRG 956 (ungroupable) as determined by the APR-DRG grouper.

D. The all patient diagnosis related groups (AP-DRG) grouper shall be used in the DRG payment system. Effective October 1, 2014, DMAS shall replace the AP-DRG grouper with the all patient refined diagnosis related groups (APR-DRG) grouper for hospital inpatient reimbursement. The APR-DRG grouper will produce a DRG as well as a severity level ranging from 1 to 4. DMAS shall phase in the APR-DRG weights by blending in 50% of the full APR-DRG weights with 50% of fiscal year (FY) 2014 AP-DRG weights for each APR-DRG group and severity level in the first year. In the second year, the blend will be 75% of full APR-DRG weights and 25% of the FY 2014 AP-DRG weights. Full APR-DRG weights shall be used in the third year and succeeding years for each APR-DRG group and severity. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology

Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file

Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

**12VAC30-70-231. Operating payment for DRG cases.**

A. The operating payment for DRG cases that are not transfer cases shall be equal to the hospital specific operating rate per case, as determined in 12VAC30-70-311, times the DRG relative weight, as determined in 12VAC30-70-381.

B. Exceptions.

1. Special provisions for calculating the operating payment for transfer cases are provided in 12VAC30-70-251.
2. Readmissions within five days of discharge shall be considered a continuation of the same stay and shall not be treated as a new case.
3. Effective July 1, 2020, readmissions within six to 30 days of discharge shall be paid at 50% of the normal rate unless it is a planned readmission, an obstetrical readmission, an admission to critical access hospitals, or in any case where the patient was originally discharged against medical advice.

Chapter 80  
Methods and Standards for Establishing Payment Rate; Other Types of Care

~~PREFACE: The content of this regulation has been promulgated under the requirements of the Virginia Administrative Process Act. This regulation is subject to federal approval. Prior to use, check with the agency regulatory coordinator for any changes or updates not reflected in this Code.~~

**12VAC30-80-30. Fee-for-service providers.**

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee

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schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. The state agency fee schedule is published on the Department of Medical Assistance Services (DMAS) website at <http://www.dmas.virginia.gov/#/searchcptcodes>.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public) except that emergency room services 99282-99284 with a principal diagnosis on the Preventable Emergency Room Diagnosis List shall be reimbursed the rate for 99281. The Preventable Emergency Room Diagnosis List shall be based on the list used for managed care organization clinical efficiency rate adjustments.

2. Dentists' services. Dental services, dental provider qualifications, and dental service limits are identified in 12VAC30-50-190. Dental services are paid based on procedure codes, which are listed in the agency's fee schedule. Except as otherwise noted, state-developed fee schedule rates are the same for both governmental and private individual practitioners.

3. Mental health services.

a. Professional services furnished by nonphysicians as described in 12VAC30-50-150. These services are reimbursed using current procedural technology (CPT) codes. The agency's fee schedule rate is based on the methodology as described in subsection A of this section.

(1) Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists in subdivision A 1 of this section.

(2) Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric, or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

b. Intensive in-home services are reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

c. Therapeutic day treatment services are reimbursed based on the following units of service: one unit equals two to 2.99 hours per day; two units equals three to 4.99 hours per day; three units equals five or more hours per day. No room and board is included in the rates for therapeutic day treatment. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

d. Therapeutic group home services (formerly called level A and level B group home services) shall be reimbursed based on a daily unit of service. The agency's rates are set

as of July 1, 2011, and are effective for services on or after that date.

e. Therapeutic day treatment or partial hospitalization services shall be reimbursed based on the following units of service: one unit equals two to three hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

f. Psychosocial rehabilitation services shall be reimbursed based on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

g. Crisis intervention services shall be reimbursed on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

h. Intensive community treatment services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

i. Crisis stabilization services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

j. Independent living and recovery services (previously called mental health skill building services) shall be reimbursed based on the following units of service: one unit equals one to 2.99 hours per day; two units equals three to 4.99 hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSchd/DMEPOS-Fee-Schedule.html>.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov).

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and

dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

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14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

d. Effective May 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 258% of Medicare rates.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's

hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective November 1, 2018, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 145% of the Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than \$551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) or personal care services for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200 or covered under Early and Periodic Screening, Diagnosis, and Treatment. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The

state agency fee schedule is published on the DMAS website at <http://www.dmas.virginia.gov>. The agency's rates, based upon one-hour increments, were set as of July 1, 2019, and shall be effective for services on and after that date.

22. Supplemental payments to state-owned or state-operated clinics.

a. Effective for dates of service on or after July 1, 2015, DMAS shall make supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2015. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual.

b. The amount of the supplemental payment made to each qualifying state-owned or state-operated clinic is determined by calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 19 b of this subsection and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section shall be made annually in lump sum payments to each clinic.

d. To determine the upper payment limit for each clinic referred to in subdivision 19 b of this subsection, the state payment rate schedule shall be compared to the Medicare resource-based relative value scale nonfacility fee schedule per Current Procedural Terminology code for a base period of claims. The base period claims shall be extracted from the Medical Management Information System and exclude crossover claims.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility. As of July 1, 2019, payments for hospice services in a nursing facility are 100% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

C. Effective July 1, 2019, the telehealth originating site facility fee shall be increased to 100% of the Medicare rate and shall reflect changes annually based on changes in the Medicare rate. Federally qualified health centers and rural health centers are exempt from this reimbursement change.

**12VAC30-80-36. Fee-for-service providers: outpatient hospitals.**

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

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"Base year" means the state fiscal year for which data is used to establish the EAPG base rate. The base year will change when the EAPG payment system is rebased and recalibrated. In subsequent rebasings, the Department of Medical Assistance Services (DMAS) shall notify affected providers of the base year to be used in this calculation.

"Cost" means the reported cost as described in 12VAC30-80-20 A and B.

"Cost-to-charge ratio" equals the hospital's total costs divided by the hospital's total charges. The cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Enhanced ambulatory patient group" or "EAPG" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Diseases (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"EAPG relative weight" means the expected average costs for each EAPG divided by the relative expected average costs for visits assigned to all EAPGs.

"Medicare wage index" means the Medicare wage index published annually in the Federal Register by the Centers for Medicare and Medicaid Services. The indices used in this section shall be those in effect in the base year.

B. Effective January 1, 2014, the prospective enhanced ambulatory patient group (EAPG) based payment system described in this subsection shall apply to reimbursement for outpatient hospital services (with the exception of laboratory services referred to the hospital but not associated with an outpatient hospital visit, which will be reimbursed according to the laboratory fee schedule).

1. The payments for outpatient hospital visits shall be determined on the basis of a hospital-specific base rate per visit multiplied by the relative weight of the EAPG (and the payment action) assigned for each of the services performed during a hospital visit.

2. The EAPG relative weights shall be the weights determined and published periodically by DMAS and shall be consistent with applicable Medicaid reimbursement limits and policies. The weights shall be updated at least every three years.

3. The statewide base rate shall be equal to the total costs described in this subdivision divided by the wage-adjusted sum of the EAPG weights for each facility. The wage-adjusted sum of the EAPG weights shall equal the sum of the EAPG weights multiplied by the labor percentage times the hospital's Medicare wage index plus the sum of the EAPG weights multiplied by the nonlabor percentage. The base rate shall be determined for outpatient hospital services at least every three years so that total expenditures will equal the following:

a. When using base years prior to January 1, 2014, for all services, excluding all laboratory services and emergency services described in subdivision 3 c of this subsection, a percentage of costs as reported in the available cost reports for the base period for each type of hospital as defined in 12VAC30-70-221.

(1) Type One hospitals. Effective January 1, 2014, hospital outpatient operating reimbursement shall be calculated at 90.2% of cost, and capital reimbursement shall be at 86% of cost inflated to the rate year.

(2) Type Two hospitals. Effective January 1, 2014, hospital outpatient operating and capital reimbursement shall be calculated at 76% of cost inflated to the rate year.

(3) When using base years after January 1, 2014, the percentages described in subdivision 3 a of this subsection shall be adjusted according to subdivision 3 c of this subsection.

(4) For critical access hospitals, effective July 1, 2019, the operating rate shall be based on an adjustment factor equal to 100% of cost reimbursement.

b. Laboratory services, excluding laboratory services referred to the hospital but not associated with a hospital visit, are calculated at the fee schedule in effect for the rate year.

c. Services rendered in emergency departments determined to be nonemergencies as prescribed in 12VAC30-80-20 D 1 b shall be calculated at the nonemergency reduced rate reported in the base year for base years prior to January 1, 2014. For base years after January 1, 2014, the cost percentages in subdivision 3 a of this subsection shall be adjusted to reflect services paid at the nonemergency reduced rate in the last year prior to January 1, 2014.

d. Effective July 1, 2020, reimbursement for claims with procedure codes 99281-99284 and a principal diagnosis code on the Preventable Emergency Room Diagnosis List shall be based on an all-inclusive EAPG payment weight for claims with CPT 99281 and a principal diagnosis code on the Preventable Emergency Room Listing. All other procedures on the outpatient hospital claim shall be packaged in the all-inclusive payment for 99281-99284. DMAS shall calculate the all-inclusive payment weight for claims with 99281 using data from the most recent rebasing. The Preventable Emergency Room Diagnosis List shall be based on the list used for managed care organization clinical efficiency rate adjustments.

4. Inflation adjustment to base year costs. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with DMAS, shall be used to update the base year costs to the midpoint of the rate year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus,

corrections made by Global Insight (or its successor) in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year. Inflation shall be applied to the costs identified in subdivision 3 a of this subsection. The inflation adjustment for state fiscal year 2017 shall be 50% of the full inflation adjustment calculated according to this section. There shall be no inflation adjustment for state fiscal year 2018. A full inflation adjustment shall be made in both fiscal year 2017 and fiscal year 2018 to Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009.

5. Hospital-specific base rate. The hospital-specific base rate per case shall be adjusted for geographic variation. The hospital-specific base rate shall be equal to the labor portion of the statewide base rate multiplied by the hospital's Medicare wage index plus the nonlabor percentage of the statewide base rate. The labor percentage shall be determined at each rebasing based on the most recently reliable data. For rural hospitals, the hospital's Medicare wage index used to calculate the base rate shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher. A base rate differential of 5.0% shall be established for freestanding Type Two children's hospitals. The base rate for non-cost-reporting hospitals shall be the average of the hospital-specific base rates of in-state Type Two hospitals.

6. The total payment shall represent the total allowable amount for a visit including ancillary services and capital.

7. The transition from cost-based reimbursement to EAPG reimbursement shall be transitioned over a four-year period. DMAS shall calculate a cost-based base rate at January 1, 2014, and at each rebasing during the transition.

a. Effective for dates of service on or after January 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 75% of the cost-based base rate and 25% of the EAPG base rate.

b. Effective for dates of service on or after July 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 50% of the cost-based base rate and 50% of the EAPG base rate.

c. Effective for dates of service on or after July 1, 2015, DMAS shall calculate the hospital-specific base rate as the sum of 25% of the cost-based base rate and 75% of the EAPG base rate.

d. Effective for dates of service on or after July 1, 2016, DMAS shall calculate the hospital-specific base rate as the EAPG base rate.

8. To maintain budget neutrality during the first six years of the transition to EAPG reimbursement, DMAS shall compare the total reimbursement of hospital claims based on the parameters in subdivision 3 of this subsection to EAPG reimbursement

every six months based on the six months of claims ending three months prior to the potential adjustment. If the percentage difference between the reimbursement target in subdivision 3 of this subsection and EAPG reimbursement is greater than 1.0%, plus or minus, DMAS shall adjust the statewide base rate by the percentage difference the following July 1 or January 1. The first possible adjustment would be January 1, 2015, using reimbursement between January 1, 2014, and October 31, 2014.

C. The enhanced ambulatory patient group (EAPG) grouper version used for outpatient hospital services shall be determined by DMAS. Providers or provider representatives shall be given notice prior to implementing a new grouper.

D. The primary data sources used in the development of the EAPG payment methodology are the DMAS hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals. The following table identifies key data elements that are used to develop the EAPG payment methodology. DMAS may supplement this data with similar data for Medicaid services furnished by managed care organizations if DMAS determines that it is reliable.

Data Elements for EAPG Payment Methodology	
Data Elements	Source
Total charges for each outpatient hospital visit	Claims history file
Number of groupable claims lines in each EAPG	Claims history file
Total number of groupable claim lines	Claims history file
Total charges for each outpatient hospital revenue line	Claims history file
Total number of EAPG assignments	Claims history file
Cost-to-charge ratio for each hospital	Cost report file
Medicare wage index for each hospital	Federal Register

VA.R. Doc. No. R20-6454; Filed November 23, 2020, 10:17 a.m.





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# Regulations

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

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

**Titles of Regulations:** 20VAC5-201. Rules Governing Utility Rate Applications and Annual Informational Filings (amending 20VAC5-201-10 through 20VAC5-201-40, 20VAC5-201-70, 20VAC5-201-90 through 20VAC5-201-110; adding 20VAC5-201-15; repealing 20VAC5-201-50, 20VAC5-201-60, 20VAC5-201-80).

