



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 38 ISS. 8

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

DECEMBER 6, 2021

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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**; **Joanne Frye**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Malfourd W. Trumbo**; **Amigo R. Wade**.

Staff of the Virginia Register: **Holly Trice**, 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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## December 2021 through January 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
38:9	December 1, 2021	December 20, 2021
38:10	December 13, 2021 ( <b>Monday</b> )	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022
38:26	July 27, 2022	August 15, 2022
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 ( <b>Monday</b> )	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-60, Hazardous Air Pollutant Sources**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated September 17, 2021, to support this decision.

This regulation enhances the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements of state law. The regulation is necessary for the protection of public health, safety, and welfare and has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. The regulation is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written using nontechnical language.

This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. No comments were received from the public during this periodic review. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation and does not conflict with federal regulation. This regulation implements the requirements of the federal Clean Air Act.

This regulation was last updated in 2020. This regulation continues to contribute to the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions through public discussion and direct review of permitting actions by the board. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-140, Regulation for Emissions Trading Programs**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated November 5, 2021, to support this decision.

This regulation enhances the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements of state law. The regulation is necessary for the protection of public health, safety, and welfare and has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. The regulation is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written using nontechnical language.

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Part I of this regulation was last updated in 2017. Part VII of this regulation was last updated in 2020. This regulation continues to contribute to the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions through public discussion and direct review of permitting actions by the board. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103.

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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 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Final Regulation

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

**Title of Regulation:** 9VAC15-20. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia (amending 9VAC15-20-10, 9VAC15-20-20, 9VAC15-20-40, 9VAC15-20-70, 9VAC15-20-150, 9VAC15-20-170).

**Statutory Authority:** § 45.2-1646 of the Code of Virginia.

**Effective Date:** January 5, 2022.

**Agency Contact:** Bettina Sullivan, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4204, FAX (804) 698-4178, or email [bettina.sullivan@deq.virginia.gov](mailto:bettina.sullivan@deq.virginia.gov).

#### Summary:

*Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy.*

#### 9VAC15-20-10. Definitions.

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

"Access road" means a paved or unpaved route or path from a public highway or public road to a well site or associated facility.

"Associated facilities" means any facility used for gas or oil operations in the Commonwealth, other than a well or well site.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with "9VAC25-830: Chesapeake Bay Preservation Area Designation and Management Regulations" and § 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A

Chesapeake Bay Preservation Area consists of Resource Protection Areas and Resource Management Areas.

"Cuttings" means fragments of rock produced in a well bore by a drill bit and brought to the surface by drilling fluids or air pressure.

"Department of Environmental Quality" means the Department of Environmental Quality as described in § 10.1-1182 et seq. of the Code of Virginia.

"Department of ~~Mines, Minerals and Energy~~" means the Department of ~~Mines, Minerals and Energy~~ as described in ~~§ 45.1-161.1~~ § 45.2-100 et seq. of the Code of Virginia.

"Director of the Department of Energy" means the Director of the Department of Energy or the director's authorized agent.

"Director of the Department of Environmental Quality" means the Director of the Department of Environmental Quality or ~~his~~ the director's authorized agent.

~~"Director of the Department of Mines, Minerals and Energy" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.~~

"Drilling fluid" means any fluid or drilling mud circulated in the well bore during drilling operations.

"Economic characteristics" means activities associated with the production, distribution, and consumption of goods and services.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water, or other fluid into the productive strata; (ii) application of pressure, heat, or other means for the reduction of viscosity of the hydrocarbons; or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, ~~wells~~ or pool.

"Environment" means the natural, scenic, and historic attributes of Virginia.

"Environmental impact assessment" or "assessment" means that documentation that is required by ~~§ 62.1-195.1~~ § 45.2-1646 of the Code of Virginia to be a part of any application for a permit to drill an oil or gas well in Tidewater Virginia.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Facilities and equipment" means all infrastructure supporting the development, drilling, construction, completion, or operation of any gas or oil operation including ~~but not limited to~~ well drilling equipment, well heads, separators, compressors, pumps, manifolds, vehicles, fluid circulation systems, waste handling facilities, storage tanks, valves, pipelines, etc., used to explore for, produce, or transport oil or gas.

"Fiscal characteristics" means the structure of taxation, public revenue, public expenditure, and public debt.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture of them, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil.

"Gas or oil operation" or "operation" means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging, or replugging any well, land disturbing activity relating to the development, construction, operation, and abandonment of a gathering pipeline, the development, operation, maintenance, and restoration of any site involved with gas or oil operations, or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or that contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas well" means any well that produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gathering pipeline" means (i) a pipeline that is used or intended for use in the transportation of gas or oil from the well to a transmission pipeline or other pipeline regulated by the Federal Energy Regulatory Commission or the State Corporation Commission or (ii) a pipeline that is used or intended for use in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where the gas or oil is sold.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula  $RKLS/T$ , as defined by the Food Security Act (F.S.A.) Manual of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to

or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983 in the "Field Service Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service.

"Historic properties" means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places or the Virginia Historical Landmarks Register including any artifacts, records, and remains that are related to and located within such properties.

"Historic properties survey" means a survey undertaken to establish the presence or absence of historic properties, and any related and necessary management plans developed to conserve such resources.

"Land-disturbing activity" means any change in or reconfiguration of the land surface or vegetation on the land surface through vegetation clearing or earth moving activities including ~~but not limited to~~ clearing, grading, excavating, drilling, transporting, or filling.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and at a temperature base of 60°F.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213 of the Code of Virginia.

"Natural heritage resources" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Natural heritage survey" means a survey undertaken to establish the presence or absence of natural heritage resources, and any related and necessary management plans developed to conserve such resources.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency in response to § 404 of the Federal Water Pollution Control Act, in 33 CFR 328.3b.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and that are not the result of condensation of gas after it leaves the underground reservoir.

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# Regulations

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"Oil well" means any well that produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open space" means any land, water, or submerged land that is provided for, preserved for, or used for (i) park or recreational purposes; (ii) conservation of land or other natural resources; (iii) cultural, historic, or scenic purposes; (iv) assisting in the shaping of the character, direction, and timing of community development; or (v) nontidal or tidal wetlands.

"Operations area" means the location of the well, well site, associated facilities, production facilities, access roads, pipeline systems, and other related facilities and equipment necessary to the conduct of a gas or oil operation.

"Person" means any individual or group, any partnership, corporation, association, organization, or other legal entity, including any public body.

"Pipeline corridor" means those areas that pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights-of-way.