**20VAC5-204. Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities (adding 20VAC5-204-5 through 20VAC5-204-90).**

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

**Effective Date:** January 1, 2021.

**Agency Contact:** Allison Samuel, Principal Utilities Analyst, Public Utilities Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3177, or email [allison.samuel@scc.virginia.gov](mailto:allison.samuel@scc.virginia.gov).

**Summary:**

*The amendments remove investor-owned electric utilities from 20VAC5-201, which now only applies to investor-owned gas and water utilities and add 20VAC5-204, Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities, applicable to investor-owned electric utilities. The new chapter establishes minimum filing requirements related to annual informational filings, rate case filings, and prudency determinations under Chapters 10 (§ 56-232 et seq.) and 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, including requiring triennial reviews rather than biennial reviews of base rate earnings, expanding the number and types of rate adjustment clauses that may be sought by electric utilities, and permitting the filing of limited prudency reviews under § 56-585.1:4 F of the Code of Virginia. Changes to the proposed regulation include (i) permitting electronic service of public notice on local officials, (ii) revising Schedule 45 to conform to statute, and (iii) reorganizing the requirements of Schedule 46.*

AT RICHMOND, NOVEMBER 23, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00022

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

#### ORDER ADOPTING REGULATIONS

On April 17, 2020, the State Corporation Commission ("Commission") issued an Order for Notice and Comment ("Procedural Order") in this docket establishing a proceeding to promulgate new rules governing utility rate applications and annual informational filings of investor-owned electric utilities ("Investor-owned Electric Utility Rate Case Rules"). In connection therewith, the Commission determined it would also consider limited revisions to the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 et seq. ("Existing Rate Case Rules") (together with Investor-owned Electric Utility Rate Case Rules, "Proposed Rules" or "Rules"). Draft Proposed Rules and Form Schedules prepared by the Commission Staff ("Staff") were appended to the Procedural Order.

The Procedural Order permitted interested persons to submit comments on or before June 9, 2020, which were permitted to include proposals and hearing requests. The Procedural Order further permitted Staff to file, on or before June 30, 2020, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

Comments concerning the Proposed Rules were filed by: (i) Virginia Electric and Power Company and Appalachian Power Company, jointly (individually, "Dominion" and "APCo," collectively, "Joint Commenters"); (ii) Kentucky Utilities Company; and (iii) the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). No requests for hearing were received.

On June 30, 2020, Staff filed a Staff Report including certain revisions to the Proposed Rules and Form Schedules proposed by Staff after reviewing the comments provided. Staff also proposed a modification to proposed Schedule 45 in response to legislation ("Senate Bill 731") passed by the 2020 General Assembly.<sup>1</sup>

On July 27, 2020, Joint Commenters filed a motion ("Motion") for leave to file limited supplemental comments to the Staff Report. In support of the Motion, Joint Commenters stated that they had not previously had an opportunity to comment on the Staff Report's proposed modification to Schedule 45. Joint Commenters also represented that Staff does not oppose

incorporating the Joint Commenters' proposed language into Schedule 45 in place of the language included in the Staff Report related to Senate Bill 731.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the rules appended hereto as Attachment A, effective January 1, 2021.<sup>2</sup> As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration.

The regulations we adopt herein contain a number of modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on May 11, 2020.<sup>3</sup> These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report, the comments filed in this proceeding, and the Motion. Although we will not comment on each rule in detail, particularly where there is limited or no disagreement, there were several contested issues that we will address further herein. In this regard, we further note that the Rules, as modified herein, continue to permit requests for waiver based on good cause shown.<sup>4</sup>

As stated in the Procedural Order, since the most recent revisions to the Existing Rate Case Rules, the electric utilities, interested parties and the Commission have obtained significant actual experience in implementing Chapter 23 of Title 56 of the Code of Virginia ("Regulation Act"). Among other things, subsequent legislative amendments have modified the Regulation Act to require triennial reviews rather than biennial reviews of base rate earnings; expanded the number and types of rate adjustment clauses ("RACs") that may be sought by utilities; and permitted the filing of limited prudency reviews under Code §§ 56-585.1 A 6 and 56-585.1:4 F. Importantly, the Regulation Act also establishes various statutory deadlines for the Commission to issue a final order in various types of cases, ranging from 90 days to nine months after filing. As stated by Consumer Counsel, these time periods limit the time available for discovery and analysis of requested rate changes, and "enormous amounts of ratepayers dollars are typically at issue in these cases."<sup>5</sup>

#### 20 VAC 5-204-10 B – Testimony summaries

The Joint Commenters suggested that testimony summaries be permitted to be two pages in length, rather than only one page as proposed.<sup>6</sup> With regard to testimony summaries, the Commission finds that a summary of up to two pages is appropriate for base rate and triennial review proceedings. For all other proceedings, summaries should be limited to one page in length.

#### 20 VAC 5-204-10 H – Requirements for electronic submission of documents

Proposed 20 VAC 5-204-10 H expands on current requirements to provide Staff with electronic versions of documents including the application, direct testimony and schedules on the day of filing, with the exception of schedules

that do not have calculations derived from formulas, which would be required to be provided to Staff within five business days. Joint Commenters state they "fully support" moving toward increased use of electronic media, but request more time to provide such electronic copies, ranging from one to five additional business days after filing an application.<sup>7</sup> Staff argues that the additional time requested by the Joint Commenters is unnecessary given that the Existing Rate Case Rules require that such electronic schedules be provided on the application filing date and applicants have generally complied with this rule for over a decade without any issues.<sup>8</sup> We agree and approve the timelines as originally proposed.

With regard to providing electronic versions of documents to Consumer Counsel, we agree with the clarification suggested by Joint Commenters that applicants need only provide Consumer Counsel with the public version of the application and direct testimony, consistent with current practice.<sup>9</sup>

We also note that the Joint Commenters requested to provide certain information to Staff, including information required by Schedules 18, 28 and 36, within 10 business days.<sup>10</sup> Staff disagreed with this proposal, noting the Proposed Rules already provide up to five business days for certain information.<sup>11</sup> The Commission declines to extend further the time for providing required information as requested by Joint Commenters. The Rules, as approved, strike a balance between tight statutory deadlines and the burden of producing information that can be voluminous and time consuming to prepare.

#### 20 VAC 5-204-10 I – Filing of paper copies

Several comments supported, to varying degrees, reducing the number of paper copies of documents filed with the Clerk of the Commission and provided to Staff.<sup>12</sup> As a general matter, we share the desire to reduce the filing of unnecessary paper copies. We also recognize, however, that the copies filed with the Clerk's office are distributed to the Commission's various divisions for internal use in investigating each application. In addition, the copies of Schedules 29 and 40 required to be provided to Staff are also for internal use in investigating each application. At this time, we will retain the number of copies required by the Proposed Rules.<sup>13</sup>

#### 20 VAC 5-204-10 J – Electronic service on local officials

We agree with the Joint Commenters that electronic service on local officials should be permitted under the Rules, consistent with the limited waiver the Commission granted Dominion related to electronic service on Commonwealth officials.<sup>14</sup> We will, however, adopt the alternative language proposed in the Staff Report which provides as follows:

Service specified by this paragraph shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the

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customary place of business or to the residence of the person served.<sup>15</sup>

## Schedules 3, 4 and 5

Schedules 3, 4 and 5 of the Rules provide information related to an applicant's historical capital structure and cost of capital information. The Rules would require these schedules to be filed in RAC proceedings, which is not currently required. Joint Commenters oppose providing these schedules in RAC proceedings, asserting it is unnecessary, cost additive and redundant.<sup>16</sup> We adopt Schedules 3, 4 and 5 as originally proposed and will require them to be filed in RAC proceedings. In making this determination, we find the following persuasive: (i) the information in these schedules is necessary to calculate the RAC revenue requirement in each case; and (ii) delaying the provision of these schedules for 10 business days, or requiring that they be obtained through discovery, is contrary to the need for the Rules to provide important information at the beginning of the case given tight statutory deadlines.<sup>17</sup>

## Schedule 8

Schedule 8 requires an applicant to file its proposed capital structure and cost of capital statement in various rate proceedings. Joint Commenters propose to make Schedule 8 optional for triennial reviews and RAC proceedings, arguing that the Code requires the use of end-of-test period capital structure, and the information is duplicative of information provided in Schedule 3.<sup>18</sup> Staff argued, however, that Schedule 8 has value because it "provides clarity as to the specific capital structures and overall cost of capital used to compute various components of an applicants' proposed revenue requirement."<sup>19</sup> In addition, Staff notes that, compared to Schedule 3, Schedule 8 provides a simplified presentation of the proposed capital structure and cost of capital, providing greater transparency, and assists Staff in auditing the applicant's revenue requirement calculations.<sup>20</sup> Weighing the burden of producing Schedule 8 against its value in triennial reviews and RAC proceedings, we find that Schedule 8 should be a required schedule and not optional.

## Schedules 10, 13, 20, 23 and 44

The Rules modify the way an applicant presents the removal of prospective RACs and the associated impact on base rates cost of service. Under the Proposed Rules, applicants would remove the impact of both current and future RACs in Schedules 10, 13, 20, and 23. Schedule 44 will present detailed information for each current and future RAC removed through Schedules 10, 13, 20, and 23. The Joint Commenters state a preference to continue existing practice. Currently, future RAC activity is eliminated in the earnings test and ratemaking schedules through regulatory accounting adjustments.<sup>21</sup> Staff, however, represents that elimination of RAC costs and revenues consumes a lot of Staff's time when auditing and states that Schedules 10, 13, 20, 23, and 44 are intended to increase transparency.<sup>22</sup> We agree with Staff that these revised

schedules will increase transparency and will adopt Schedules 10, 13, 20, 23 and 44 with only minor revisions. In doing so, we are mindful of the 8-month statutory deadline applicable to triennial review proceedings.

## Schedules 18 and 28 – Balance Sheet Analysis Section of the Lead/Lag Study

Schedules 18 and 28 provide details of all balance sheet accounts included in the balance sheet analysis section of the applicant's lead/lag study. Associated Accumulated Deferred Income Taxes ("ADIT") are required to be included in the balance sheet analysis in both Schedules 18 and 28. Joint Commenters opposed including the ADIT information in Schedules 18 and 28, stating it is redundant, as this information is already included as cost-free capital in Schedules 12 and 22, respectively.<sup>23</sup>

Staff acknowledged that for utilities that complete a lead/lag study, the inclusion of ADIT-related information in Schedules 18 and 28 is a matter of presentation.<sup>24</sup> For a utility that does not complete a lead/lag study, however, Staff states that ADIT associated with the accounts included in the balance sheet analysis are only appropriate to include in rate base if an applicant completes a lead/lag study.<sup>25</sup> Staff states that for audit and tracking, it prefers the balance sheet analysis-related ADIT to be included within the balance sheet analysis itself.<sup>26</sup> We agree and will retain the proposed language in Schedules 18 and 28 related to inclusion of ADIT-related information.

## Schedule 45 – Peer Group Information

We grant the Motion and adopt the Joint Commenters' proposed revisions to Schedule 45 to reflect the passage of Senate Bill 731.

## Schedule 46 – Filing Requirements for RACs and Prudency Determinations

The Proposed Rules included significant changes to broaden existing Schedule 46 to address all the currently permissible types of RACs and prudency determinations. Joint Commenters proposed to reorganize Schedule 46 into (i) transmission RACs; (ii) initial RAC applications; (iii) RAC update applications; and (iv) prudency determination Filings,<sup>27</sup> which Staff did not oppose.<sup>28</sup>

Joint Commenters also proposed to delete certain categories of information required by Schedule 46 including (i) materials used by senior management to make major cost decisions; (ii) long-term revenue requirements on a total company basis; and (iii) transaction-level details to facilitate Staff's sampling and audit of actual costs.<sup>29</sup>

With respect to materials used by senior management to make major cost decisions, Staff explained that these materials, which have been provided through the discovery process in the past, are valuable in a RAC or prudency determination proceeding because they provide insight into the justification for a proposed project or major cost decision.<sup>30</sup> The Joint Commenters, on the other hand, state this type of material is

competitively sensitive and will add an unnecessary administrative burden to ensure appropriate protection.<sup>31</sup> They also assert this language is vague and subjective and could inject unnecessary dispute regarding the meaning of "major."<sup>32</sup> In response to these concerns, and to avoid future disputes, Staff suggested the Commission clarify this requirement by adding "as determined by the applicant."<sup>33</sup>

We find that the senior management materials should be required by Schedule 46. The Commission has protocols in place to protect confidential and extraordinarily sensitive material. Moreover, provision of this information at the outset of a proceeding will allow for a more streamlined review of applications and audit of financial information.

With respect to providing the long-term revenue requirement on a total company basis in RAC proceedings, Joint Commenters state that it creates an unnecessary administrative burden to provide this information as part of a filing that is not justified by the usefulness of the information.<sup>34</sup> Staff disagreed, stating, among other things, that the long-term revenue requirement is valuable information because it provides an estimate of the all-in cost of a program or project, including financing costs.<sup>35</sup> We agree this information should be required by the Rules and will include this requirement in Schedule 46.

Joint Commenters also objected to providing "transaction-level details to facilitate the sampling and audit of actual costs electronically to [UAF]" within five business days of an application filing date.<sup>36</sup> The Joint Commenters suggest that the Proposed Rules contain insufficient description of what sort of details the applicant must provide based on the type of case to facilitate this sampling and audit.<sup>37</sup> Staff disagreed, stating this language requires an applicant to provide detailed, actual cost information, at a transaction-level, such that Staff can use the information to select a sample of transactions to audit.<sup>38</sup> Moreover, Staff explained that:

The purpose of this requirement is to provide Staff with a starting point for its audit and review of actually incurred costs in connection with a RAC filing. Providing this information to Staff upfront at the beginning of a proceeding is very helpful given the quantity of proceedings on-going simultaneously and tight statutory timeframes for review. Having this information within five business days will help Staff do a thorough audit and investigation of potentially very significant costs.<sup>39</sup>

Balancing the burden of providing this information with its usefulness, we find that Schedule 46 should include the requirement to provide transaction level details to facilitate sampling and audit of actual costs.

For economic studies required by Schedule 46, the Joint Commenters propose to add qualifying language "to the extent required by statute." Staff and Consumer Counsel oppose inclusion of this language.<sup>40</sup> We agree it should not be included and so find. To the extent the Company believes an economic study is not required by a statute to support a particular

resource, the Company may seek a waiver of the Rules, as appropriate.

Finally, Consumer Counsel proposes to extend the applicability of Schedule 46 to apply to new energy storage facilities.<sup>41</sup> Staff notes that Schedule 46, as proposed, would apply to all initial RAC and prudency reviews which would encompass RACs for energy storage facilities.<sup>42</sup> At this time, we find it is not necessary to include additional requirements in the Rules related to energy storage facilities.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Gas and Water Utilities, 20 VAC 5-201-10 et seq., and the Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-owned Electric Utilities, 20 VAC 5-204-10 et seq., as shown in Attachment A to this Order, are hereby adopted and are effective as of January 1, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

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

(4) This docket is dismissed.

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.

<sup>1</sup> 2020 Acts of Assembly, ch. 1108.

<sup>2</sup> The Rules were originally planned to become effective October 1, 2020. Joint Commenters requested the Rules become effective January 1, 2021 "to allow sufficient time for utilities to adopt to the final revisions once implemented." Joint Commenters Comments at 3. Staff did not oppose this request, and we find this modification to be reasonable.

<sup>3</sup> Other than minor edits to 20 VAC5-201-15 and 20 VAC 5-201-20 C, no additional modifications to the Existing Rate Case Rules beyond those previously attached to the Procedural Order are being adopted. Accordingly, all references for the remainder of the Order to Proposed Rules or Rules refer to the Investor-owned Electric Utility Rate Case Rules.

<sup>4</sup> 20 VAC 5-204-10 E.

<sup>5</sup> Consumer Counsel Comments at 2.

<sup>6</sup> Joint Commenters Comments at 5.

<sup>7</sup> Id. at 6-8.

<sup>8</sup> Staff Report at 13.

<sup>9</sup> Joint Commenters Comments at 6.

<sup>10</sup> Id. at 17-23.

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<sup>11</sup> Staff Report at 15.

<sup>12</sup> See, e.g., Joint Commenters Comments at 8-9; Kentucky Utilities Comments at 1-2;

<sup>13</sup> We note that the Rules reduce the number of copies to be filed with the Clerk of the Commission that would otherwise be required under our Rules of Practice and Procedure.

<sup>14</sup> Joint Commenters Comments at 9 (citing Petition of Virginia Electric and Power Company, For a continuing waiver of 20 VAC 5-201-10 J of the Rules Governing Utility Rate Applications and Annual Informational Filings to permit electronic service to local officials upon request, Case No. PUE-2016-00039, Doc. Con. Cen. No. 160420194, Order (Apr. 19, 2016)).

<sup>15</sup> Staff Report at 7.

<sup>16</sup> Joint Commenters Comments at 13.

<sup>17</sup> See Staff Report at 17-18.

<sup>18</sup> Joint Commenters Comments at 13.

<sup>19</sup> Staff Report at 19.

<sup>20</sup> Id. at 18-19.

<sup>21</sup> Joint Commenters Comments at 15.

<sup>22</sup> Staff Report at 20.

<sup>23</sup> Joint Commenters Comments at 18.

<sup>24</sup> Staff Report at 21.

<sup>25</sup> Id. at 22.

<sup>26</sup> Id.

<sup>27</sup> Joint Commenters Comments at 25.

<sup>28</sup> Staff Report at 24.

<sup>29</sup> Joint Commenters Comments at 26-28.

<sup>30</sup> Staff Report at 25.

<sup>31</sup> Joint Commenters Comments at 26.

<sup>32</sup> Id.

<sup>33</sup> Staff Report at 26.

<sup>34</sup> Joint Commenters Comments at 27.

<sup>35</sup> Staff Report at 27.

<sup>36</sup> Joint Commenters Comments at 28.

<sup>37</sup> Id.

<sup>38</sup> See Staff Report at 29.

<sup>39</sup> Id. at 28.

<sup>40</sup> See Staff Report at 28-29; Consumer Counsel Comments at 3-4.

<sup>41</sup> See Consumer Counsel Comments at 3.

<sup>42</sup> See Staff Report at 30-31.

## Chapter 201

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

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

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-201-20, 20VAC5-201-40,

~~20VAC5-201-60~~ and 20VAC5-201-85 to the commission 60 days prior to the application filing date.

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

1. The name and post office address of the applicant and the name and post office address of ~~its~~ the applicant's counsel.

2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.

3. A statement of details of the ~~objective or~~ objectives sought and the legal basis therefore.

4. All direct testimony by which the applicant expects to support the ~~objective or~~ objectives sought.

5. Information or documentation conforming to the following general instructions:

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

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

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or

Schedule Number

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

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

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

C. This chapter does not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in Earnings Test Filings made pursuant to 20VAC5-201-10, or 20VAC5-201-30 ~~or 20VAC5-201-50~~.

D. An application filed pursuant to 20VAC5-201-20, 20VAC5-201-30, 20VAC5-201-40, ~~20VAC5-201-60, 20VAC5-201-70, 20VAC5-201-80~~ or 20VAC5-201-85 shall not be deemed filed per Chapter 10 (§ 56-232 et seq.) ~~or Chapter 23 (§ 56-576 et seq.)~~ of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

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

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

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

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

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

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

J. For any application made pursuant to 20VAC5-201-20 and, 20VAC5-201-40 through, 20VAC5-201-70, and 20VAC5-201-85, the applicant shall serve a copy of the information required in subsection A and subdivisions B 1 through, B 2, and B 3 of this section, upon the attorney and chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase. The applicant shall also serve each such

official with a statement that a copy of the complete application may be obtained at no cost by making a request therefor orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia. All such service specified by this section shall be made either by (i) personal delivery or (ii) first class mail; to the customary place of business or to the residence of the person served.

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

**20VAC5-201-15. Applicability to applications of investor-owned electric utilities.**

This chapter shall not apply to applications filed by investor-owned electric utilities on or after [ ~~October~~ January ] 1, [ ~~2020~~ 2021 ] .

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

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

1. Exhibits consisting of Schedules ~~1-43~~ 1 through 43 and the utility's direct testimony shall be submitted. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in 20VAC5-201-90.

~~2. An applicant subject to § 56-585.1 of the Code of Virginia shall file Schedules 45 and 47 in addition to the schedules required in subdivision A 1 of this section in accordance with the instructions accompanying such schedules in 20VAC5-201-90.~~

~~3.~~ An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 50 (this exhibit may include numerous subschedules labeled 50A et seq.).

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

C. Applicants meeting each of the [ ~~four~~ ] following criteria may omit Schedules ~~9-18~~ 9 through 18 in rate applications: (i) ~~the applicant is not subject to § 56-585.1 of the Code of Virginia,~~ (ii) the applicant is not currently bound by a performance-based regulation plan authorized by the commission pursuant to § 56-235.6 of the Code of Virginia that includes an earnings sharing mechanism or other attribute for which the commission has directed the performance of an Earnings Test, ~~(iii)~~ (ii) the applicant has no Virginia jurisdictional regulatory assets on its books, and ~~(iv)~~ (iii) the applicant is not seeking to establish a regulatory asset.

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

1. In computing its cost of capital, as prescribed in Schedule 3 in 20VAC5-201-90, the applicant, ~~other than those utilities subject to § 56-585.1 of the Code of Virginia,~~ shall use the equity return rate approved by the commission and used to determine the revenue requirement in the utility's most recent rate proceeding.
2. An applicant, in developing its rate of return statement, shall make adjustments to its test period jurisdictional results only in accordance with the instructions for Schedule 25 in 20VAC5-201-90.
3. The applicant may propose new allocation methodologies, rate designs, and new or revised terms and conditions provided such proposals are supported by appropriate cost studies. Such support shall be included in Schedule 40.

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

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

Unless modified per a commission-approved alternative regulatory plan, each utility ~~not subject to § 56-585.1 of the Code of Virginia, and which is~~ not requesting a base rate increase shall make an annual informational filing consisting of Schedules ~~1-7~~ 1 through 7, 9, 11-12, 14-19 ~~14 through 19, 21-22, 24-25~~ 21, 22, 24, 25, 27, 28, and 40 a and b as identified in 20VAC5-201-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the commission within 120 days after the end of the test period. Accounting adjustments reflected in Column (2) of Schedule 21 shall incorporate the ratemaking treatment approved by the commission in the utility's last rate case and

shall be calculated in accordance with the Expedited Rules of Schedule 25. Requirements found in 20VAC5-201-10 B 2 ~~through, B 3, and B 4~~ may be omitted in Annual Informational Filings.

Applicants meeting each of the ~~four~~ following criteria may omit Schedules ~~9-18~~ 9, 11, 12, 14, and 15 through 18 in Annual Informational Filings: (i) ~~the applicant is not subject to § 56-585.1 of the Code of Virginia,~~ (ii) the applicant is not currently bound by a performance-based regulation plan authorized by the commission pursuant to § 56-235.6 of the Code of Virginia that includes an earnings sharing mechanism or other attribute for which the commission has directed the performance of an Earnings Test, ~~(iii)~~ (ii) the applicant has no Virginia jurisdictional regulatory assets on its books, and ~~(iv)~~ (iii) the applicant is not seeking to establish a regulatory asset.

### **20VAC5-201-40. Optional performance-based regulation applications.**

~~A. An applicant, other than those subject to § 56-585.1 of the Code of Virginia, that files an application for performance-based regulation pursuant to § 56-235.6 of the Code of Virginia shall file Schedules 1-32~~ 1 through 32 and 34-43 ~~34 through 43~~ as identified in 20VAC5-201-90.

~~B. An applicant subject to § 56-585.1 that files a performance-based regulation filing pursuant to § 56-235.6 shall file Schedules 1-45 and 47 as identified in 20VAC5-201-90.~~

### **20VAC5-201-50. Biennial review applications. (Repealed.)**

~~A. A biennial review application filed pursuant to § 56-585.1 of the Code of Virginia shall include the following:~~

~~1. Exhibits consisting of Schedules 3, 6-7, 9-18, 40a and 44 as identified in 20VAC5-201-90 shall be submitted with the utility's direct testimony for each of the two successive 12-month test periods.~~

~~2. Exhibits consisting of Schedules 1-2, 4-5, 8, 19-34, 36-39, 40b-d, 41-43, 45, and 47 as identified in 20VAC5-201-90, shall be submitted with the utility's direct testimony for the second of the two successive 12-month test periods.~~

~~3. An exhibit consisting of Schedule 35 shall be filed with the commission no later than April 30 each year.~~

~~4. An exhibit consisting of Schedule 49 shall be submitted with the utility's direct testimony, if required.~~

~~5. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 50 (this exhibit may include subschedules as needed labeled 50A et seq.).~~

~~6. A reconciliation of Schedules 19 and 22 to the statement of income and comparative balance sheet contained in FERC Form No. 1.~~

~~B. The assumed rate year for purposes of determining ratemaking adjustment in Schedules 21 and 24, as identified in~~

20VAC5-201-90, shall begin on December 1 of the year following the two successive 12 month test periods.

**20VAC5-201-60. Rate adjustment clause filings. (Repealed.)**

An application filed pursuant to § 56-585.1 A 4, 5 or 6 of the Code of Virginia shall include Schedules 45 and 46 as identified and described in 20VAC5-201-90, and which shall be submitted with the utility's direct testimony.

**20VAC5-201-70. Temporary increases of rates.**

A. Applicants that file a request for a temporary increase in rates pursuant to § 56-245 of the Code of Virginia shall include Schedules ~~47, 1 through 9, 11, 12, 14 and 16-18, 16, 17, and 18~~ as identified and described in 20VAC5-201-90.

B. Applicants subject to § 56-585.1 of the Code of Virginia that file a request for a temporary increase in rates pursuant to § 56-245 shall file Schedules 44, 45 and 47 as identified and described in 20VAC5-201-90 in addition to the schedules required in subsection A of this section.