"Pipeline systems" means all parts of those physical facilities through which gas or oil moves in transportation, including ~~but not limited to~~ pipes, valves, and other appurtenances attached to pipes such as compressor units, metering stations, regulator stations, delivery stations, holders, or other related facilities.

"Production well" means a well, related production facilities and equipment, and activities related to the drilling of a well for the purpose of developing and producing, or converting an exploratory well to develop or produce, oil or gas from geological strata for the purpose of sale, exchange, transfer, or use by the owner or for the purpose of exchange, transfer, sale, or use by any other person.

"Rare, threatened, or endangered species" means any insect, fish, wildlife, or plant species that is listed as, is a candidate for listing as, or is recommended for listing as a rare, threatened, or endangered species by the U.S. Fish and Wildlife Service, the Department of Agriculture and Consumer Services, the Department of ~~Game and Inland Fisheries~~ Wildlife Resources, or the Department of Conservation and Recreation.

"Recreational resources" means the broad range of outdoor and indoor public and private areas and facilities, many of which are identified in the "Virginia Outdoors Plan," used in meeting Virginia's recreational needs including ~~but not limited to~~ public parks, public forests, natural areas, wildlife management areas, lakes and reservoirs, historic resources, trails, rivers, beaches, water access areas, Virginia byways, tidal and nontidal wetlands, and greenways.

"Scenic resources" means features that characterize an area by giving it a special visual identity or that present unique vistas or landscapes, including ~~but not limited to~~ such features as designated or candidate state or federal scenic rivers, federal or state scenic highways or parkways, Virginia byways, and

scenic values as recognized by local, state, or federal governments.

"Tidal wetlands" means "vegetated wetlands" and "nonvegetated wetlands" as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means that area of Virginia as defined in § 62.1-44.15:68 of the Code of Virginia and the localities of Manassas and Manassas Park.

"Virginia Outdoors Plan" means the State Comprehensive Outdoor Recreation Plan developed and administered by the Department of Conservation and Recreation.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil that is (i) produced or generated during or results from the development, drilling, and completion of wells and associated facilities or the development and construction of gathering pipelines or (ii) produced or generated during or results from well, pipeline, and associated facilities' operations including, ~~but not limited to~~, brines and produced fluids other than gas or oil. In addition, this term shall include all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into underground strata for the extraction, injection, or replacement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection, or placement. The term shall not include any shaft or hole, sunk, drilled, bored, or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, methane drainage boreholes where the methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face or an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or nonfuel mineral core hole or borehole for the purpose of exploration.

## **9VAC15-20-20. Authority.**

This chapter implements ~~§ 62.1-195.1~~ § 45.2-1646 of the Code of Virginia, which requires the Department of Environmental Quality to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments for gas or oil well drilling operations in Tidewater Virginia.

## **9VAC15-20-40. Applicability.**

The environmental impact assessment requirements and criteria apply to all oil or gas well drilling operations, whether an exploratory well or a production well, proposed to occur in

Tidewater Virginia. Any person proposing to drill an exploratory well or production well in Tidewater Virginia shall submit to the Department of Mines, Minerals and Energy, as part of ~~his~~ the person's application for a permit to drill such a well, an environmental impact assessment.

**9VAC15-20-70. Description of the environment and natural resource features potentially affected by the gas or oil operation.**

A. The discussion under this part shall include a description of the existing environment and natural resource features ~~which that~~ that will be or may be affected by the gas or oil operation and how they will be or may be affected. The analysis of the environment and natural resource features shall encompass, at the minimum, any area located within 1320 feet of a proposed well and within 100 feet of proposed pipeline systems or associated facilities unless the applicant for the permit to drill can demonstrate that a smaller impact analysis area is appropriate given the nature and location of the proposed gas or oil operation and the potential impact of such an operation on the environment and natural resources. The 1320-foot distance is half of the statewide well spacing requirement set out for gas wells in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia and will ensure that the impact analysis for wells established in Tidewater Virginia at the statewide spacing will be tangential. The 100-foot distance from pipelines and associated facilities will ensure that Chesapeake Bay Preservation Areas or other environmentally sensitive resources that may be affected by the oil or gas operation will be detected. The potential for impacts by the proposed oil or gas operation on natural resource features and the environment ~~which that~~ that are located outside of the 1320-foot impact analysis area for wells and the 100-foot impact analysis area for pipeline systems and associated facilities shall also be considered and discussed. The discussion shall be supported with graphic information in the form of a plat ~~or plats~~ at a scale between 1:1000 and 1:4000 showing the location of natural resources that will be or may be affected by the proposed operation. The discussion shall include, ~~but not be limited to:~~

1. Physical site conditions such as:

- a. Topographical features including relief, slope, project area elevation, and landscape features such as beaches, sand dunes, shorelines, etc.;
- b. Surface water hydrology and drainage patterns including locations of embayments, rivers or streams and related subaqueous beds, tidal or nontidal wetlands, and the 100-year floodplain in the watershed potentially affected by the proposed operation;
- c. Existing surface water quality characteristics and how water quality may be affected by emissions from the proposed operation;
- d. Existing air quality and how air quality may be affected by emissions from the proposed operation;

e. Geological conditions such as groundwater hydrogeology, including the depths to the top and bottom of groundwater aquifers; general characteristics of the geologic strata to be penetrated by drilling activities; and a discussion of the possibility for land subsidence and any potential impacts associated with land subsidence which may result from the operation;

f. A description of the existing water quality of groundwater aquifers ~~which that~~ that will be or may be affected by drilling activities or liquid waste disposal activities focusing particularly on the potability of water in potentially affected aquifers and the extent to which identified aquifers are currently used as domestic or community water supplies;

g. A discussion of the soil types on which an operation will be located, including an identification of prime agricultural lands, highly permeable soils, highly erodible soils, and soil profile descriptions of each representative soil series on the well site to a depth of 72 inches;

h. The identification and location of any public water supply intakes within the watershed where an operation will occur and located within 10 miles downstream of the proposed well site; or any public or private water supply wells located within a one-mile radius of the proposed oil or gas well drilling operation; and

i. Chesapeake Bay Preservation Areas, both Resource Protection Areas (RPAs) and Resource Management Areas (RMAs), located within 1320 feet of the proposed operations area.