**20VAC5-201-80. Fuel factor filings. (Repealed.)**

A. In the event that an electric utility files an application to change the fuel factor, fuel factor projections shall be filed at least six weeks prior to the proposed effective date. The filing shall include projections required by the commission's Fuel Monitoring System as well as the testimony and exhibits supporting the fuel factor projections. At a minimum, the filing shall include the following for each month of the forecast period in which the proposed fuel factor is expected to be in effect:

1. Projections of system sales and energy supply requirements (MWh);
2. Projections of generation and purchased power levels (MWh) by source;
3. Projections of fuel requirements by generating unit (MMBtu);
4. Projections of fuel and purchased power costs by source;
5. Projections of off system sales volumes and margins;
6. Projections of generating unit outage rates and heat rates; and
7. Total fuel factor costs by source by month.

The filing shall further include the following information for each month for the most recent historical 12 month period:

1. Actual system sales and energy supply (MWh);
2. Actual generation and purchased power levels (MWh) by source;
3. Actual fuel burns by generating units (MMBtu);
4. Actual fuel and purchased power costs by source;

5. Actual off system sales volumes and margins along with support for calculation of margins;

6. Actual generating unit planned and forced outage rates and heat rates along with brief descriptions and durations of outages; and

7. Discussion of any abnormal operating events and actions taken to minimize fuel and purchased energy costs.

B. Electric utilities not seeking a change in the fuel factor shall file fuel factor projections at least six weeks prior to the expiration of the last projection or as required by the commission. The filing shall include the same information required in subsection A of this section.

**EDITOR'S NOTE:** No changes from the proposed regulation, as published in [36:19 VA.R. 2188-2251 May 11, 2020](#), were made to 20VAC5-201-90, 20VAC5-201-95, 20VAC5-201-100, and 20VAC5-201-110, so those sections are not being published.

Chapter 204

Rules Governing Utility Rate Applications and Annual Informational Filings of Investor-Owned Electric Utilities

**20VAC5-204-5. Purpose and applicability.**

This chapter sets forth minimum filing requirements for Virginia's investor-owned electric utilities related to annual informational filings, rate case filings, and prudency determinations under Chapter 10 (§ 56-232 et seq.) and Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. Forms are prescribed or adopted for purposes of implementing Chapter 10 (§ 56-576 et seq.) and Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. When so prescribed or adopted, use of the forms is mandatory. This chapter should not be construed as limiting the ability of the commission or its staff to evaluate information in addition to or beyond that identified in this chapter.

**20VAC5-204-10. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-204-20, 20VAC5-204-40, and 20VAC5-204-60 to the commission 60 days prior to the application filing date. A notice of intent to file an application shall be provided for each 20VAC5-204-40 and 20VAC5-204-60 application, and such notice shall identify the specific section and subsection of the Code of Virginia pursuant to which the application will be filed. [ An applicant may include more than one application in a notice of intent to the extent the applicant intends to file multiple applications pursuant to 20VAC5-204-40 and 20VAC5-204-60 within the same timeframe but must list each intended application separately within the notice of intent. ] If the filing is for the continuation of a previously-approved rate adjustment clause, the notice shall identify the specific rate adjustment clause. If the application is for approval of a new rate adjustment clause or



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for a prudency determination, the notice shall include a narrative description of the associated project or program.

B. Applications pursuant to 20VAC5-204-20 through 20VAC5-204-80 shall include:

1. The name and post office address of the applicant and the name and post office address of the applicant's counsel.

2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.

3. A statement of details of the objectives sought and the legal basis therefore.

4. All direct testimony by which the applicant expects to support the objectives sought. Each testimony shall include a summary not to exceed one page [ for applications pursuant to 20VAC5-204-30, 20VAC5-204-40, or 20VAC5-204-60 through 20VAC5-204-80 and not to exceed two pages for applications pursuant to 20VAC5-204-20 or 20VAC5-204-50 ].

5. Information or documentation conforming to the following general instructions:

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

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

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or

Schedule Number

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

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

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

C. This chapter does not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in earnings tests made pursuant to 20VAC5-204-20, 20VAC5-204-30, or 20VAC5-204-50.

D. An application filed pursuant to 20VAC5-204-20, 20VAC5-204-30, 20VAC5-204-40, 20VAC5-204-50, 20VAC5-204-60, 20VAC5-204-70, or 20VAC5-204-80 shall

not be deemed filed pursuant to Chapter 10 (§ 56-232 et seq.) or Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

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

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

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

H. Applicants shall provide a searchable PDF version of the application and direct testimony electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation [ ~~and~~ on the application filing date. Applicants must also provide a searchable PDF of the public version of the application and direct testimony electronically to ] the Division of Consumer Counsel of the Office of the Attorney General of Virginia [ on the application filing date ].

Additionally, all schedules containing calculations derived from formulas shall be provided electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation [ ~~and the Division of Consumer Counsel of the Office of the Attorney General of Virginia~~ ] in an electronic spreadsheet including all underlying formulas and assumptions [ on the application filing date ]. Such electronic spreadsheet shall be commercially available and have common use in the utility industry.

All schedules that do not contain calculations derived from formulas shall be provided electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation [ ~~and the Division of Consumer Counsel of the Office of the Attorney General of Virginia~~ ] in a searchable PDF version within five business days of the application filing date. Additional versions of such schedules shall be made available to parties upon request.

I. All applications, including direct testimony and Schedules 1 through 28, 30 through 39, and 41 through 49, as applicable, shall be filed in an original and 12 copies with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. One copy of Schedules 29 and 40 shall be filed with the Clerk of the Commission. Applicants may omit filing Schedule 29 with the Clerk of the Commission in Annual Informational Filings. Additional copies of such schedules shall be made available to parties upon request.

One copy of Schedules 29 and 40 shall be submitted to the Division of Utility Accounting and Finance. Four copies of Schedule 40 shall be submitted to the Division of Public Utility Regulation.

J. [ 1. ] For any application made pursuant to 20VAC5-204-20 [ ~~and~~ ] 20VAC5-204-40 [ ~~through 20VAC5-204-80, or 20VAC5-204-60~~ ], the applicant shall serve a copy of the information required in subsection A of this section at the same time that it is filed with the commission upon: (i) the chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase [ or, in the case of applications made pursuant to 20VAC5-204-40, the proposed project ]; (ii) the mayor or manager of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase [ or, in the case of applications made pursuant to 20VAC5-204-40, the proposed project ]; and (iii) the Division of Consumer Counsel of the Office of the Attorney General of Virginia. [ Such service shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served. ]

[ 2. ] For applications pursuant to 20VAC5-204-20 and 20VAC5-204-40 through 20VAC5-204-80, the applicant shall also serve each [ ~~such~~ ] official [ listed in subdivision J 1 of this section ] with the following within five business days of the issuance of the commission's procedural order regarding the application: (i) the information required in subdivisions B 1, B 2, and B 3 of this section; (ii) a statement that a copy of the complete [ public version of the ] application may be obtained at no cost by making a request therefor [ orally or ] in writing to a specified company official [ or location ]; and (iii) the commission's procedural order regarding the application. [ Such service shall be made electronically to the extent the applicant has official email addresses for such officials. If not, such service shall be made either by (i) personal delivery or (ii) first class mail to the customary place of business or to the residence of the person served. ]

[ 3. ] In addition, the applicant shall serve a copy of [ ~~its~~ the ] complete [ public version of its ] application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia at the same time it is filed with the commission. [ ~~All such~~ Such ] service [ ~~specified by this section~~ ] shall be made either by personal delivery or first class mail to the customary place of business [ or to the residence of the person served ].

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

### **20VAC5-204-20. Base rate increase applications pursuant to Chapter 10 of Title 56 of the Code of Virginia.**

A. An application for a base rate increase pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall conform to the following requirements:

1. Exhibits consisting of Schedules 1 through 43 and the utility's direct testimony shall be submitted. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in 20VAC5-204-90.

2. An applicant subject to § 56-585.1 of the Code of Virginia shall file Schedules 44, 45, 47, and 48A in addition to the schedules required in 20VAC5-204-20 A 1 in accordance with the instructions accompanying such schedules in 20VAC5-204-90.

3. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 49 (this exhibit may include numerous subschedules labeled 49A et seq.).

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

C. Applicants meeting each of the three following criteria may omit Schedules 9 through 18 in [ base ] rate [ increase ] applications: (i) the applicant is not subject to § 56-585.1 of the Code of Virginia; (ii) the applicant has no Virginia jurisdictional regulatory assets on the applicant's books that are subject to an earnings test; and (iii) the applicant is not seeking to establish a regulatory asset.

### **20VAC5-204-30. Annual informational filings.**

Each utility not subject to § 56-585.1 of the Code of Virginia, and which is not requesting a base rate increase, shall make an annual informational filing consisting of Schedules 1 through 7, 9, 11, 12, 14 through 19, 21, 22, 24, 25, 27, 28, 29, 36, and 40 a and b as identified in 20VAC5-204-90. The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. This information shall be filed with the commission within 120 days after the end of the test period. Accounting adjustments reflected in Column (2) of Schedule 21 shall incorporate the ratemaking treatment approved by the commission in the utility's last rate case and shall be calculated in accordance with the rules of Schedule 25. Requirements found in 20VAC5-204-10 B 2, [ ~~B 3 B 3~~ ], and B 4 may be omitted in Annual Informational Filings.

Applicants meeting each of the following criteria may omit Schedules 9 through 18 in Annual Informational Filings: (i) the applicant has no Virginia jurisdictional regulatory assets on the applicant's books subject to an earnings test; and (ii) the applicant is not seeking to establish a regulatory asset.

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## **20VAC5-204-40. Prudency determination filings.**

An application pursuant to Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia for a prudency determination that does not request approval of an associated rate adjustment clause shall include Schedule 46 as identified and described in 20VAC5-204-90, which shall be submitted with the utility's direct testimony.

## **20VAC5-204-50. Base rate review applications pursuant to § 56-585.1 of the Code of Virginia.**

A. A base rate review application filed pursuant to § 56-585.1 of the Code of Virginia shall include the following:

1. Exhibits consisting of Schedules 3; 6; 7; 9 through 18; 29 a, b, c, and f; 30, 31, 32, 34, 35, 36, 40a, 44, [ and ] 48 [ ~~a and 48b~~ ] as identified in 20VAC5-204-90 shall be submitted with the utility's direct testimony for each of the successive 12-month test periods. Schedule 35 for the final 12-month test period shall be filed no later than April 30 of [ ~~each~~ the ] application filing year.

2. Exhibits consisting of Schedules 1, 2, 4, 5, 8, 19 through 28, 29 d, 29 e, 33, 37, 38, 39, 40b, 40c, 41, 42, 43, 45 [ , and ] 47 [ ~~and 48e~~ ] as identified in 20VAC5-204-90 shall be submitted with the utility's direct testimony for the final 12-month test period.

3. An exhibit consisting of additional schedules may be submitted with the utility's direct testimony. Such exhibit shall be identified as Schedule 49 (this exhibit may include subschedules as needed labeled 49A et seq.).

4. A reconciliation of the total company amounts in Schedules 19 and 22 to the statement of income and comparative balance sheet contained in Federal Energy Regulatory Commission Form No. 1 shall be filed with the commission no later than April 30 of [ ~~each~~ the ] application filing year.

B. The assumed rate year for purposes of determining ratemaking adjustments in Schedules 21 and 24, as identified in 20VAC5-204-90, shall begin on January 1 following the application filing date.

## **20VAC5-204-60. Rate adjustment clause filings.**

An application for a rate adjustment clause filed pursuant to Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia shall include Schedule 46 as identified and described in 20VAC5-204-90, which shall be submitted with the utility's direct testimony. Additionally, applications requiring an overall cost of capital shall include Schedules 3, 4, 5, and 8.

## **20VAC5-204-70. Temporary increases of rates.**

A. Applicants that file a request for a temporary increase in rates pursuant to § 56-245 of the Code of Virginia shall include Schedules 1 through 7, 9, 11, 12, 14, 16, 17, and 18 as identified and described in 20VAC5-204-90.

B. Applicants subject to § 56-585.1 of the Code of Virginia that file a request for a temporary increase in rates pursuant to § 56-245 shall file Schedules 10, 13, 44, 45, 47, and 48A as identified and described in 20VAC5-204-90 in addition to the schedules required in subsection A of this section.

## **20VAC5-204-80. Fuel factor filings.**

A. In the event that an electric utility files an application to change the fuel factor, fuel factor projections shall be filed at least six weeks prior to the proposed effective date. The filing shall include projections required by the commission's fuel monitoring system as well as the testimony and exhibits supporting the fuel factor projections. At a minimum, the filing shall include the following for each month of the forecast period in which the proposed fuel factor is expected to be in effect:

(i) Projections of system sales and energy supply requirements (MWh);

(ii) Projections of generation and purchased power levels (MWh) by source;

(iii) Projections of fuel requirements by generating unit (MMBtu);

(iv) Projections of fuel and purchased power costs by source;

(v) Projections of off-system sales volumes and margins;

(vi) Projections of generating unit outage rates and heat rates; and

(vii) Total fuel factor costs by source by month.