2. Biological conditions and resources including ~~but not limited to:~~

a. A description of the terrestrial and aquatic habitat types and associated flora and fauna, including any natural heritage resources ~~which that~~ that are documented by performing a natural heritage survey in conformance with methodologies established by the Department of Conservation and Recreation, and any rare, threatened, or endangered species present;

b. A description of the use patterns of terrestrial habitat by wildlife, including areas such as nesting, roosting, breeding, and calving areas or other unique natural habitat;

c. A description of the use patterns of freshwater, estuarine, and marine habitat by terrestrial and aquatic species, including ~~but not limited to~~ submerged aquatic vegetation, fish spawning areas, shellfish beds, habitat of anadromous fish and other finfish, and benthic organisms; and

d. State Wildlife Management Areas, State Natural Area Preserves, National Wildlife Refuges, or elements of Virginia's National Estuarine Research Reserve System or other unique or important natural communities.



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3. Culturally important areas such as historical, open space, and recreational resources, including those resources listed in the Virginia Outdoors Plan, including ~~but not limited to~~:

- a. Historic properties ~~which~~ that are documented by performing a historic properties survey in conformance with guidelines established by the Department of Historic Resources;
- b. Public beaches;
- c. Scenic resources;
- d. Public water access sites;
- e. Local, state, or national parks, recreational areas, open space, or forests;
- f. State-owned or state managed lands;
- g. Federally-owned or federally managed lands;
- h. Easements held for agricultural, forestal, open space, horticultural, or other conservation purposes; and
- i. Prime agricultural lands as identified by the U.S. Soil Conservation Service and important farm lands as identified by the Virginia Department of Agriculture and Consumer Services.

B. Describe the typical noise levels currently existing at the proposed operations areas. Describe any operation activities that will produce noise over 65 decibels measured at the boundary of the operations area, the source and daily duration of those activities producing the noise, and the estimated external noise level at the nearest noise receptor such as a residence, school, hospital, business, public meeting place, feature identified in the Virginia Outdoors Plan, or wildlife habitat. The applicant should describe what measures, if any, will be taken to reduce projected exterior noise levels below 65 decibels at the nearest receptor.

C. Describe any activities associated with the operation that will produce light or glare within the operations area after sundown and before dawn. Describe the hours that artificial lighting sources will exist, including flaring of wells, gas processing facilities, or production facilities, the intensity of any light sources, and the time such light sources would be in operation. Describe the potential aesthetic, nuisance, safety, or environmental hazards that light or glare may produce outside of the operations area. Describe what steps, if any, that will be taken to minimize light or glare.

D. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on natural, scenic, recreational, and historic resources identified in the assessment. The assessment shall also discuss irrevocable or irreversible losses of the natural resources identified in the assessment.

## **9VAC15-20-150. Department of Environmental Quality notification by the Department of ~~Mines, Minerals and Energy~~.**

Upon receiving a permit application to drill an oil or gas well in Tidewater Virginia, the Director of the Department of ~~Mines, Minerals and Energy~~ shall notify the Director of the Department of Environmental Quality that a coordinated review of an environmental impact assessment must be initiated. The applicant shall provide the Department of ~~Mines, Minerals and Energy~~ with 17 copies of the environmental impact assessment and the Department of ~~Mines, Minerals and Energy~~ will deliver the copies to the Director of the Department of Environmental Quality. The 90-day review process will begin upon receipt of the appropriate number of copies of the environmental impact assessment by the Director of the Department of Environmental Quality.

## **9VAC15-20-170. Review of comments.**

The Director of the Department of Environmental Quality shall review all written state agency, local government, planning district commission, and public comments and any written or oral comments received during any public hearing. Based on the review by the Director of the Department of Environmental Quality of written comments, oral and written comments received at public hearings, and the environmental impact assessment, the Director of the Department of Environmental Quality will prepare and submit a written report of its findings and recommendations to the Director of the Department of ~~Mines, Minerals and Energy~~. The findings and recommendations of the Director of the Department of Environmental Quality on an assessment will be available for public inspection at the offices of the Department of Environmental Quality.

VA.R. Doc. No. R22-6829; Filed November 9, 2021, 10:40 a.m.

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## **TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

### **STATE CORPORATION COMMISSION**

#### **Final Regulation**

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

Title of Regulation: **10VAC5-230. Debt Settlement Services Providers (adding 10VAC5-230-10 through 10VAC5-230-80).**

Statutory Authority: §§ 6.2-2039 and 12.1-13 of the Code of Virginia.

Effective Date: December 15, 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:

*Pursuant to Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia, the new regulation establishes a licensing and regulatory framework for debt settlement services providers, including providing definitions for terms used in the regulation, specifying the required surety bond amount and minimum fidelity bond coverage, setting annual and other reporting requirements, setting the annual fee schedule, prescribing additional business requirements and restrictions, and establishing advertising rules. Changes to the proposed regulation (i) establish the ownership percentage necessary to be considered an "affiliate" as 1.0%; (ii) lower the minimum continuous fidelity bond coverage requirement to \$50,000; and (iii) allow a licensee to refer or direct an individual to an affiliate for services upon providing proof of compliance with subdivision 7 of § 6.2-2040 of the Code of Virginia.*

AT RICHMOND, NOVEMBER 18, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00010

Ex Parte: In the matter of Adopting Regulations Governing Debt Settlement Services Providers under Chapter 20.1 of Title 6.2 of the Code of Virginia

ORDER ADOPTING REGULATIONS

On July 26, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt regulations pursuant to Chapter 20.1 of Title 6.2 (§ 6.2-2026 et seq.) of the Code of Virginia ("Chapter 20.1"). Chapter 20.1 establishes a licensing and regulatory framework for debt settlement services providers. Chapter 20.1 became effective on July 1, 2021.

The proposed regulations implement the provisions of Chapter 20.1 by, among other things, defining certain terms, specifying the required surety bond amount and minimum fidelity bond coverage, establishing annual and other reporting requirements, setting forth the annual fee schedule, and prescribing additional business requirements and restrictions as well as various advertising rules.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on August

16, 2021, posted on the Commission's website, and sent to all debt settlement services providers licensed under Chapter 20.1 and other interested persons. The Order to Take Notice invited all interested persons to participate and required that any comments or requests for a hearing on the proposed regulations be submitted in writing on or before September 3, 2021.

Comments on the proposed regulations were timely filed by the American Fair Credit Council, the Consumer Debt Relief Initiative, the Virginia Poverty Law Center, and Virginia Organizing. The Commission did not receive any requests for a hearing.

The Bureau considered the comments that were filed and responded to them in its Response to Comments ("Response"), which the Bureau filed with the Clerk of the Commission on October 1, 2021. In its Response, the Bureau recommended that the Commission amend various sections of the proposed regulations.