The filing shall further include the following information for each month for the most recent historical 12-month period:

1. Actual system sales and energy supply (MWh).

2. Actual generation and purchased power levels (MWh) by source.

3. Actual fuel burns by generating units (MMBtu).

4. Actual fuel and purchased power costs by source.

5. Actual off-system sales volumes and margins along with support for calculation of margins.

6. Actual generating unit planned and forced outage rates and heat rates along with brief descriptions and durations of outages.

7. Discussion of any abnormal operating events and actions taken to minimize fuel and purchased energy costs.

B. Electric utilities not seeking a change in the fuel factor shall file fuel factor projections at least six weeks prior to the expiration of the last projection or as required by the commission. The filing shall include the same information required in subsection A of this section.

**20VAC5-204-90. Instructions for Schedules and exhibits for this chapter.**

The following instructions for schedules and exhibits are to be used in conjunction with this chapter:

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

Instructions: Using the format of Form Schedule 1 and the following definitions, provide the data for the test period and four prior fiscal years. The information shall be compatible with the latest SEC Form 10-K consolidated financial statements (including any restatements). Information in Sections A and B of Schedule 1 shall be compiled for the corporate entity that raises equity capital in the marketplace. Information in Section C of Schedule 1 shall be compiled for the subsidiary company that provides regulated utility service in Virginia.

**Definitions for Schedule 1**

<u>Return on Year End Equity =</u>	<u>Earnings Available for Common Shareholders</u> <u>Year End Common Equity</u>
<u>Return on Average Equity =</u>	<u>Earnings Available for Common Shareholders</u> <u>The Average of Year End Equity for the Current &amp; Previous Year</u>
<u>Earnings Per Share =</u>	<u>Earnings Available for Common Shareholders</u> <u>Average No. Common Shares Outstanding</u>

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

Payout Ratio = DPS/EPS

Dividend Yield = DPS/Year End Price

Price Earnings Ratio = Average Market Price/EPS

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

Instructions: This schedule shall be prepared using the following definitions and instructions and presented in the format of Form Schedule 2. The information shall be provided for the test period and the four prior fiscal years based on information for the applicant and for the consolidated company if the applicant is a subsidiary.

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

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

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

- Preferred dividends (Line 13) for a subsidiary shall be stated per books.

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

- Common dividends (Line 16) for a subsidiary shall be stated per books.

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

Instructions: This schedule shall show the amount of each capital component per balance sheet, the amount for ratemaking purposes, the percentage weight in the capital structure, and the component cost and weighted cost, using the format in Form Schedule 3. The information shall be provided for the test period, the four prior fiscal years, and on a 13-month average or five-quarter average basis for the test period. The data shall be provided for the entity whose capital structure was approved for use in the applicant's last rate case.

In Part A, the information shall be compatible with the latest SEC Form 10-K consolidated financial statements (including any restatements). In Parts B, C, and D, the methodology shall be consistent with that approved in the applicant's last rate case. Reconcile differences between Parts A and B for both end-of-test-period and average capital structures.

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

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

Adjustments made to per books amounts shall be fully documented and explained.

For investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia, Parts A, B, C, and D shall be based on the utility's actual, end-of-period capital structure.

In an application for a rate adjustment clause pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia, Schedule 3 information shall be provided to support each actual, end-of-period capital structure for each year necessary to calculate the revenue requirement. Information for prior time periods not necessary to calculate the revenue requirement need not be provided.

**Schedule 4 - Schedules of Long-Term Debt, Preferred Stock, Investment Tax Credits, and Any Other Component of Ratemaking Capital**

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

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

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

Investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia shall file data consistent with the utility's end of test period capital structure and cost of short-term debt.

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

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

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

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

Instructions: If not provided in the public financial reports for Schedule 6, provide comparative balance sheets, income statements, and cash flow statements for the test year and the 12-month period preceding the test year for the applicant and its consolidated parent company if applicant is a subsidiary. In lieu of providing a copy, the applicant may provide a link to where such information can be found on the Internet.

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

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

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

Instructions: Use the format of Form Schedule 9.

For cases filed pursuant to § 56-585.1 A of the Code of Virginia, Schedule 9 shall reflect average rate base. Interest expense, preferred dividends, and common equity capital shall be calculated using the actual end-of-test period capital structure included in Schedule 3 B and average rate base. In all other cases, Schedule 9 shall reflect average rate base, capital, and common equity capital. Interest expense, preferred dividends, and common equity capital shall be calculated by using the average capital structure included in Schedule 3 B and average rate base.

Utilities not subject to § 56-585.1 of the Code of Virginia shall file only Columns (1), (2), and (3) on Schedule 9.

Revenues presented in Schedule [ ~~40~~ 9 ] shall include separate line items for each type of revenue (e.g., base rates and § 56-585.1 A 4, A 5, and A 6 rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

## **Schedule 10 - Rate of Return Statement - Earnings Test - Generation and Distribution Per Books**

Instructions: Use the format of Form Schedule 10.

Utilities not subject to § 56-585.1 of the Code of Virginia may omit Schedule 10.

Schedule 10 shall reflect combined generation and distribution operations. Additionally, utilities shall file Schedule 10A, reflecting generation only operations, and Schedule 10B, reflecting distribution only operations, using the same format as Schedule 10.

For cases filed pursuant to § 56-585.1 A of the Code of Virginia, Schedule 10 shall reflect the average rate base. Interest expense, preferred dividends, and common equity capital shall be calculated by using the actual end-of-test period capital structure included in Schedule 3 B and average rate base. In all other proceedings, Schedule 10 shall reflect average rate base, capital, and common equity capital. Interest expense, preferred dividends, and common equity capital shall be calculated by using the average capital structure included in Schedule 3 B and average rate base.

Revenues presented in Schedule 10 shall include separate line items for each type of revenue (e.g., base rates and § 56 585.1 A 4, A 5, and A 6 rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

Schedule 10 Columns (2) and (3) shall reflect revenues, expenses, and rate base for commission-approved rate adjustment clauses pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia, respectively. Schedule 10 Column (4) shall include revenues, expenses, and rate base intended to be recovered through [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ].

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

Instructions: Use the format of Form Schedule 11.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 11 shall reflect combined generation and distribution operations. [ ~~Additionally, such~~ Such ] utilities shall file Schedule 11A, reflecting generation only operations, and Schedule 11B, reflecting distribution only operations, using the same format as Schedule 11. [ ~~Additionally, such utilities shall file Schedule 11C reflecting the fully-adjusted results of its generation and distribution operation for each test period under review and the combined results for all test periods.~~ ]

Revenues presented in Schedule 11 shall include separate line items for each type of revenue (e.g., base rates and § 56-585.1 A 4, A 5, and A 6 rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

Schedule 11 adjustments in Column (2) shall reflect any financial differences between per books and regulatory accounting as prescribed by the commission. Each Column (2) adjustment shall be separately identified and reflected in Schedule 16.

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

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

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

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

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

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

Instructions: Use the format of Form Schedule 12.

Utilities not subject to § 56-585.1 of the Code of Virginia shall file only Columns (1), (2), and (3) on Schedule 12.

Applicants with jurisdictional per books operating revenues of more than \$150 million shall calculate cash working capital allowance using a lead/lag study. Applicants with jurisdictional per books operating revenues between \$20 and \$150 million may include a zero cash working capital requirement rather than perform a lead/lag study.

**Schedule 13 - Rate Base Statement - Earnings Test - Generation and Distribution Per Books**

Instructions: Use the format of Form Schedule 13.

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

For utilities subject to § 56-585.1, Schedule 13 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 13A, reflecting generation only operations, and Schedule 13B, reflecting distribution only operations, using the same format as Schedule 13.

Schedule 13 Columns (2) and (3) shall reflect rate base information for commission-approved rate adjustment clauses pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia. Column (4) shall reflect rate base information for amounts intended to be recovered through [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ].

Cash working capital allowance shall be calculated using a lead/lag study.

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

Instructions: Use the format of Form Schedule 14.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 14 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 14A, reflecting generation only operations, and Schedule 14B, reflecting distribution only operations, using the same format as Schedule 14.

Cash working capital allowance shall be calculated using a lead/lag study. Schedule 14 Column (2) shall reflect adjustments necessary to identify any financial differences between per books and regulatory accounting as prescribed by the commission. Each Column (2) adjustment shall be separately identified and reflected in Schedule 16.

**Schedule 15 - Schedule of Regulatory Assets**

Instructions: Use the format of Form Schedule 15.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 15 shall reflect combined generation and distribution operations as well as generation only operations and distribution only operations.

All regulatory assets shall be individually listed with associated deferred income tax. Indicate whether the regulatory asset (i) is included in financial reporting or is

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currently recognized for ratemaking purposes only; and (ii) is subject to an earnings test.

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

Instructions: If applicable per Schedules 9 and 12 instructions.

Use the format of Form Schedule 16.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 16 shall reflect combined generation and distribution operations as well as generation only operations and distribution only operations.

Each regulatory accounting adjustment shall be numbered sequentially beginning with ET-1 and listed under the appropriate description category (Operating Revenues, Interest Expense, Common Equity Capital, etc.).

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

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

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

Instructions: Use the format of Form Schedule 17.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 17 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 17A, reflecting generation only operations, and Schedule 17B, reflecting distribution only operations, using the same format as Schedule 17.

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

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 12, 13, and 14.

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

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

Instructions: Use the format of Form Schedule 18.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 18 shall reflect combined generation and distribution operations as well as generation only operations and distribution only operations.

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

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

Support for Schedule 18 shall include a list of all balance sheet subaccounts and titles. Indicate whether the account's impact is included in (i) the balance sheet analysis; (ii) the capital structure; (iii) the income statement portion of the lead/lag study; (iv) elsewhere in rate base; or (v) excluded from cost of service. Applicants shall also include a brief description of the costs in each account.

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

Instructions: Use the format of Form Schedule 19.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 19 shall reflect combined generation and distribution operations.

Utilities not subject to § 56-585.1 shall file only Columns (1), (2), and (3) on Schedule 19.

Revenues presented in Schedule 19 shall include separate line items for each type of revenue (e.g., base rates and § 56-585.1 A 4, A 5, and A 6 rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

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

## **Schedule 20 - Rate of Return Statement - Generation and Distribution Per Books**

Instructions: Use the format of Form Schedule 20.

Utilities not subject to § 56-585.1 of the Code of Virginia may omit Schedule 20.

Schedule 20 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 20A, reflecting generation only operations, and Schedule 20B, reflecting distribution only operations, using the same format as Schedule 20.

Revenues presented in Schedule 20 shall include separate line items for each type of revenue (e.g., base rates and § 56-585.1 A 4, A 5, and A 6 rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

Schedule 20 Columns (2) and (3) shall reflect revenues, expenses, and rate base for commission-approved rate adjustment clauses pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia, respectively. Schedule 20 Column (4) shall reflect revenues, expenses, and rate base intended to be recovered through [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ].

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

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

Instructions: Use the format of Form Schedule 21.

Revenues presented in Schedule 21 shall include separate line items for each type of revenue (e.g., base rates and § 56-585.1 A 4, A 5, and A 6 of the Code of Virginia rate adjustment clauses, fuel factor, late payment fees, and miscellaneous revenue).

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 21 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 21A, reflecting generation only operations, and Schedule 21B, reflecting distribution only operations, using the same format as Schedule 21.

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

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

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

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

Applicants filing pursuant to 20VAC5-204-30 may omit Columns (4) and (5).

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

Instructions: Use the format of Form Schedule 22.

Utilities not subject to § 56-585.1 of the Code of Virginia shall file only Columns (1), (2), and (3) on Schedule 22.

Applicants with jurisdictional per books operating revenues more than \$150 million shall calculate cash working capital allowance using a lead/lag study. Applicants with jurisdictional per books operating revenues between \$20 million and \$150 million may include a zero cash working capital requirement rather than perform a lead/lag study.

## **Schedule 23 - Rate Base Statement - Generation and Distribution Per Books**

Instructions: Use the format of Form Schedule 23.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 23 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 23A, reflecting generation only operations, and Schedule 23B,

reflecting distribution only operations, using the same format as Schedule 23.

Utilities not subject to § 56-585.1 may omit Schedule 23.

Schedule 23 Columns (2) and (3) shall reflect rate base information for commission-approved rate adjustment clauses pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia, respectively. Schedule 23 Column (4) shall reflect rate base information for amounts intended to be recovered through [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ].

Cash working capital allowance shall be calculated using a lead/lag study.

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

Instructions: Use the format of Form Schedule 24.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 24 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 24A, reflecting generation only operations, and Schedule 24B, reflecting distribution only operations, using the same format as Schedule 24.

Cash working capital allowance shall be calculated using a lead/lag study.

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

Instructions: Use the format of Form Schedule 25.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 25 shall reflect combined generation and distribution operations as well as generation only operations and distribution only operations.

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

Ratemaking adjustments shall reflect an annual level of revenues and expenses in accordance with applicable rules and laws governing utility rate changes. Rate base adjustments may reflect no more than a rate year average. Detailed workpapers substantiating each adjustment shall be provided in Schedule 29.

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

Instructions: Use the format of Form Schedule 26 for lead schedule. An example of a supporting schedule is provided.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 26 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 26A, reflecting generation only operations, and Schedule 26B, reflecting distribution only operations, using the same format as Schedule 26.



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Provide a revenue reconciliation of each topic or subject that affects the revenue requirement. All components of each topic or subject shall be detailed (i.e., payroll and related = payroll, benefits, payroll taxes, and related tax effect) on a supporting schedule. Cash working capital shall be considered a separate topic or subject rather than as a component of each topic or subject.

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

Instructions: Use the format of Form Schedule 27.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 27 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 27A, reflecting generation only operations, and Schedule 27B, reflecting distribution only operations, using the same format as Schedule 27.

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

The Total Cash Working Capital amount determined in this schedule shall be included in Schedules 22, 23, and 24.

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

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

Instructions: Use the format of Form Schedule 28.

For utilities subject to § 56-585.1 of the Code of Virginia, Schedule 28 shall reflect combined generation and distribution operations as well as generation only operations and distribution only operations.

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

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

Support for the [ ~~above schedule~~ Schedule 28 ] should include a list of all balance sheet subaccounts and titles. [ Additionally, support for Schedule 28 should include a brief description of the cost in each balance sheet subaccount, whether the cost is presented on an end-of-period or 13-month average basis, and the reasons why such cost is presented on an end-of-period or 13-month average basis. ] Indicate whether the account's impact is included in (i) the balance sheet analysis; (ii) the capital structure; (iii) the income statement portion of the lead/lag study; (iv) elsewhere in rate base; or (v) excluded from cost of service. Include a brief description of the costs included in each account. [ Whether the cost is presented on an end-of-

period or 13-month average basis, applicants shall provide the monthly balances making up the 13-month average. ]

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

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

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

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

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

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

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

f. Investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia shall separately identify functional information for each earnings test and proposed rate year adjustment required in subsections b and d of these instructions.

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

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

Applicants shall file a schedule detailing all revenue and expense accounts by month for the test period. Applicants shall provide a detailed explanation of all jurisdictional revenue and system expense increases or decreases of more than 10% during the test period compared to the previous 12-month period. The expense variance analysis applies to test period expense items greater than one-tenth of one percent (.001) of Operating & Maintenance expenses excluding fuel factor costs. Additionally, the applicant shall provide an electronic spreadsheet version of the accounts payable ledger or schedule of all accounts payable [ ~~including all underlying formulas and assumptions.~~ ] electronically to the Division of Utility Accounting and Finance within five business days of the application filing date.

**Schedule 31 - Advertising Expense**

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

**Schedule 32 - Storm Damage**

Instructions: Provide a schedule identifying major storm damage expense by month, Federal Energy Regulatory Commission account, and internal or third-party cost for the test year [ ~~and the previous three years~~ ]. Include a detailed description of the damage sustained, the length of outages associated with the storm damage, and work necessary to restore service. [ ~~Applicant~~ Applicants filing a base rate increase application pursuant to Chapter 10 (§ 56-232 et sec.) of Title 56 of the Code of Virginia shall provide such schedule for the test year and previous three years. Applicants filing a base rate review application pursuant to § 56-585.1 of the Code of Virginia ] shall indicate whether each major storm is considered a severe weather event pursuant to § 56-585.1 A 8 of the Code of Virginia.

**Schedule 33 - Generating Unit Performance**

Instructions: This schedule applies to applicants subject to § 56-585.1 of the Code of Virginia. Provide a detailed schedule of each generating unit outage or derate identifying whether the outage or derate was planned, due to maintenance, or

forced; start and end dates; cause; and cost. Additionally, provide the heat rate, equivalent availability factor, equivalent forced outage rate, and net capacity factor for each unit.

**Schedule 34 - Miscellaneous Expenses**

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

**Schedule 35 - Affiliate Services**

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

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

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

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

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

If affiliate charges are booked per a pricing mechanism other than that approved by the commission, the regulated entity shall provide a reconciliation of books to commission-approved pricing, including an explanation of why the commission-approved pricing is not used for booking purposes.

**Schedule 36 - Income Taxes**

Instructions: Provide a schedule detailing the computation of test period current state and federal income taxes on a total

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

Provide a schedule detailing the individual items of deferred state and federal income tax expense for the test period on a total company and Virginia jurisdictional basis. Separately quantify excess deferred income taxes amortization on both a total company and Virginia jurisdictional basis. Also, differentiate between protected (subject to Internal Revenue Service normalization rules) and unprotected amortization and state the amortization method and period applicable to each. Additionally, provide a schedule detailing the computation of fully adjusted, deferred state and federal income tax applicable to the Virginia jurisdiction.

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

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

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

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

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

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

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

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

## **Schedule 37 - Organization**

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

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

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

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

## **Schedule 39 - Out-of-Period Book Entries**

Instructions: Provide a summary schedule prepared from an analysis of journal entries showing "out-of-period" items booked during the test period. Show the amount, USOA account, and explanation of each charge.

## **Schedule 40 - Jurisdictional and Class Cost of Service Study**

Instructions: Use the format of Form Schedule 40.

Investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia shall provide functionally separate schedules for generation, transmission, and distribution information for subsections a, b, and c of these instructions as well as bundled information. Each functional schedule shall provide separate columns, as applicable, for each rate adjustment clause approved by the commission under § 56-585.1 A 4, A 5, or A 6 of the Code of Virginia.

a. Provide detailed calculations for all jurisdictional allocations for each revenue, expense and rate base USOA account used to create Schedules 9 and 10. Allocations should be based on test period average data. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation

basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40a using both the new methodology used in the current rate case and the old methodology used in the last rate case.

b. Provide detailed calculations for all jurisdictional allocations for each revenue, expense and rate base USOA account used to create Schedules 19 and 22. Show the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. Provide the calculations supporting the applicant's line loss percentages. Additionally, clearly show the derivation of the transmission cost components allocated to Virginia. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40b using both the new methodology used in the current rate case and the old methodology used in the last rate case.

c. Provide a class cost of service study showing the allocation basis for each primary USOA account and for any amount included therein with a unique allocation basis. Explain the methodology used and why such method is proposed. Class transmission allocations shall reflect the Virginia retail information that has been converted from the Federal Energy Regulatory Commission approved wholesale information. Provide a detailed calculation and explanation showing how the Federal Energy Regulatory Commission wholesale transmission information is converted to Virginia retail information. Discuss all changes in the applicant's operations that have materially changed any allocation factor as well as any significant changes in allocation methodology since the last rate case. For any change in allocation methodology used in the current rate case that has a material effect on the current test period cost of service study, provide Schedule 40c using both the new methodology used in the current rate case and the old methodology used in the last rate case.

#### **Schedule 41 - Proposed Rates and Tariffs**

Instructions: Provide a summary of the rates designed to effect the proposed revenue increase. Provide a redline copy of all tariff pages that the applicant proposes to revise in this proceeding.

#### **Schedule 42 - Present and Proposed Revenues**

Instructions:

a. Provide the detailed calculations supporting total per books revenues in Column (3) of Schedule 21. The present revenues from each of the applicant's services shall be determined by multiplying the current rates times the test period billing units (by rate block, if applicable).

b. Provide a detailed calculation supporting total adjusted revenues in Column (5) of Schedule 21. The proposed revenues from each of applicant's services shall be determined by multiplying the proposed rates by the adjusted billing units (by rate block, if applicable). Detail by rate schedule all miscellaneous charges and other revenues, if applicable. Reconcile per books billing units to adjusted billing units itemizing changes such as customer growth, weather, and miscellaneous revenues. The revenue changes for applicant's services should be subtotaled into the applicant's traditional categories.

#### **Schedule 43 - Sample Billing**

Instructions: Investor-owned electric utilities shall provide a sample billing analysis detailing the effect on each rate schedule at representative levels of consumption.

#### **Schedule 44 - Rate Adjustment Clauses Pursuant to § 56-585.1 A 4, A 5, or A 6 of the Code of Virginia**

Instructions: Use the format of Form Schedule 44.

Utilities not subject to § 56-585.1 of the Code of Virginia may omit Schedule 44.

Provide a schedule that identifies each commission-approved rate adjustment clause and each individual [ ~~future deferral mechanism~~ prospective rate adjustment clause ] for which amounts have been removed from generation and distribution base rate cost of service in Columns (2), (3), and (4) of Schedules 10, 13, 20, and 23 in separate columns. Schedule 44 shall reflect combined generation and distribution operations. Additionally, such utilities shall file Schedule 44A, reflecting rate adjustment clauses and [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ] for generation only operations, and Schedule 44B reflecting rate adjustment clauses and [ ~~future deferral mechanisms~~ prospective rate adjustment clauses ] for distribution only operations, using the same format as Schedule 44.

Provide a narrative description for each individual [ ~~future deferral mechanism~~ prospective rate adjustment clause ] for which amounts have been removed from base rate cost of service in Column (4) of Schedules 10, 13, 20, and 23.

Provide support by general ledger account for each amount shown in Schedule 44 electronically to the Division of Utility Accounting and Finance within five business days of the application filing date in an electronic spreadsheet with all underlying formulas and assumptions.

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## **Schedule 45 - Return on Equity Peer Group Benchmark**

Investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia shall provide all documentation supporting the [ reported and authorized ] return on equity benchmark proposed pursuant to § 56-585.1 A 2 a and A 2 b of the Code of Virginia. Such documentation shall include a complete list of all potential peer group utilities with corresponding [ authorized returns set by applicable regulatory commissions, applicable regulatory commission documents, reported ] returns calculated for each of the three years within the requisite three-year period. Securities and Exchange Commission documents in which such peer group returns are reported for the three-year period, a detailed explanation of why utilities were excluded from the peer group, and a spreadsheet showing how such returns were calculated.

## **Schedule 46 - Rate Adjustment Clauses and Prudency Determinations Pursuant to Chapter 23 (§ 56-576 et seq.) of the Code of Virginia**

a. Instructions for [ initial applications: For an initial proposed transmission ] rate adjustment clause [ or a prudency determination without an associated rate adjustment clause, the applicant shall provide the following for each associated project applications. For any rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia, the applicant shall provide the following information ]:

[ ~~(1)~~ 1. ] A schedule of all projected and actual costs, by [ project, ] type of cost and year [ and by month ],

[ ~~(2)~~ 2 ] A schedule of all actual costs (including both capital costs and operations and maintenance expenses) incurred to date. 2 ] Within five business days of the application filing date, the applicant shall provide transaction-level details to facilitate the sampling and audit of such actual costs electronically to the Division to Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. [ Provide the information for the period covered by the most recently completed true-up of the Federal Energy Regulatory Commission wholesale transmission formula rate as of the application filing date ].

[ ~~(3)~~ 3. ] The annual revenue requirement [ on both a total company and Virginia jurisdictional basis for over ] the duration of [ each the ] proposed [ project rate adjustment clause ] by year and by class [ on a total company and Virginia jurisdictional basis ], including all supporting calculations and assumptions.

[ ~~(4)~~ Information 4. Detailed information ] relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

[ ~~(5)~~ A detailed explanation of the need for the proposed project.

[ ~~(6)~~ Economic analyses, with supporting workpapers and calculations, supporting the proposed project.

[ ~~(7)~~ Materials used by senior management in approving or recommending each proposed project.

[ ~~(8)~~ Key supporting documents relied upon by the applicant such as: contracts, studies, investigations, results from requests for proposals, cost-benefit analyses, and other items supporting the costs associated with each proposed project.

5. The docket or case number and Federal Energy Regulatory Commission ruling approving the wholesale transmission formula, rate, or cost for which the applicant is seeking recovery approval. In lieu of providing copies of such rulings, the applicant may provide a link to where such information can be found on the Internet. ]

b. [ ~~Additional instructions~~ Instructions ] for initial [ applications for generating unit additions: For an initial proposed ] rate adjustment clause [ or for a prudency determination without an associated rate adjustment clause associated with a generating unit, the applicant shall provide the following to support the reasonableness and prudence of each associated project applications ]:

[ ~~(1)~~ Information relative to the need of the proposed generating unit, such as load and generating capacity reserve forecast information.

[ ~~(2)~~ Feasibility and engineering studies that support the specific plant type and site selected.

[ ~~(3)~~ Fuel supply studies that demonstrate the availability and adequacy of selected fuels.

[ ~~(4)~~ Support for planning assumptions regarding plant performance and operating costs, including historical information for similar units.

[ ~~(5)~~ Economic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant's overall generating resources that demonstrate that the selected option is the best alternative.

[ ~~(6)~~ Detailed cost estimate for the facility, including projected costs of construction, transmission interconnections, fuel supply related infrastructure improvements, and project financing.