NOW THE COMMISSION, having considered this matter, finds that the proposed regulations should be modified consistent with the modifications the Bureau recommended in its Response, with one exception. The Commission finds that proposed 10 VAC 5-230-50 D should be modified to permit licensees to establish that they are complying with § 6.2-2040 (7) of the Code of Virginia. The Commission also finds that the modified proposed regulations should be adopted effective December 15, 2021. The Commission expresses appreciation to those who submitted written comments.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as modified herein and attached hereto, are adopted effective December 15, 2021.
- (2) This Order and the attached regulations shall be made available on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).
- (3) The Commission's Division of Information Resources shall provide a copy of this Order and the regulations to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.
- (4) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

A COPY of this Order and the attached 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 regulations to every debt settlement services provider licensed under Chapter 20.1, those persons who submitted comments in this proceeding, and such other interested persons as he may designate.

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## Chapter 230 Debt Settlement Services Providers

### **10VAC5-230-10. Definitions.**

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

"Advertisement" for purposes of Chapter 20.1 and this chapter means a commercial message in any medium that promotes, directly or indirectly, the offering of debt settlement services to any consumer. The term 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, as well as other information distributed or made available solely to other businesses. [ The term also excludes materials that are solely educational and informational in purpose. ]

"Affiliate" means an entity of which [ ~~any~~ 1.0% or more ] of the voting shares or ownership interest is held, directly or indirectly, by a person that also owns, directly or indirectly, [ ~~any~~ 1.0% or more ] of the voting shares or ownership interest of a licensee.

"Chapter 20.1" means Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia.

"Owner" means a person who holds, directly or indirectly, [ ~~any~~ 1.0% or more ] of the voting shares or ownership interest of a licensee.

"Subsidiary" means an entity of which any of the voting shares or ownership interest is held, directly or indirectly, by a licensee.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2026 of the Code of Virginia.

### **10VAC5-230-20. Bond coverage.**

A. Pursuant to § 6.2-2029 of the Code of Virginia, a surety bond shall be filed with the commissioner and continuously maintained thereafter in full force by each licensee. The form of the bond shall be prescribed and provided by the commissioner. The bond amount required for initial licensure shall be at least \$25,000. After initial licensure, the bond amount required may be adjusted annually based on the volume of debt settlement services agreements maintained by a licensee during the preceding calendar year and any other factors deemed pertinent by the commissioner.

B. If a person has filed a surety bond with the commissioner, the bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

1. The person's application for a license is withdrawn or denied;
2. The person's license is surrendered, suspended, or revoked; or

3. The person ceases engaging in the business of providing or offering to provide debt settlement services.

C. A licensee shall continuously maintain at least [ \$250,000 \$50,000 ] in fidelity bond coverage.

### **10VAC5-230-30. Reporting requirements.**

A. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact upon the business of the licensee:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee [ relating to its debt settlement services business or similar business ].

3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's debt settlement services license or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its debt settlement services business or similar business; or (iii) takes any other action against the licensee relating to its debt settlement services business or similar business where the total amount of restitution or other payment from the licensee exceeds \$5,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

4. 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 debt settlement services business 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.

5. In lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action, the licensee surrenders its license to engage in (i) the business of providing or offering to provide debt settlement services in another state or (ii) any similar business in another state.

6. The licensee is denied a license to engage in (i) the business of providing or offering to provide debt settlement services in another state or (ii) any similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted for or convicted of a felony [ , if known ].

8. 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).

9. Such other events as may be prescribed by the commissioner.

B. Pursuant to § 6.2-2035 of the Code of Virginia, each licensee shall file an annual report with the commissioner on or before March 25. The annual report shall contain the following data regarding a licensee's business under Chapter 20.1 during the preceding calendar year:

1. The total number of agreements to provide debt settlement services maintained;
2. The total number of agreements to provide debt settlement services entered into;
3. The total principal amount of debt enrolled by consumers into the licensee's debt settlement services;
4. The total number of settled debts;
5. The total principal amount to be paid by consumers to satisfy settled debts;
6. The total amount of fees charged pursuant to § 6.2-2041 of the Code of Virginia;
7. The total amount of fees received pursuant to § 6.2-2041 of the Code of Virginia;
8. The total number of debt settlement services agreements terminated by consumers; and
9. Any additional information required by the commissioner.

**10VAC5-230-40. Schedule of annual fees for the examination, supervision, and regulation of debt settlement services providers.**

Pursuant to § 6.2-2038 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter 20.1. The fees are to defray the costs of examination, supervision, and regulation of licensees by the bureau.

[ ~~The annual fee~~ Each licensee ] shall [ ~~be pay~~ an annual fee equal to the sum of the following: (i) ] \$1,000 [ ~~per licensee plus~~, and (ii) ] \$3.44 per debt settlement services agreement maintained by the licensee during the calendar year preceding the year of [ the ] assessment. In cases where a licensee was not licensed under Chapter 20.1 as of December 31 of the calendar year preceding the year of the assessment, the annual fee shall be \$0.

The fee assessed using the schedule set forth in this section shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The information supplied in the annual report due March 25 each year of each licensee provides the basis for its assessment.

Fees prescribed and assessed by this schedule are apart from and do not include the reimbursement for expenses permitted by subsection B of § 6.2-2038 of the Code of Virginia.

**10VAC5-230-50. Additional business requirements and restrictions; acquisitions.**

A. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2031 of the Code of Virginia.

B. [ ~~A~~ If a ] licensee [ ~~shall not provide or offer to provide~~ provides ] debt settlement services in connection with a debt settlement services agreement that has been set up or established by any [ ~~other~~ ] person [ ~~except for other than~~ ] a credit counselor of the licensee [ , then the licensee shall ensure that (i) the total fees charged to the consumer in connection with the debt settlement services, including any fees for enrolling the consumer or setting up or establishing the agreement, do not exceed the limitations in § 6.2-2041 of the Code of Virginia; and (ii) the agreement complies with Chapter 20.1 and this chapter ].

C. A licensee shall not sell or otherwise assign a debt settlement services agreement to another person unless the purchaser or assignee is licensed or exempt from licensure under Chapter 20.1.

D. A licensee shall not refer or direct [ ~~a consumer~~ an individual ] for whom the licensee is providing debt settlement services to any creditor that is an affiliate, owner, or subsidiary of the licensee [ , unless the licensee can establish that in accordance with subdivision 7 of § 6.2-2040 of the Code of Virginia the licensee did not and will not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting the individual in connection with obtaining an extension of credit or other service from the creditor, except for educational or counseling services required in connection with a government-sponsored program ].

E. A licensee shall comply with all state and federal laws and regulations applicable to the conduct of its business, including the Standards for Safeguarding Customer Information (16 CFR Part 314).

F. A licensee or person required to be licensed under Chapter 20.1 shall not provide any information to the bureau that is false, misleading, or deceptive.

G. A licensee or person required to be licensed under Chapter 20.1 shall not provide any information to a consumer that is false, misleading, or deceptive.

H. A licensee or person required to be licensed under Chapter 20.1 shall not engage in any activity that directly or indirectly

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results in an evasion of the provisions of Chapter 20.1 or this chapter.

I. A person shall remain subject to the provisions of Chapter 20.1 and this chapter applicable to licensees in connection with all debt settlement services provided or offered to be provided while licensed under Chapter 20.1 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases providing debt settlement services.

J. 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 Chapter 20.1 shall pay a nonrefundable application fee of \$500.

## **10VAC5-230-60. Advertising.**

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

1. The name of the licensee as set forth in the license issued by the commission.
2. A statement that the licensee is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the licensee (i.e., DSP-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.

C. Every licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, [ ~~a copy~~ an example ] of every advertisement used, including solicitation letters, print media proofs, commercial scripts, recordings of all radio and television broadcasts, and Internet web pages. A licensee may retain copies of its advertisements in electronic form.

## **10VAC5-230-70. Enforcement; civil penalties.**

A. Failure to comply with any provision of Chapter 20.1 or this chapter may result in civil penalties, license suspension, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2046 of the Code of Virginia, a person shall be subject to a civil penalty of up to \$1,000 for every violation of Chapter 20.1 or this chapter. Furthermore, if a person violates any provision of Chapter 20.1 or this chapter in connection with multiple debt settlement services agreements, the person shall be subject to a separate civil penalty for each debt settlement services agreement. For example, if a licensee enters into five debt settlement services agreements and the

licensee violates two provisions of this chapter in connection with each of the five debt settlement services agreements, there would be a total of 10 violations and the licensee would be subject to a maximum civil penalty of \$10,000.

## **10VAC5-230-80. Commission authority.**

The commission may at its discretion waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R21-6865; Filed November 18, 2021, 4:12 p.m.



## **TITLE 12. HEALTH**

### **STATE BOARD OF HEALTH**

#### **Final Regulation**

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

**Title of Regulation:** **12VAC5-115. Virginia Immunization Information System (amending 12VAC5-115-30).**

**Statutory Authority:** § 32.1-46.01 of the Code of Virginia.

**Effective Date:** January 7, 2022.

**Agency Contact:** Christy Gray, Director, Office of Immunizations, Virginia Department of Health, 101 North 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 864-8076, or email [christy.gray@vdh.virginia.gov](mailto:christy.gray@vdh.virginia.gov).

#### **Summary:**

*Pursuant to Chapter 211 of the 2021 Acts of Assembly, Special Session I, the amendments make reporting using Virginia Immunization Information System (VIIS) mandatory for any health care provider in the Commonwealth that administers immunizations.*

#### **12VAC5-115-30. Registration procedures.**

A. Participation in VIIS is ~~voluntary~~ mandatory for any health care provider, as defined in § 32.1-127.1:03 of the Code of Virginia, in the Commonwealth that administers immunizations.

B. Completed registration forms from authorized participants must be processed and approved by VDH before access to the system is allowed. Registration will require the participant to assure compliance with necessary confidentiality and security access provisions that specify security procedures to ensure

that VIIS data are protected from unauthorized view and access. The participant shall update and submit the forms to VDH every year.

C. Once the participant is approved, the participant shall sign a participant registration agreement with VDH. VDH will then provide training and activate the participant in the VIIS system.

D. Qualifying participant organizations shall designate an administrator for their organization. The administrator may then allow VIIS access by an employee in ~~his~~ the administrator's organization and, in doing so, shall assume responsibility for registering that person, obtaining the most recent security forms that specify VITA or VDH security requirements, retaining all completed user forms, assigning the security role of the user, accepting legal responsibility for ~~his~~ the employee's proper use of VIIS, and terminating access to VIIS if the employee is noncompliant with VIIS requirements or no longer requires access.

E. ~~An administrator may terminate his organization's~~ Terminate organizational participation ~~at any time~~ by notifying VDH in writing. All data entered by that organization shall remain in the system.

VA.R. Doc. No. R22-6870; Filed November 3, 2021, 12:39 p.m.

### Final Regulation

**Title of Regulation:** 12VAC5-403. Certification of Doulas (adding 12VAC5-403-10 through 12VAC5-403-70).

**Statutory Authority:** §§ 32.1-12 and 32.1-77.1 of the Code of Virginia.

**Effective Date:** January 6, 2022.

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

**Summary:**

*Pursuant to Chapter 724 of the 2020 Acts of Assembly, the new regulation (i) establishes the minimum requirements to be considered a certified doula in Virginia based on the core competences for doula certification used by national organizations and community based organizations in Virginia and (ii) outlines the minimum standards required of the certifying body, which will be approved by the board and which will be responsible for confirming state-certified doulas, approving the training and education to meet doula certification requirements, and maintaining a registry of state-certified doulas available to the general public.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## Chapter 403 Certification of Doulas

### **12VAC5-403-10. Definitions.**

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

"Antepartum" means the period of pregnancy prior to labor and delivery.

"Certifying body" means an organization approved by the State Board of Health that has as one of its purposes the certification of doulas.

"Community-based doula" means a doula who often has shared lived experiences and is trained to provide extended, culturally congruent support to families throughout pregnancy to include antepartum, intrapartum, during labor and birth, and up to one year postpartum. Community-based doulas provide an expanded set of services and play a crucial role in improving outcomes and experiences for communities most affected by discrimination and disparities in health outcomes.

"Doula" means a trained nonmedical professional who provides continuous physical, emotional, and informational support to a pregnant person during the antepartum or intrapartum period or during the period up to one year postpartum.

"Intrapartum" means the period of pregnancy after the onset of labor through delivery.

"Postpartum" means the period of pregnancy following birth.

"State-certified doula" means a trained, community-based nonmedical professional who provides continuous physical, emotional, and informational support to a pregnant person during the antepartum or intrapartum period or during the period up to one year postpartum who has been certified by a certifying body approved by the State Board of Health.

"Training entity" means an organization that has a training and education programs that are approved by a certifying body approved by the State Board of Health to meet the curriculum requirements for community-based doula certification.