1. The applicant shall provide the following information for any initial proposed rate adjustment clause application pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia:

i. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by project if applicable for the specific rate adjustment clause.

ii. Within five business days of the application filing date, the applicant shall provide transaction-level details to facilitate the sampling and audit of actual costs electronically to the Division to Utility Accounting and Finance in an electronic spreadsheet with all underlying

formulas and assumptions. The applicant shall provide the information based on most current actual costs available to-date.

iii. A detailed explanation of the justification for the proposed costs.

iv. Key documents supporting the projected and actual costs that the applicant seeks to recover through the rate adjustment clause, such as economic analyses, contracts, studies, investigations, results from requests for proposals, cost benefit analyses, or other items supporting the costs.

v. Key materials used by senior management in approving or recommending the proposed costs as determined by the applicant.

vi. The annual revenue requirement over the duration of the proposed rate adjustment clause by year and by class on a total company and Virginia jurisdictional basis, including all supporting calculations and assumptions. The applicant shall provide such information by project if applicable for the specific rate adjustment clause.

vii. Detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

2. The applicant shall provide the following additional information for any initial proposed rate adjustment for new generating facilities pursuant to § 56-585.1 A 6 of the Code of Virginia:

i. Information relative to the need or justification for the proposed generating unit.

ii. Feasibility and engineering studies that support the specific plant type and site selected.

iii. To the extent the generating unit requires fuel, fuel supply studies that demonstrate the availability and adequacy of the selected fuels.

iv. Support for planning assumptions regarding plant performance and operating costs, including historical information for similar units.

v. Economic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant's overall generating resources that demonstrate that the selected option is the best alternative.

vi. Detailed cost estimates for the facility, including projected costs of construction, transmission interconnections, fuel supply related infrastructure improvements and project financing. ]

c. Instructions for rate adjustment clause updates: [ For an update to a commission approved rate adjustment clause, the applicant shall provide the following for each associated project:

(4) 1. The applicant shall provide the following information for any update to a rate adjustment clause approved by the

commission pursuant to § 56-585.1 A 5 or A 6 of the Code of Virginia:

i. ] An updated schedule of all projected and actual costs [ ] by [ project, ] type of cost and year and by month [ to the extent available. The applicant shall provide such information by project if applicable for the specific rate adjustment clause ].

[ (2) An update to the schedule of all actual costs provided in the previous rate adjustment clause application (including both capital costs and operations and maintenance expenses). If the rate adjustment clause update includes a true up, provide such schedule for costs incurred through the true up period. If the rate adjustment clause does not include a true up, provide the schedule based on most current actual costs available to date ii. Within five business days of the application filing date, the applicant shall provide transaction-level details to facilitate the sampling and audit of such actual costs electronically to the Division to Utility Accounting and Finance in an electronic spreadsheet with all underlying formulas and assumptions. If the rate adjustment clause update includes a true-up, provide such information for costs incurred during the true-up period. If the rate adjustment clause does not include a true-up, provide the information based on most current actual costs available to-date.

iii. Key documents supporting the projected and actual costs recovered through the rate adjustment clause, such as: economic analyses, support used by senior management for major cost decisions as determined by the applicant, contracts, studies, investigations, results from requests for proposals, cost-benefit analyses, and other items supporting the costs that have not been provided in previous applications ].

[ (3) iv. ] The annual revenue requirement [ on both a total company and Virginia jurisdictional basis for over ] the duration of [ each the ] proposed [ project by year and by class, including all supporting calculations and assumptions rate adjustment clause by year and by class on a total company and Virginia jurisdictional basis, including all supporting calculations and assumptions. The applicant shall provide such information by project if applicable for the specific rate adjustment clause ].

[ (4) v. ] Detailed information relative to the applicant's methodology for allocating the revenue requirement among rate classes and the design of class rates.

[ (5) Key updated supporting documents, such as economic analyses, support used by senior management for major cost decisions, supporting documents, contracts, studies, investigations, results from requests for proposals, cost-benefit analyses, and other items supporting the costs for each project that have not been provided in previous applications 2. The applicant shall provide the following additional information for an update to a rate adjustment

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clause approved by the Commission for energy efficiency programs pursuant to § 56-585.1 A 5 of the Code of Virginia:

i. Evidence of the actual energy and demand savings achieved as a result of each specific program for which cost recovery is sought, along with revised cost-benefit tests that incorporate actual utility-specific energy and demand savings and cost data.

ii. A description of the significant accounting procedures and internal controls in place for each energy efficiency program that is administered by either a third-party or by the applicant, including: (i) a description of the internal controls and procedures for rebate, incentive, and vendor payments for each newly approved energy efficiency program; (ii) a discussion of any changes in internal controls and procedures since the previous filing for existing energy efficiency programs; and (iii) support for how the applicant is ensuring that internal controls and procedures for all energy efficiency programs are functioning correctly ].

[ d. Additional instructions for transmission rate adjustment clauses: Applicant shall provide the docket/case number and Federal Energy Regulatory Commission ruling approving the transmission rate/cost for which the applicant is seeking recovery approval. In lieu of providing a copy, the applicant may provide a link to where such information can be found on the Internet.

e. Additional instructions for energy efficiency rate adjustment clauses: In a rate adjustment clause filing where the applicant is seeking to update commission approved energy efficiency programs, the applicant shall file evidence of the actual energy and demand savings achieved as a result of each specific program for which cost recovery is sought, along with revised cost benefit tests that incorporate actual utility specific energy and demand savings and cost data.

Applicant shall provide a description of the significant accounting procedures and internal controls in place for each energy efficiency program that is administered by either a third party or by the applicant, including (i) a description of the internal controls and procedures for rebate, incentive, and vendor payments for each newly approved energy efficiency program; (ii) a discussion of any changes in internal controls and procedures since the previous filing for existing energy efficiency programs; and (iii) support for how the applicant is ensuring that internal controls and procedures for all energy efficiency programs are functioning correctly.

d. Instructions for prudency determination filings:

1. The applicant shall provide the following information for any prudency determination filing pursuant to § 56-585.1 of the Code of Virginia:

i. A detailed explanation of the justification for the proposed costs.

ii. Key documents supporting the projected and actual costs of the project for which the applicant seeks a prudency determination, such as economic analyses, support used by senior management for major cost decisions as determined by the applicant, contracts, studies, investigations, results from requests for proposals, cost-benefit analyses, and other items supporting the costs.

2. The applicant shall provide the following additional information for any prudency determination filing for a plan for electric distribution grid transformation projects pursuant to § 56-585.1 A 6 of the Code of Virginia:

i. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by project if applicable for the specific prudency determination filing.

ii. The estimated annual revenue requirement over the duration of the proposed project by year on a total company basis, including all supporting calculations and assumptions. The applicant shall provide such information by project if applicable for the specific prudency determination filing.

3. The applicant shall provide the following additional information for any prudency determination filing for the construction of new generating facilities pursuant to § 56-585.1:4 of the Code of Virginia:

i. A schedule of all projected and actual costs by type of cost and year, and by month to the extent available. The applicant shall provide such information by project if applicable for the specific prudency determination filing.

ii. The estimated annual revenue requirement over the duration of the proposed project by year on a total company basis, including all supporting calculations and assumptions. The applicant shall provide such information by project if applicable for the specific prudency determination filing.

iii. The information required by subdivision b 2 of these instructions.

4. The applicant shall provide the following additional information for any prudency determination filing for the purchase of the energy, capacity, and environmental attributes of new generating facilities pursuant to § 56-585.1:4 of the Code of Virginia:

i. A copy of the power purchase agreement.

ii. Information relative to the need for the energy, capacity, and environmental attributes of such new generating facilities.

iii. Economic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant's overall generating resources that demonstrate that the selected option is the best alternative. ]

**Schedule 47 - Total Aggregated Revenues and Consumer Price Index**

Investor-owned electric utilities subject to § 56-585.1 of the Code of Virginia shall file the following:

- a. A detailed schedule showing the calculation of total aggregate regulated rates as defined in § 56-585.1 A 9 of the Code of Virginia for each year beginning with calendar year 2010.
- b. A schedule of annual increases in the United States Average Consumer Price Index as described in § 56-585.1 A 9 of the Code of Virginia beginning with calendar year 2010. Additionally, include the annual compounded amount.

**Schedule 48 - § 56-585.1 A 8 of the Code of Virginia costs and credits**

- a. Instructions for per books costs pursuant to § 56-585.1 A 8 of the Code of Virginia: Applicant shall provide a supporting schedule quantifying each cost that is reflected in Schedule 11, Column (1) as it was recorded per books by the utility for financial reporting purposes pursuant to § 56-585.1 A 8 of the Code of Virginia.

[ ~~Such schedule should provide cost details by month for each individual cost item.~~ ]

Applicant shall provide [ cost details by month for each individual cost item supporting amounts in Schedule 48a, as well as ] a narrative description of, and any internal accounting memoranda and guidance from external auditors to support, the accounting for each cost item reflected in Schedule 11, Column (1) as it was recorded per books by the utility for financial reporting purposes pursuant to § 56-585.1 A 8 of the Code of Virginia electronically to the Division of Utility Accounting and Finance within five business days of the application filing date.

- b. Instructions for costs eligible for customer credit reinvestment offset: Applicant shall provide a schedule quantifying all capital [ ~~expenditures~~ investments ] eligible for use as a customer credit reinvestment offset [ , by project, ] as of the end of the [ final 12-month ] test period [ on a Virginia jurisdictional basis ]. Such schedule should [ ~~provide cost details by capital project and should~~ ] include the plant-in-service and accumulated depreciation balances associated with each project.

Applicant shall identify where each capital project eligible for customer credit reinvestment offset is reflected in cost of service as of the end of the [ final 12-month ] test period.

[ Applicant shall provide cost details, by month, for each project included in Schedule 48b for all test periods electronically to the Division of Utility Accounting and Finance within five business days of the application filing date. Additionally, applicant shall provide support for the Virginia jurisdictional allocation of each project

electronically to the Division of Utility Accounting and Finance within five business days of the application filing date. ]

- c. Instructions for customer credits and customer credit reinvestment offsets: Applicant shall provide a schedule calculating any credits due to customers using the calculation prescribed by § 56-585.1 A 8 of the Code of Virginia.

If the applicant proposes to use the customer credit reinvestment offset to offset any portion of credits due to customers, applicant shall provide a schedule quantifying the capital investments it proposes to use as a customer credit reinvestment offset.

**Schedule 49 - Additional Schedules**

Reserved for additional exhibits presented by the applicant to be labeled Schedule 49 et seq.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (20VAC5-204)

[Forms - Schedule 1 - Historical Profitability and Market Data \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 2 - Interest and Cash Flow Coverage Data \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 3 - Capital Structure & Cost of Capital Statement - Per Books and Average \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 9 - Rate of Return Earnings Statement Test - Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 10 - Rate of Return - Earnings Test - Generation and Distribution Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 11 - Rate of Return Statement - Earnings Test - Adjusted to a Regulatory Accounting Basis \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 12 - Rate of Return Earnings Statement Test - Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 13 - Rate Base Statement - Earnings Test - Generation and Distribution Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 14 - Rate Base Statement - Earnings Test - Adjusted to a Regulatory Accounting Basis \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 15 - Schedule of Regulatory Assets \[ \(eff. 1/2021\) \]](#)



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# Regulations

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[Forms - Schedule 16 - Detail of Regulatory Accounting Adjustments \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 17 - Lead/Lag Cash Working Capital Calculation - Earnings Test \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 18 - Balance Sheet Analysis - Earnings Test \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 19 - Rate of Return Earnings Statement Test - Per Books - For the Test Year \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 20 - Rate of Return Statement - Generation and Distribution Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 21 - Rate of Return Statement - Reflecting Ratemaking Adjustments \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 22 - Rate Base Statement - Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 23 - Rate Base Statement - Generation and Distribution Per Books \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 24 - Rate Base Statement - Reflecting Ratemaking Adjustments \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 25 - Detail of Ratemaking Adjustments \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 26 - Revenue Requirement Reconciliation \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 26 - Revenue Requirement Reconciliation \[ Supporting Schedule \] - FOR ILLUSTRATIVE PURPOSES ONLY \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 27 - Lead/Lag Cash Working Capital Calculation - Adjusted \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 28 - Balance Sheet Analysis - Adjusted \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule - 40a and b - Jurisdictional Cost of Service Study \[ \(eff. 1/2021\) \]](#)

[Forms - Schedule 40C - Class Cost of Service Study \[ \(eff. 1/2021\) \]](#)

~~[\[ Forms - Schedule 44 - Detail of Rate Adjustment Clauses included in Columns \(2\) - \(4\) of Schedules 10 and 13](#)~~

[Forms - Schedule 44 - Detail of Rate Adjustment Clauses \(eff. 1/2021\) \]](#)

VA.R. Doc. No. R20-6240; Filed November 30, 2020, 11:55 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER SEVENTY-ONE (2020)

### **Establishment of the Virginia Coastal Resilience Technical Advisory Committee**

#### Importance of Initiative

In response to the growing threat of natural hazards and sea level rise in the Commonwealth, I issued Executive Order 24, Increasing Virginia's Resilience to Sea Level Rise and Natural Hazards, in 2018. This Order, instructed the Chief Resilience Officer (CRO), with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection (SACAP), to create and implement a Coastal Resilience Master Plan (Master Plan). The Master Plan will guide coastal adaptation and protection efforts, align state programs, and prioritize local and regional projects. In October 2020, I approved the Virginia Coastal Resilience Master Planning Framework (Framework), which outlines the guiding principles, goals, and actions necessary to create a full Master Plan.