### **12VAC5-403-20. State-certified doula.**

Any person seeking to be a state-certified doula under this chapter shall be a community-based doula and shall (i) meet the qualifications and education requirements established in this chapter and (ii) hold a certification as a certified doula from a certifying body approved by the State Board of Health.

### **12VAC5-403-30. Qualifications.**

A. Any person seeking to be a state-certified doula under this chapter shall complete at least 60 hours of doula training. Training shall be provided by one or more entities approved by a certifying body approved by the State Board of Health.

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B. The training and education requirements outlined in 12VAC5-403-50 shall not apply to doulas who have already obtained an initial level of certification within three years prior to [ ~~(insert the effective date of this regulation)~~ January 6, 2022, ] and are applying to be a state-certified doula through the certifying body approved by the State Board of Health, provided that the applicant provides proof of completion of any unmet training and education requirements within one year of application.

## **12VAC5-403-40. Minimum standards for certifying bodies.**

A. The State Board of Health shall approve a certifying body that has adopted standards from a nationally recognized organization that has a doula certification that reflects national best practices pertaining to community-based doula training and certification to establish certified doula training and education programs and to approve or accept continuing education courses for renewing doula certification in Virginia.

B. The certifying body shall:

1. Maintain a registry of state-certified doulas that is accessible to the public and displays the certification status of doulas.
2. Submit to the State Board of Health an annual report by the end of every fiscal year that identifies the number of new and cumulative state-certified doulas and the number of new and cumulative training programs approved for the purpose of providing doula certification.

C. The certifying body shall require its certificate holders to:

1. Adhere to a code of ethics set forth by the certifying body.
2. Complete at least 60 hours of training and education provided by one or more training entities approved by the certifying body.

## **12VAC5-403-50. Curriculum requirements.**

A. Unless the exception in 12VAC5-403-30 B is met, any person seeking to be a state-certified doula under this chapter shall complete doula training and education programs that have been approved by the certifying body. The curriculum requirements for the certified doula training and education programs are outlined in the Virginia Curriculum Requirements for the State-Certified Doula and shall be approved by the certifying body.

B. The curriculum requirements for the certified doula training and education programs shall include a minimum of 60 hours in the following topics:

1. Maternal and infant health concepts and approaches ( [ 2 two ] hours).
  - a. Provision of perinatal support services from [ 1st first ] trimester to [ twelve 12 ] months postpartum.

b. Provision of emotional and social support, including navigating pregnancy loss.

2. Lactation anticipatory guidance and support (10 hours).

3. Service coordination and system navigation (20 hours).

a. Provision of in-home prenatal and postpartum care support.

b. Assessing psychosocial and health needs, including perinatal mood and anxiety disorders (PMADs) screening.

c. Goal setting and prioritization of psychosocial and health needs.

d. Antepartum (high-risk) maternal care support.

e. Labor support.

f. Education and referrals for developmental screenings.

g. Resource navigation for wraparound services (i.e., intimate partner violence, domestic violence, oral health, family planning).

4. Health promotion and prevention ( [ 8 eight ] hours).

a. Provision of perinatal health education.

b. Provision of newborn parenting education

c. Provision of wellness and self-care coaching.

5. Advocacy, outreach, and engagement ( [ 5 five ] hours).

a. Serving as an advocate for respectful maternal care.

b. Intentional reflection of the community served.

c. Care coordination and social service navigation.

d. Provision of reproductive rights education, informed choice and decision making, and birth planning.

e. Child abuse and neglect mandatory reporting.

6. Communication ( [ 2 two ] hours).

a. Respectful, client-centered maternal care.

b. Active listening.

c. Navigating patient families, medical support staff, and other support systems.

d. Responding to challenges.

7. Cultural humility and responsiveness ( [ 8 eight ] hours).

a. Intersectionality and cultural humility, including language access.

b. Health literacy.

c. Trauma-informed care.

8. Ethical responsibilities and professionalism ( [ 5 five ] hours).

a. Code of ethics, standards of practice, and [ HIPAA the Health Insurance Portability and Accountability Act of 1996 (P.L. 104–191) ].

b. Required charting and documentation.

c. Serving as an accountability partner.

**12VAC5-403-60. Continuing education.**

Any person seeking to be a state-certified doula under this chapter shall be required to complete a minimum of 15 hours of continuing education every two years from the date of certification from a training entity approved by the certifying body pursuant to 12VAC5-403-40. These hours shall be in courses outlined in the Virginia Curriculum Requirements for the State-Certified Doula.

**12VAC5-403-70. Certification not required.**

This regulation does not require a doula to be certified by a certifying body approved by the State Board of Health in order to practice as a doula in Virginia.

VA.R. Doc. No. R21-6484; Filed November 9, 2021, 10:22 a.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

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

**Title of Regulation:** 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20).

**Statutory Authority:** §§ 12.1-13 and 56-594 of the Code of Virginia.

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

**Public Comment Deadline:** January 4, 2022.

**Agency Contact:** Mike Cizenski, Principal Utility Engineer, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email [mike.cizenski@sec.virginia.gov](mailto:mike.cizenski@sec.virginia.gov).

**Summary:**

*Pursuant to Chapter 266 of the 2021 Acts of Assembly, Special Session I, the amendment conforms the definition of "small agricultural generator" to § 56-594.2 of the Code of Virginia to include any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia.*

AT RICHMOND, NOVEMBER 16, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00251

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER NUNC PRO TUNC

On November 12, 2021, the State Corporation Commission ("Commission") entered an Order Establishing Proceeding in the above-captioned docket to initiate a rulemaking proceeding to amend the Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"). Commission Staff ("Staff") prepared a proposed amendment to Rule 20 VAC 5-315-20 of the Net Energy Metering Rules ("Proposed Amendment"), which should have been appended to the Order Establishing Proceeding.

It has come to the Commission's attention that the Order Establishing Proceeding was entered without the Proposed Amendment being appended thereto. In addition, it has also been determined that Ordering Paragraph (7) contains an incorrect date reference.<sup>1</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that an Order Nunc Pro Tune should be entered to make the Proposed Amendment part of the record and to revise Ordering Paragraph (7) of the Order Establishing Proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) The Proposed Amendment is appended hereto and made part of the record.
- (2) Ordering Paragraph (7) of the Order Establishing Proceeding is removed and replaced nunc pro tune with the following: On or before January 18, 2022, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Amendment.
- (3) In accordance with Ordering Paragraph (4) of the Order Establishing Proceeding, on or before December 2, 2021, each Virginia electric distribution company to which the Net Energy Metering Rules apply shall serve a copy of this Order Nunc Pro Tune, including the attached Proposed Amendment, in addition to a copy of the Order Establishing Proceeding, upon each of the Virginia electric distribution company's respective net metering customers and each of their existing small agricultural generators. The certificate of service required to be filed with the Clerk of the Commission no later than December 22, 2021, shall include verification of service of both Orders.
- (4) All other provisions of the Order Establishing Proceeding remain in full force and effect.
- (5) This matter is continued.



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# Regulations

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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.

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<sup>1</sup>Ordering Paragraph (7) concerns the deadline for Staff's report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Amendment.

AT RICHMOND, NOVEMBER 12, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00251

Ex Parte: In the matter of amending regulations governing net energy metering

## ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 266 of the 2021 Acts of Assembly, Special Session I ("Chapter 266"), amended the definition of "[s]mall agricultural generator" in Code § 56-594.2 as follows:

"Small agricultural generator" means a customer that: ...

2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1;..."

The current Net Energy Metering Rules thus must be revised to reflect the change set forth in Chapter 266.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules in keeping with the expanded definition of "[s]mall agricultural generator" in Chapter 266.

To initiate this proceeding, the Commission Staff has prepared a proposed amendment to Rule 20 VAC 5-315-20 of the Net Energy Metering Rules ("Proposed Amendment"), which is appended to this Order. The Commission finds that notice of the Proposed Amendment should be given to the public; that interested persons should be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Amendment; and that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20

should serve a copy of this Order upon each of their respective net metering customers and each of their existing small agricultural generators and file a certificate of service.

The Commission takes judicial notice of the ongoing public health issues related to the spread of the coronavirus, or COVID-19. The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.<sup>1</sup>

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2021-00251.

(2) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure,<sup>2</sup> as modified herein.<sup>3</sup> Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5 VAC 5-20-170, Confidential information, of the Rules of Practice. At this time, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.<sup>4</sup>

(3) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) On or before December 2, 2021, each Virginia electric distribution company to which the Net Energy Metering Rules apply shall serve a copy of this Order upon each of their respective net metering customers and each of their existing small agricultural generators and shall file with the Clerk of the Commission a certificate of service no later than December 22, 2021, consistent with the findings above.

(5) An electronic copy of the Proposed Amendment may be obtained by submitting a request to Michael A. Cizenski in the Commission's Division of Public Utility Regulation at the following email address: [mike.cizenski@scc.virginia.gov](mailto:mike.cizenski@scc.virginia.gov). An electronic copy of the Proposed Amendment can be found at the Division of Public Utility Regulation's website: [scc.virginia.gov/pages/Rulemaking](http://scc.virginia.gov/pages/Rulemaking). Interested persons may also download unofficial copies of the Order and the Proposed Amendment from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(6) On or before January 4, 2022, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Amendment following the instructions on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). Those unable, as a practical matter, to submit such documents electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document

Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All such documents shall refer to Case No. PUR-2021-00251. Individuals should be specific in their comments, proposals, or supplements to the Proposed Amendment and should address only those issues pertaining to the amendment of § 56-594.2 of the Code pursuant to Chapter 266. Issues outside the scope of addressing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(7) On or before January 18, 2022, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Amendment.

(8) This matter is continued for further orders of the Commission.

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

<sup>2</sup>5 VAC 5-20-10 et seq. ("Rules of Practice").

<sup>3</sup>See supra, n.1.

<sup>4</sup>As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may be subject to delayed processing due to the COVID-19 public health issues.

**20VAC5-315-20. Definitions.**

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter

S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters serving the agricultural net metering customer that are located at the same or adjacent sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or controlled by the agricultural business;
4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;
5. Are interconnected and operated in parallel with an electric company's distribution facilities; and
6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or by the net metering customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a

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# Regulations

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competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Low-income utility customer" means the same as that term is defined in § 56-576 of the Code of Virginia.

"Net metering customer" means for an electric cooperative, a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers. The generating facility

shall be operated under a net metering service arrangement. For an investor-owned electric distribution company, "net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education, public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Phase I Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;
2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or leased by the net metering customer and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;
4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and
5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. For an electric cooperative, the capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. For an investor-owned electric distribution company, the capacity of any generating facility installed between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;
2. Uses as its total source of fuel renewable energy;
3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;
4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;
5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and
6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;
2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia;
3. May be served by multiple meters that are located at separate but contiguous sites;
4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;
5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and
6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

VA.R. Doc. No. R22-6231; Filed November 14, 2021, 4:51 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

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

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

### BOARD OF ACCOUNTANCY

Title of Document: [Continuing Professional Education Violation Penalties - Guidelines](#).

Public Comment Deadline: January 5, 2022.

Effective Date: January 6, 2022.

Agency Contact: Steven Burkarth, Regulatory Coordinator, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-8505, or email [steven.burkarth@boa.virginia.gov](mailto:steven.burkarth@boa.virginia.gov).

### STATE BOARD OF EDUCATION

Title of Document: [Board of Education Guidance on Cultural Competency Training for Teachers and Other Licensed School Board Employees in Virginia Public Schools](#).

Public Comment Deadline: January 5, 2022.

Effective Date: January 6, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 25th Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2540, or email [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Development Disability Waiver - Customized Rate Provider Guidelines](#).

Public Comment Deadline: January 5, 2022.

Effective Date: January 6, 2022.

Agency Contact: Emily McClellan, Policy and Research Division, 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).

### DEPARTMENT OF MOTOR VEHICLES

Title of Document: [Military Guide](#).

Public Comment Deadline: January 5, 2022.

Effective Date: January 6, 2022.

Agency Contact: Melissa K. Velazquez, Legislative Director, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.virginia.gov).

### STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child Care Subsidy Guidance Manual](#).

Public Comment Deadline: January 5, 2022.

Effective Date: January 6, 2022.

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.clarke@dss.virginia.gov](mailto:nikki.clarke@dss.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Public Comment Opportunity on Proposed Variances to the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on applications for proposed variances to the Human Rights Regulations submitted to the State Human Rights Committee (SHRC). The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of the Human Rights Regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, the SHRC intends to prepare a written decision deferring, disapproving, modifying, or approving each variance application. All variances shall be approved for a specific time period. The decision and reasons for the variance will be published in a later issue of this Register.