Since coastal resilience and protection encompasses many policy initiatives, state agencies, and federal resources, a significant amount of coordination is required to protect Virginia's Coastal Regions as defined in the Framework. Creating the Virginia Coastal Resilience Technical Advisory Committee (TAC) will help facilitate that coordination. The TAC will support the CRO and the SACAP in evaluating coastal adaptation and protection project proposals, facilitating project implementation, and developing updates to the Master Plan.

#### Directive to Establish the Virginia Technical Advisory Committee

Protecting Virginia's coastal communities requires thoughtful collaboration among state, local, and regional leaders, federal partners, scientific experts, and stakeholders. The TAC will facilitate this coordination and develop recommendations for specific, place based, prioritized coastal adaptation and protection strategies. Therefore, by virtue of the authority vested in me as Governor, under Article V of the Constitution of Virginia and §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority to act in such matters, I hereby formally convene the TAC to provide independent advice and recommendations to the Office of the Governor and relevant executive branch agencies.

#### A. Composition and Support of the Committee

The TAC will be comprised of representatives of state agencies, coastal planning district commissions (PDCs) and regional commissions (RCs), and academic advisors, among others. Members shall serve at the pleasure of the Governor and shall include, but shall not be limited to, the following individuals or their designees:

- The Executive Directors of each of the eight coastal PDCs/RCs;
- The Director of the Virginia Department of Conservation and Recreation;
- The Director of the Virginia Department of Emergency Management;
- The Director of the Virginia Department of Housing and Community Development;
- The Executive Director of the Virginia Resources Authority;
- The Director of the Virginia Department of Environmental Quality;
- The Director of the Virginia Transportation Research Council;
- The Commissioner of the Virginia Marine Resources Commission;
- The Coordinator of the Commonwealth Center for Recurrent Flooding Resiliency;
- The Virginia Institute for Marine Science Associate Dean for Research and Advisory Services;
- The Director of the William and Mary Law School Coastal Policy Center;
- The Director of the Virginia Tech Center for Coastal Studies;
- The Director of the Environmental Resilience Institute at the University of Virginia;
- The Commander of the U.S. Army Corps of Engineers, Norfolk District;
- The Director of Virginia Sea Grant;
- The Governor's Chief Diversity, Equity, and Inclusion Officer; and
- The Governor's Chief Data Officer.

The CRO will serve as chair of the TAC. Staff support will be provided by the SACAP with assistance from the Coastal Zone Management Program (CZM), pursuant to a separate agreement. Appointed TAC members will serve in an advisory role without compensation in accordance with § 2.2-2100 of the Code of Virginia, and will meet quarterly, at a minimum, as well as upon the call of the chair.

#### B. Duties of the Committee

##### 1. Assist with Creation of the Master Plan

The TAC shall assist the CRO and SACAP with creating a full Master Plan by developing and implementing protocols for evaluation of projects and strategy proposals. Once the Master Plan process and initial Master Plan are finalized, the TAC will

continue to facilitate implementation, evaluate progress, and develop Master Plan updates. In alignment with the guiding principles of the Virginia Master Planning Framework, actions recommended by the TAC will:

1. Acknowledge climate change and its consequences and base decision making on the best available science;
  2. Identify and address socioeconomic inequities and work to enhance equity through coastal adaptation and protection efforts;
  3. Recognize the importance of protecting and enhancing green infrastructure, such as natural coastal barriers and fish and wildlife habitat, by prioritizing nature-based solutions; and
  4. Utilize community and regional scale planning to the maximum extent possible, seeing region-specific approaches tailored to the needs of individual communities.
2. Perform Risk Assessments and Provide Recommendations

In support of completing the Master Plan, the TAC will be responsible for tracking scientific developments, reviewing proposed local and regional actions, and recommending additional risk assessment and engineering studies as required to support:

1. Developing a Prioritized List of Coastal Adaptation and Protection Projects

The TAC, working with the CRO and SACAP, will submit a prioritized list of both built and natural infrastructure coastal adaptation and protection projects as part of the Master Plan by December, 2021. This list will identify critical infrastructure needs, at-risk communities, adaptation strategies, and specific resilience projects to include with the Master Plan. It will be organized by the four Virginia Coastal Regions of Hampton Roads, Rural Coastal Virginia, the Northern Fall Line, and the Southern Fall Line, as categorized in the Framework.

2. Creating Evaluative Criteria for Master Plan Projects

Consistent with the guiding principles of the Framework, the TAC will create evaluative criteria for Master Plan supported projects. The prioritized list of built and infrastructure projects, mentioned above, will serve as one element of the TAC evaluation criteria. The TAC will use this criterion to review Master Plan project proposals and make recommendations for state engagement in project implementation. In cooperation with the CRO, the TAC will also incorporate the ConserveVirginia initiative to assess coastal adaptation and protection strategies.

3. Making Recommendations to Strengthen State and Non-State Partnerships

Coastal adaptation and protection strategies should align with other federal and state programs, including those

focused on resilience, economic and community development, and flooding adaptation and protection initiatives. The TAC shall make recommendations regarding how the Commonwealth can strengthen partnerships with the Department of Defense and other federal installations, as well as:

- i. Align economic development initiatives, Framework, and Master Plan objectives, and
- ii. Coordinate across multiple resilience, pre-disaster, urban development, and flooding adaptation grant programs.

These recommendations will focus on programs administered by the Department of Conservation and Recreation, Virginia Department of Emergency Management, Department of Housing and Community Development, Federal Emergency Management Agency, U.S. Department of Housing and Urban Development, and the U.S. Army Corps of Engineers.

### Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in full force unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 16th day of November 2020.

/s/ Ralph S. Northam  
Governor

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

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

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

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Senior Community Service Employment Program State Plan for Program Years 2020-2023.](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

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

### STATE BOARD OF EDUCATION

Title of Document: [Emergency Guidelines for Locally-Awarded Verified Credits.](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

Agency Contact: Leslie Sale, Director of Policy, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-0941, or email [leslie.sale@doe.virginia.gov](mailto:leslie.sale@doe.virginia.gov).

### STATE BOARD OF HEALTH

Title of Document: [Children with Special Health Care Needs Pool of Funds Guidelines.](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

Agency Contact: Mylam Ly, Policy Analyst and Project Coordinator, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7263, or email [mylam.ly@vdh.virginia.gov](mailto:mylam.ly@vdh.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Information Regarding Contract Requirements for Medicaid Managed Care Organizations.](#)

[Information Regarding DMAS Client Appeals \(State Fair Hearing\).](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

Agency Contact: Emily McClellan, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

### BOARD OF PHYSICAL THERAPY

Title of Document: [Guidance for Telehealth.](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

Agency Contact: Elaine J. 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](mailto:elaine.yeatts@dhp.virginia.gov).

### STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual, Chapter D, Resource Family Home Approval.](#)

Public Comment Deadline: January 20, 2021.

Effective Date: January 21, 2021.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email [nikki.clark@dss.virginia.gov](mailto:nikki.clark@dss.virginia.gov).

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# GENERAL NOTICES

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## STATE AIR POLLUTION CONTROL BOARD

### Formation of a Stakeholder Group for a Regulation Concerning Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses

Item 378 of Chapter 1289 of the 2020 Acts of Assembly requires the State Air Pollution Control Board to adopt regulations to prohibit the sale, lease, rent, installation, or entry into commerce in Virginia of any products or equipment that use or will use hydrofluorocarbons for the applications and end uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017. The 2020 Special Session I amended Item 378 to require the board to solicit input from a work group composed of extruded polystyrene boardstock and billet manufacturers located in Virginia and other relevant stakeholders to determine a feasible date by which those manufacturers should be required to comply with that proposed regulation. The board is seeking nominations for the stakeholder work group required by Item 378. Persons nominated should represent an extruded polystyrene boardstock and billet manufacturer located in Virginia, a trade group that represents extruded polystyrene boardstock and billet manufacturers located in Virginia, or other relevant stakeholders. Nominations should include the name of the nominee, the manufacturer or trade group represented, and contact information for the nominee including phone number, mailing address, and email address. Nominations must be sent by U.S. Postal Service mail or by email to the contact person listed. Nominations must be received no later than December 21, 2020. Meetings of the stakeholder work group will be held in January 2021 and may be electronic-only meetings consistent with the effective Executive Orders and statutory requirements under the Governor's declared State of Emergency. Nominees approved as members of the work group by the Director, Department of Environmental Quality will be notified by email. Meetings will be open to the public and will be announced on the Virginia Regulatory Town Hall at <https://www.townhall.virginia.gov/L/meetings.cfm?time=future> at least three days before the meeting date.

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

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Draft Hospice Provider Manual Chapter IV

The draft Hospice Provider Manual (Chapter IV) is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until December 24, 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

### Development of Total Maximum Daily Loads for Mountain Run and Two of its Unnamed Tributaries in Culpeper County

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Mountain Run and two of its unnamed tributaries in Culpeper County. The following stream segments are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for polychlorinated biphenyls (PCBs): (i) Mountain Run in Culpeper County: 24.53 miles, from the outlet of Lake Pelham downstream to the confluence with Rappahannock River; (ii) Unnamed Tributary to Mountain Run (stream code 3-XBE) in Culpeper County: 0.6 mile from the perennial headwaters to the confluence with Mountain Run; and (iii) Unnamed Tributary to Mountain Run (stream code 3-XIH) in Culpeper County: 1.12 miles from the perennial headwaters to the confluence with Mountain Run.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs.

Given the existing state of emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. A computer or a telephone is necessary to participate virtually. All meeting attendees are encouraged to access the meeting using a computer to view the meeting visuals. Attendees may also use a phone for audio and a computer for visual to avoid possible interruptions in computer audio. Although the use of a phone for audio only participation is possible, since the meeting will rely on visuals, audio only participation is discouraged. The URL to register for the virtual meeting is provided at the end of this notice. Once registered for the meeting, registrants will receive an email with the URL and telephone information to participate in the meeting. If meeting attendees experience any interruption in the meeting broadcast, they should call the technical support line that is also provided at the end of this notice.

The first public meeting on the development of the TMDL to address the PCBs for these segments will be held Wednesday,

January 13, 2021, from 6 p.m. to 8 p.m. Register for this virtual meeting and to receive access information at <https://attendee.gotowebinar.com/register/9174864193881079821>. For technical assistance during the meeting, call telephone (703) 583-3906.

In the event that the Governor's State of Emergency is lifted, the meeting will be held on the same date and time at: Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

The public comment period begins January 14, 2021, and ends February 16, 2021. A technical advisory committee (TAC) to assist in development of this TMDL will be established. Any person interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address, and the organization represented (if any). Notification of the composition of the panel will be sent to all applicants.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to the DEQ contact person.

**Contact Information:** Rebecca Shoemaker, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3807, or email [rebecca.shoemaker@deq.virginia.gov](mailto:rebecca.shoemaker@deq.virginia.gov).

### **Proposed Enforcement Action - Lekram Investment LLC**

The State Water Control Board proposes to issue a consent special order to Lekram Investment LLC for and on behalf of Hickory Hill Partners LLC, VWP Permit No. WP4-08-0535, for alleged violation of the State Water Control Law at the Hickory Hill subdivision located at 9222 Wickham Drive in Hanover County, Virginia. Comments to the proposed action can be made from December 21, 2020, to January 21, 2021. A detailed description of the proposed action is available upon request to the contact person.

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

### **Proposed Enforcement Action for Michael and Elizabeth Chiamonte and Alan Vahabzade**

An enforcement action has been proposed for Michael and Elizabeth Chiamonte and Alan Vahabzade for violations of the State Water Control Law and regulations associated with the Chiamonte Property located at 133 River Mountain Lane in Amissville, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations

associated with the Chiamonte Property. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Comments will be accepted by the contact person from December 22, 2020, through January 21, 2021.

**Contact Information:** Stephanie Bellotti, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [stephanie.bellotti@deq.virginia.gov](mailto:stephanie.bellotti@deq.virginia.gov).

### **Proposed Enforcement Action for FDP Virginia Inc.**

An enforcement action has been proposed for FDP Virginia Inc. for violations of the State Water Control Law at the FDP Brakes facility in Tappahannock, Virginia. A description of the proposed action is available at the office listed, from the contact person, or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Comments will be accepted by the contact person from December 21, 2020, through January 20, 2021.

**Contact Information:** Kristen Sadtler, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, or email [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov).

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

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

**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 <http://commonwealthcalendar.virginia.gov>.

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

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

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# ERRATA

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## STATE CORPORATION COMMISSION

Title of Regulation: **10VAC5-60 Consumer Finance Companies.**

Publication: 37:4 VA.R. 602-613 October 12, 2020.

Correction to Proposed Regulation:

Page 607, 10VAC5-60-30 B, column 1,

line 17, after "~~disbursement~~" strike the comma

line 21, after "~~chapter~~" strike the comma

line 22, after "section" insert a comma.

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