Purpose of notice: The SHRC is seeking comment on the following applications for proposed variances to the Human Rights Regulations:

1. Renewal of Variances for DBHDS Western State Hospital (WSH).

#### Variance to Procedures for Behavioral Treatment Plans:

12VAC35-115-105 H: Providers shall not use seclusion in a behavioral treatment plan.

#### Variance to Procedures for Use of Seclusion, Restraint, and Time Out:

12VAC35-115-110 C 3: Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

Explanation: The requested variances will allow WSH to place an individual in an environment of seclusion, at the individual's

request, and not as related to an emergency, in order to prevent self-injurious harm to the individual and to the staff members responsible for his care.

2. New Variance for DBHDS Commonwealth Center for Children and Adolescents (CCCA).

#### Variance to Procedures for Behavioral Treatment Plans:

12VAC35-115-105 H: Providers shall not use seclusion in a behavioral treatment plan.

Explanation: The requested variance will allow CCCA to place the individual (youth) in seclusion when different alternatives have been attempted without sustained success in maintaining safe behaviors as part of the behavioral treatment plan.

Variances to these regulations by the state facilities listed are reviewed by the SHRC at least annually, with reports to the SHRC regarding the variances as requested.

3. New Variance for Youth for Tomorrow New Life Center, Inc.

#### Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8: Generally granting an individual the right to communicate privately with anyone via telephone and to have or refuse visitors, unless certain listed exceptions are met.

Explanation: In order to maintain the safety and security of individuals (youth), the program may restrict communication via telephone and in person visitation to only those names placed on a list generated by the parent or legal guardian and the resident.

The requested variance will allow Youth for Tomorrow New Life Center, Inc. to utilize an approved contact list for phone calls and an approved contact list for visitation for each individual. The lists shall be developed by the individual's parent or legal guardian in order to protect the best interests of the individual. The individual shall be present and given the opportunity to participate with the parent or legal guardian in creating the phone and visitation lists.

Public comment period: December 6, 2021, through January 6, 2022.

Description of proposal: The proposed variance applications must comply with the general requirements of Part VI, Variances (12VAC35-115-220), of the Human Rights Regulations.

How to comment: The SHRC accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DBHDS, who will provide them to the SHRC, by the last day of the comment period. All information received is part of the public record.

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## General Notices

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To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative listed.

**Contact Information:** Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (833) 734-1241, or email [taneika.goldman@dbhds.virginia.gov](mailto:taneika.goldman@dbhds.virginia.gov).

### **BOARD OF HOUSING AND COMMUNITY DEVELOPMENT**

#### **Public Hearing Announcement**

Pursuant to § 2.2-4006 A 12 and § 36-100 of the Code of Virginia, the Board of Housing and Community Development will hold a public hearing on the Virginia Uniform Statewide Building Code (13VAC5-63), Virginia Statewide Fire Prevention Code (13VAC5-51), Virginia Amusement Device Regulations (13VAC5-31), and the Virginia Industrialized Building Safety Regulations (13VAC5-91).

The purpose of the public hearing is to consider updating the codes to the newest editions of the model codes and standards and to consider related proposals prior to the publication of proposed regulations.

The public hearing will be held at Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, beginning at 10 a.m. on January 10, 2022. For more information, contact Kyle Flanders at telephone (804) 786-6761 or email [kyle.flanders@dhsd.virginia.gov](mailto:kyle.flanders@dhsd.virginia.gov). See the Virginia Regulatory Town Hall website for additional details at <https://townhall.virginia.gov/>.

**Contact Information:** Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090.

### **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

#### **Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Personal Care Rate Increase**

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of the notice.

Comment period began on November 12, 2021, and ends December 12, 2021.

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

In accordance with Amendment Item 313 #17c, DMAS is increasing the rates for agency-directed and consumer-directed personal care services under the Early Periodic Screening, and Diagnosis and Treatment (EPSDT) benefit by 12.5%, effective January 1, 2022. A corresponding rate increase of 12.5% will be provided for these services and for companion and respite services provided under home and community-based waivers, however, the increase is not included in a state plan amendment but via waiver documentation.

The expected increase in annual aggregate expenditures is \$41,365,521 in state general funds, \$155,872 in special funds and \$42,793,026 in federal funds in federal fiscal year 2022.

**Contact Information:** Meredith Lee, Policy, Regulations, and Manual Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

### **STATE WATER CONTROL BOARD**

#### **Proposed Judicial Consent Decree Amendment for Hampton Roads Sanitation District**

The Commonwealth of Virginia and the United States of America are proposing to amend a judicial consent decree with Hampton Roads Sanitation District (HRSD) for violations of the Commonwealth's State Water Control Law and regulations and the Clean Water Act related to the HRSD sanitary sewer system and sewage treatment plants serving Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg, Gloucester, Isle of Wight, James City, York, and Smithfield, Virginia. The proposed consent decree amendment is available at the office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. Comments will be accepted by the contact person from December 6, 2021, through January 5, 2022.



Contact Information: Kristen Sadtler, 1111 East Main Street, Richmond, VA 23219, telephone (804) 698-4149, FAX (804) 698-4178, or email [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov).

## **Proposed Enforcement Action for Norfolk Southern Railway Company**

An enforcement action has been proposed for Norfolk Southern Railway Company for violations related to railway maintenance located approximately 0.16 miles southwest of the Gap Road and Dismal Hollow Road intersection in Warren County, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Norfolk Southern Railway Company to address noncompliance with State Water Control Law. 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). The staff contact will accept comments by email, fax, or postal mail from December 6, 2021, to January 8, 2022.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov).

## **Proposed Enforcement Action for Norfolk Southern Railway Company**

An enforcement action has been proposed for Norfolk Southern Railway Company for violations related to railway maintenance located near McIntire Park Drive in the City of Charlottesville, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Norfolk Southern Railway Company to address noncompliance with State Water Control Law. 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). The staff contact will accept comments by email, fax or postal mail from December 6, 2021, to January 5, 2022.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov).

## **Proposed Enforcement Action for Titan Virginia Ready-Mix LLC**

An enforcement action has been proposed for Titan Virginia Ready-Mix LLC for violations of the State Water Control Law and regulations at the Titan Virginia Ready-Mix LLC - Springfield located in Springfield, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Titan Virginia Ready-Mix LLC - Springfield facility. A description of the proposed action is available at the Department of Environmental Quality office

listed or online at [www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders](http://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders). The staff contact will accept comments by email or postal mail from December 7, 2021, through January 6, 2022.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22201, or email [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@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 <https://commonwealthcalendar.virginia.gov>.

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

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



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## General Notices

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